Basti Sugar Mills Co. Ltd. vs State Of Uttar Pradesh And Ors. on 10 February, 1954

Equivalent citations: AIR1954ALL538, (1954)IILLJ279ALL, AIR 1954 ALLAHABAD 538

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. I have carefully considered the judgments prepared by my brothers Sapru and Bhargam. On the points on which they are in agreement I have nothing to add. On one point, however, they have differed. Bhargava, J. has held that the order passed by the U. P. Government under Section 3(b), U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) about payment of bonus for the years 1947-48 and 1948-49 was invalid as the U. P. Government had no authority to pass an order determining the conditions of service of the workmen with retrospective effect and, in any case, such bonus could be payable only to the workmen who were in service in those years. My brother, Sapru, has, however, taken a different view.

2. As has been pointed out by my brother Bhargava, the industrial Disputes Act, 1947 (Act No, 14 of 1947) deals with settlement of industrial disputes by Conciliation Officers or Boards of Conciliation or by Industrial Tribunals, Courts of Inquiry have also been provided for inquiring into any matter appearing to be connected with or relevant to an industrial dispute. An industrial dispute can no doubt arise not only with regard to the terms of employment in "praesenti' or in 'futuro' but also in respect of the terms and conditions of service in the past and in the case of an industrial dispute decided under the Industrial Disputes Act of 1947 (No. 14 of 1947) it may be possible for the requisite authorities to pass an order affecting the terms and conditions of service not only in the present or in future but also in the past.

3. The order in the case before us has, however, been passed by the U. P. Government under the U. P. Industrial Disputes Act (U. P. Act No. 23 of 1947). Section 3 of that Act is as follows : "3 'Power to prevent strikes, lock-outs, etc.' If in the opinion of the Provincial Government, it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision-

(a) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally, or a strike or lock-out in connection with any industrial dispute;

(b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

(c) for appointing industrial courts;

(d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order ;

(e) for requiring any public utility service, or any subsidiary undertaking not to close or remain closed and to work or continue to work, on such conditions as may be specified in the order;

(f) for exercising control over any public utility service, or any subsidiary undertaking by authorising any person (hereinafter referred to as an authorised controller) to exercise, with respect to such service, undertaking or part thereof such functions of control as may be specified in the order; and, on the making of such order the service undertaking or part, as the case may be shall so long, as the order continues, be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order; and every person having any functions of management of such service, undertaking or part thereof shall comply with such directions;

(g) for any incidental or supplementary matters, which appear to the Provincial Government necessary or expedient for the purposes of the order;

Provided that no order made under Clause (b)-

(I) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;

(II) shall, if an industrial dispute is referred for adjudication under Clause (d) be enforced after the decision of the adjudicating authority is announced by, or with the consent of, the Provincial Government."

We are concerned with Clause (b) which empowers the Provincial Government to make provisions for requiring employers, workmen or both to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order, if, in the opinion of the Provincial Government, it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to

the life of the community, or for maintaining: employment. The first proviso to Clause (b) lays down that no order shall require an employer to observe terms and conditions of employment less favourable to the workmen than those 'which were applicable to them at any time within three months preceding the date of the order.

The whole of this section is intended to empower the Government to pass general or special orders when the passing of such orders becomes necessary for securing the public safety or convenience or the maintenance of public order or supplies. It may be urged that if the workmen claim something for the past years, without which they are not prepared to continue to work in future, and the Government is of the opinion that it is expedient to pass the order for securing the public safety, convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, there is no reason why the Government should have no right to pass an order with respect to a period which has already expired and that it should have authority only to control the relationship in the present and the future. The question, however, has to be decided on the language of the section rather than on such general considerations and the language of the section appears to me to indicate that the power given to the Government relates to the present and the future.

Where the dispute is as regards any past period, it is open to the Government to have the matter decided either by a Board of Conciliation or by Industrial Tribunals under the Central Act or under Clauses (c) and (d) of Section 3 of the U. P. Act. The orders contemplated under Section 3(b) of the U. P. Industrial Disputes Act appear to me to relate to the terms and conditions of service in the present and in the future necessitated by fluctuating economic conditions. To my mind, the error lay in the State Government proceeding under Section 3(b) instead of referring the matter for decision under the appropriate sections of the Central or the State Act, I, therefore, agree with the order proposed by my brother, Bhargava.

Sapru, J.

4. The facts which have given rise to these petitions have been narrated fully by my brother V. Bhargava and no useful purpose will be served by going over the same ground. I wish to add a few remarks in regard to certain matters which were argued before us in order to make my own position clear.

5. The first point on which I would like to say a few words is regarding the contention of Sri Pathak that Section 3, U. P. Industrial Disputes Act, 1947, (Act 28 of 1947), is invalid as it is couched in such wide and sweeping language as to vest the Executive Government with legislative powers which cannot be canalised within definable limits and can be used by it arbitrarily, unreasonably and capriciously. The question of delegated legislation has been the subject-matter of a detailed consideration by their Lordships of the Supreme Court in 'In re The Delhi Laws Act, 1912, etc.,: 'AIR 1951 SC 332 (A)'. The implications of that decision were considered by a Full Bench decision of this Court in -- 'Bhushan Lal v. State', AIR 1952 All 866 (B) in connection with the question of the validity of Section 3, 4 and 6 of the Essential Supplies (Temporary Powers) Act, 1946, (Act 24 of 1946), The implications of this Pull Bench have been explained by my brother V. Bhargava in his

judgment and I do not propose to expatiate on them at any length.

Suffice it to say that I am quite unable to accept Sri Pathak's contention that our Constitution, being a written one, must be assumed to have an American background and is based upon an acceptance of that theory of 'separation of powers' which determined the main lines on which the Constitution of the United States of America came to be drawn up. The broad fact which stands out 3s that the Executive provided by our Constitution is a removable Executive, i.e., an Executive of the Parliamentary type such as obtains in Britain. Article 75(3) of the Constitution specifically lays down that. "The Council of Ministers shall be Collectively responsible to the House of the people,"

> Article 75(5) provides that, "A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister."

I have quoted these articles to show that the approach of our Founding Fathers of the Constitution was basically difierent from that of those responsible for the framing of the American Constitution. This has been well pointed out, if I may say so with very great respect, by Patanjali Sastri, J., afterwards C. J., in -- 'AIR 1951 SC 332 at p. 384 (A)', and I beg leave to quote him; "Thus, the English approach to the problem of delegation of legislative power is characterised by a refusal to regard legislation by a duly constituted legislature as exercise of a delegated power, and it emphatically repudiates the application of the maxim 'delegatus non potest delegare'. It recognises the sovereignty of legislative bodies within the limits of the constitutions by which they are created and concedes plenary powers of delegation to them within such limits, it regards delegation as a revocable entrustment of the power to legislate to an appointed agent whose act derives its validity and legal force from the delegating statute and not as a relinquishment by the delegating body of its own capacity to legislate.

On the other hand, the American courts have approached the problem along wholly different lines, which are no less the outcome of their own environment and tradition. The American political scene in the eighteenth century was dominated by the ideas of Montesque and Locke that concentration of legislative, executive ana judicial powers in the hands of a single organ of the State spelt tyranny, and many constitutions had explicitly provided that each of the great departments of State, the legislature, the executive and the judiciary, shall not exercise the powers of the others.

Though the Federal Constitution contained no such explicit provision, it was construed, against the background of the separatist ideology, as embodying the principle of separation of powers, and a juristic basis for the consequent non-dele-gability of its power by one of the departments to the others was found in the old familiar maxim of the private law of agency 'delegatus non potest delegare' which soon established itself as a traditional dogma of American constitutional law. But the swift progress of the nation in the industrial and economic fields and the resulting complexities of administration forced the realisation on the American Judges of the unavoidable necessity for large-scale delegation of legislative powers to administrative bodies, & it was soon recognised that to deny this would be "to stop the wheels of government". The result has been that American decisions on this branch of the law consist largely of attempts to disguise delegation 'by veiling words' or 'by

softening it by a 'quasi' (per Holmes J. in --'Springer v. Government of the Phillipine Islands', (1928) 277 US 189 (C)".

6-7. No doubt a law can be challenged on the ground of the incompetency of the particular legislature, whether federal or state, to enact it or on the ground of its inconsistency with the fundamental rights guaranteed by the Constitution, but provided the legislature concerned does not abdicate its power of legislation by wiping itself out and retains its control so as to be able to withdraw the legislative power conferred on the subordinate authority whenever it considers it proper to do so, it is not for Courts to decide how much authority should be delegated or for how long such delegation should continue. (See the observations of Das J. in -- 'AIR 1951 SO 332 at p. 422 (A)', referred to above). The powers given by Section 3 may be and are indeed of a most wide character, but that fact alone cannot affect its validity. The remedy against delegated legislation is not judicial but political control with wnich Courts have no concern. I am, therefore, clear in my mind that Section 3, U. P. Industrial Disputes Act, 1947, (Act 28 of 1947) was not beyond tne competence of the legislature and cannot be declared 'ultra vires' on tne ground that it delegates legislative or rule-making power of an unspecified character to the Executive Government.

8. I am also unable to accept Sri Pathak's contention that the provisions ot Section 3, U. P, Industrial Disputes Act, 1947, (Act 28 of 1947) are invalid on the ground that they offend the fundamental rights guaranteed under Article 19(1)(f) and 31 of the Constitution. I do not see how Article 31(1) comes in at all for all that Article lays down is that, "No person shall be deprived of his property save by authority of law." The order cannot be said to be depriving them of their property. What it does is in effect to increase the wage-bill of the. factories concerned by requiring them to pay an extra bonus to their workmen and this it does by a law which would be covered by Clause (5) of Article 19 of the Constitution. In particular, as regards Article 19(5),, 1 do not see how by issuing its notification dated 5-7-1950, directing payment of bonus by the sugar factories to their workmen and providing for payment by them of retaining allowances to workmen periodically employed. the State Government can be said to have interfered with the rights of the petitioners to acquire, hold or dispose of property.

The objective of Section 3 is to secure the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment. With that end in view, the Executive Government has been authorised in a period of fluctuating economic condition to pass various orders specified in Clauses (a) to (g) of that section. It is clear that at the time the notification was issued, the Governor of Uttar Pradesh had come to the conclusion that it was necessary to pass such orders as were contained in that notification for the purposes enumerated in Section 3. It was for the State Government on the basis of the material which it had before it to form its opinion. The Governor had before him, before issuing the notification, the report of the Court of Inquiry published under Section 17, Industrial Disputes Act, its recommendations and the general situation in which it was appointed. The contention that by directing payment of a bonus to the workers for the years in controversy the order deprives the factory owners of their property rights has no force as it cannot be said to constitute an infringement of the rights guaranteed by Article 31(1) or (2) of the Constitution. For not only Article 31(1) but also Article 31(5) would protect the order.

The paramount object of the order appears to have been to ensure the maintenance of supplies and services essential to the life of the community and the maintenance of employment. Both the orders relating to the payment of the retainer allowances and the bonus for the years 1947-48 and 1948-49 are intended to regulate the terms and conditions of employment and I fail to see how such an order could not be passed under Section 3(b), U. P. Industrial Disputes Act. There is thus nothing which would justify us in holding that, in acting as it did, the State Government either acted capriciously or without bringing to bear upon its task an intelligent mind. 1 agree with the view of my brother V. Bhargava that the granting of bonus is not an act of cnarity but is to be regarded in some measure as a right of the workers to share in the profits of the company.

9. The question that has now in this background to be considered and on which I have the misfortune to entertain some doubts in regard to wnat my brother V. Bhargava has said is as to whether the portion of tne order contained in the notification dated 5-7-1950, relating to the payment of bonus for past years, viz., 1947-48 and 1948-49, can be held to be within the scope of the Industrial Disputes Act. Sri Pathak's contention is that it is the employees who worked during those years who could, if at all, claim that payment and that therefore it could not form part of the terms and conditions of service 'to be observed' during the period specified in the order. Stress has been laid by him on the words 'to be observed' as having reference only to the future.

In my opinion, no question of the prospectivity or retrospectivity of the section arises and I do not, therefore, propose to go into the law relating to the retrospectivity of Statutes, as it has undoubtedly been correctly stated by my brother V. Bhargava. As I see it, the position is quite simple. A dispute had arisen between the employers and tne employees as regards the bonus to which the latter were entitled and the payment of which they appear to have regarded as a preliminary and essential condition for the continuance of work by them in future. That issue was referred to a Court of Inquiry and, after taking its recommendations into consideration, the State Government came to the conclusion that for the purpose of maintaining employment it was essential, in the interest of industrial peace, that the bonus claimed for the years 1947-48 & 1948-49 should be paid to the workers claiming them. Thus it was a term which the order required the employers to observe within the meaning of Section 3(b).

It may have had the effect of increasing, as all bonuses do, the wage bill of the employers, taut with that we are not concerned. Whether the personnel forming the employees of the factories in July 1950 was the same as that in 1947-48 and 1948-49 appears again to be immaterial as the employees were bargaining in their collective capacity. The employees might well have taken in the industrial dispute the line that the payment of bonus in respect of the years 1947-48 and 1948-49 to the workmen employed in those years was regarded by those who were employed in future as a preliminary and essential condition for not only the settlement of the industrial dispute in progress but also for carrying on their future work in sugar factories. By coming to the conclusion that the demand should be conceded, the State Government was not psssing an order which would have retrospective effect but was passing an order which was to ensure that the workmen thereafter to be employed in 1950 will work in a contented manner in the factories in question.

With the question whether the State Government had the material before it to enable it to come to the conclusion that the terms and conditions relating to the payment of the past bonus for future work was just and reasonable we are not concerned at all. The point is that it was a term or condition which the workers regarded as an essential preliminary for the industrial peace upon which employment depended and the State Government thought that there was reason behind their demand. I am not free from doubt as to the correctness of the view that the order as regards the payment of past bonus was invalid. I am, however, not prepared to dissent from the order proposed.

V. Bhargava, J.

10. This petition for issue of a writ under Article 225 of the Constitution has been moved by the Basti Sugar Mills Company, Ltd., through its Manager and General Attorney . Shri Deshraj Narang, Basti, challenging certain orders made by the Government; of Uttar Pradesh. Misc. Writ Cases NOB. 282, 284, 285, 308, 309 and 314 of 1050 and No. 14 of 1951 also challenge exactly the same orders of the Government of Uttar Pradesh which have been challenged in Misc. writ Case No. 280 of 1950 though the petitioner in each of these cases is different from the petitioner in Misc. Writ Case No. 2SO of 1950. Since, however, the points raised in all these cases are identical and they are based on identical facts, all these cases were heard together and this judgment will apply to all of them.

11. Some time before December, 1949, the employees of various sugar factories, who have moved these writ petitions, started making various demands and, on 16-12-1949, a notice was served on their behalf on the various sugar factories in U. P. by the Indian National Sugar Mills Workers' federation, Lucknow. The demands were six in number but it is not necessary to enumerate all of them as the petitioners in those cases seek redress in respect of only two demands. One demand related to the payment of bonus for the year 1948-49 and to restoration of a deduction which had been made in the previous year's bonus. The second relevant demand related to payment of retaining allowance to employees of the sugar factories whose services were periodically dispensed with during the off season and who were only employed by the Sugar factories during the crushing season while the sugar was being manufactured. The notice of demand threatened a strike with effect from 16-1-1950, if the demands were not met by the sugar factories. This brought about an industrial dispute between the employers and the employees of the sugar factories and the Uttar Pradesh Government, in exercise of the powers conferred by Sections 6 & 10, Industrial Disputes Act (Act 14 of 1947), issued the Labour Department Notification No. 167 (ST)/XVIII, dated January 11, 1950, appointing a Court of Enauiry and referring the dispute to it.

Under the notification, the Court of Enquiry was to consist of the Hon'ble Mr. Justice Bind Basni Prasad, Judge High Court of Judicature at Allahabad, as chairman and Sarvashri Hari Har Nath Shastri, General Secretary, Indian National Trade Union Congress and D. R. Narang, chairman, Indian Sugar Syndicate, Limited, as its members. The Court of Enquiry was directed to enquire into various matters including (1) the bonus payable by sugar factories in Uttar Pradesh to their workmen for the crushing season 1948-49 and whether or not, from the amount so payable, any amount was liable to be deducted because of excess payment of bonus if any paid during 1947-48 and (2) the retaining allowances for the off season to be paid, if any.

It was further directed by that notification that the Court of Enquiry was to enquire into the matters referred to it immediately and, as provid-ed in Section 14, Industrial Disputes Act (Act No. 14 of 1947), submit its report not later than two months from the commencement of the enquiry.

As a consequence of the appointment of the Court of Enquiry and the reference of the Industrial dispute to it, a further direction was made, prohibiting the workmen employed in any of the vacuum-pan sugar factories from going or remaining on, strike and prohibiting tne factories from enforcing a logout or continuing to lockout any of its. workmen during the period of those two months. A direction was also made, prohibiting the sugar factories from discharging, dismissing or otherwise removing from service their workmen. Tills notification was amended by Notification No. 192 (ST)/XV1II, dated 12-1-1950, so as to substitute, for the first point referred to the Court of Enquiry, the following point :

> "The bonus payable by the sugar factories in the United Provinces to their workmen for the crushing season 1948-49 and readjustments necessary, if any, in the amount of bonus paid in. respect of 1947-48."

A further notification No. 217. (ST)/XVIII, dated 13-1-1950 was issued changing the constitution, of the Court of Enquiry and laying down that the Court of Enquiry was to consist of the Hon'ble Mr. Justice Bind Easni Prasad, Judge, High Court of Judicature at Allahabad, only. There was a further amendment by a notification, dated 5-4-1950 which however, need not be mentioned in detail. Mr. Justice Bind Basni Prasad started the enquiry in pursuance of those notifications and submitted his report to the Government of Uttar Pradesh on 15-4-1950.

On receipt of this report, the Government of Uttar Pradesh, under Section 17, Industrial Disputes Act (Act No. 14 of 1947), published the report in the U. P. Gazette on 8-5-1950. Thereafter, on 5-7-1950, the U. P. Government, in exercise of its powers under Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947), issued Notification No. 1425 (ST) (II)/XVIII-13 (ST)-50, and by this noti-lication, directed the various sugar factories to. make payments of bonus for the year 1948-49 as well as payment of certain amounts as bonus for the year 1947-48, The notification further directed that the skilled seasonal workmen and the clerical staff were to be allowed retaining allowance with effect from the off season in 1950 at. the rate of 50 per cent, of their consolidated wages, and paragraph 3 of the Government Notification No. 750(ST)/XVIII, dated 29-1-1948, was ordered to be deemed to have been amended so as also to include certain classes of skilled workmen.

Payment of bonus to the workmen in accordance with the provisions of that notification was directed to be effected by the vacuum pan sugar factories within a period of six weeks from the date of that order. The Indian Sugar Mills Association, as Association of the Sugar Factories in India and registered under the Trade Union Act, moved a petition for issue of a writ under Article 226 of the Constitution (numbered as Miscellaneous Case No. 221 of 1950) on 11-8-1950, claiming to represent all the sugar factories which have moved the present petitions and challenging the validity of the orders passed by the Government of Uttar Pradesh in its Notification No. 1425 (ST) (II)/XVIII-13 (ST)-50, dated 5-7-1950.

That writ petition was dismissed on 14-9-1950, by this Court, holding that the petitioner Association had no such legal interest in the matters affected by the orders of the Government as would entitle it to apply for issue of a writ, order or direction that it claimed. Thereupon these writ petitions were moved by the individual sugar factories which were affected by that notification of 5-7-1950, again challenging its validity. The grounds taken for challenging the orders of the Government, contained in the notification, dated 5-7-1950, were as below:

> (1) That the order No. 167 (ST)/XVIII, dated 11-1-1950, and its amendments, dated January 12 and 13 and April 5, 1950, were 'ultra vires' the U. P. Government inasmuch as an industrial dispute could, not be referred to a court of Enquiry, nor could a Court of Enquiry be constituted for that purpose.
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> (2) That, under the provisions of the Industrial Disputes Act (Act No. 14 of 1947) Or the U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947), the Government of Uttar Pradesh had no juris-

diction to make the report of the Court of Enquiry binding on sugar factories, (3) That, in any event, the order that the Government could pass under Section 3(b), U. P. Industrial Disputes Act could only be prospective, whereas giving effect to the report of the Court of Enquiry and making it binding was retrospective and 'ultra' vires' the u. P. Government.

(4) That, in any event, Section 3, U. P. Industrial Disputes Act was 'ultra vires' inasmuch as the power to decide an industrial dispute could not be conferred on the Executive.

(5) That it was not open to the legislature to delegate its own functions to the Executive (6) That, in any event, the delegation was without any limitation and, therefore, bad in law.

(7) That the exercise of the power by the State had been arbitrary, unreasonable and unconstitutional.

(8) That the powers conferred on the State Government by Section 3(b), U. P. Industrial Disputes Act were capable of being applied unreasonably, arbitrarily and capriciously and to cases to which constitutionally they could not be applied.

(9) That, under the Constitution, it was not possible i'or the State to allow bonus and retainer's salary.

(10) That the petitioner could not be deprived of its property which was in the nature of profits, Reserve Fund and Dividend Equalisation Fund.

(11) That Section 3 of the U, P. Industrial Disputes Act offended against the equality clause inasmuch as it made it possible for the Government to arbitrarily settle an industrial dispute by an executive order will another dispute of the same nature might be referred at the sweet will of the Government to the Industrial Tribunal which passes a judicial decision with a right of appeal to the

Appellate industrial Tribunal.

(12) That Section 3 of the U. P. Industrial Disputes Act offends against the Constitutional Fundamental rights.

(13) That the provisions of the U. P. Industrial Disputes Act offend against Article 19(1)(f) of the Constitution.

(14) That Section 3, U. P. Industrial Disputes Act is repugnant to the Industrial Disputes Act, 1947 and is, therefore, void.

12. The prayer in the writ petitions is that this Court may be pleased to quash the Government Notification No. 1425(ST)/XVIII-13(ST)-50, dated 5-7-1950, and to issue a writ, order or direction in the nature of 'mandamus', or such other writ or order as the Court may consider proper,

(i) directing opposite party No. 1, the State of Uttar Pradesh, to withdraw the notification aforesaid.

(ii) directing opposite-party No. 1 to act according to the provisions of Section 10 of the Industrial Disputes Act, and

(iii) restraining opposite-parties, the State of Uttar Pradesh, the Secretary, Labour Department, Lucknow, the Labour Commissioner, Kanpur Basti Sugar Mills Mazdoor Union, Walterganj, Sugar Mills Mazdoor Union and the Indian National Sugar Mills Workers' Federation, Lucknow, from enforcing the aforesaid notification.

There was a further prayer for the issue of an interim stay order, staying the operation of the aforesaid notification till the decision of these petitions. The interim stay order was passed by this Court on 19-9-1950, directing that the operation of the notification aforesaid would remain stayed till the decision of the writ petitions. Consequently the orders of the Government of Uttar Pradesh in the notification of 5-7-1950, which are challenged by these writ petitions, have not yet been given effect to. The sugar factories have not yet paid bonus for the years 1947-48 and 1948-49 or the retaining allowance in accordance with those orders..

13. The first two points raised by the petitioners can conveniently be dealt with together. In the grounds taken by the petitioners, the appointment of the Court of Enquiry, the validity of its report and the passing of orders by the Government of Uttar Pradesh on the basis of that report have been challenged, principally, on the ground that, under the Industrial Disputes Act (Act No. 14 of 1947), an industrial dispute itself could not be referred to a Court of Enquiry but only to Board of Conciliation or to an Industrial Tribunal, so that the reference to the Court of Enquiry was itself incompetent. The further ground taken is that no order could be passed by the state Government, making the recommendations of the Court of Enquiry binding on the parties to the dispute. Section 5 of the Act empowers the appropriate Govt. to constitute a Board of Conciliation for promoting the settlement of an industrial dispute. Section 6, similarly, empowers the constitution of a Court of Enquiry for enquiring into any matter appearing to be connected with or relevant to an industrial

dispute. Section 7 empowers the appropriate Government to constitute one or more Industrial Tribunal for the adjudication of industrial disputes in accordance with the provisions of the Act. Section 10 lays down that:

> "If any industrial dispute exists or is apprehended, the eppropriate Government may, by order in writing,
>
> (a) refer the dispute to a Board for promoting a settlement thereof; or
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> (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
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> (c) refer the dispute to a Tribunal or adjudication."

Under Section 13 of the Act., the duty of a Conciliation Board is laid down to be to endeavour to bring about a settlement of an industrial dispute and if a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board is required to send a report thereof to the appropriate Government together with a memorandum of settlement signed by the parties to the dispute. Section 14 desls with a Court of Enquiry and lays down that "a Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period, of six months from the commencement of its inquiry."

Under Section 15, where an industrial dispute has been referred to a Tribunal for adjudication, the Tribunal has to hold its proceedings expeditiously and, on the conclusion thereof, to submit its award to the appropriate Government. The report of a Board or Court and the award of a Tribunal together with any minutes of dissent recorded therewith are required to he published by the appropriate Government within a period of one month from the date of its receipt under Section 17 of the Act. Section 18 of the Act lays down that a settlement arrived at by a Board or an award of an Industrial Tribunal, which is declared by the appropriate Government to be binding under Sub-section (2) of Section 15, shall be binding on all parties to the industrial dispute and certain other parties mentioned in that section. There is no provision in the Industrial Disputes Act, 1947, laying down that, on its publication, a report of a Court of Enquiry can be made binding on the parties to the dispute.

These provisions of the Industrial Disputes Act, 1947, support the contention of the petitioners that the reference of the industrial dispute itself to the Court of Enquiry by the Government of Uttar Pradesh by its notification, dated 11-1-1950 as subsequently amended, was not in accordance with law. The function of a Court of Enquiry under the Industrial Disputes Act (Act No. 14 of 1947) is merely to report on any matter appearing to be connected with or relevant to the industrial dispute after holding an enquiry. For the actual settlement of a dispute, reference has to be made either to a Board of Conciliation for promoting a settlement or to an Industrial Tribunal for adjudication.

It may, however, be noticed that, in the notification of 11-1-1950, when constituting a Court of Enquiry, the Government only directed the Court of Enquiry to enquire into the matters mentioned

in that notification; the Court of Enquiry was not directed to promote a settlement or to give an award on the dispute. The report of the Court of Enquiry was thereafter submitted to the Govern ment of Uttar Pradesh and it has again to be no ticed that, by Notification No. 1425 (ST) (ii)/ XVIII-13(ST)-50, dated 5-7-1950, which is challeng ed by these writ petitions, the State Government did not purport to enforce the recommendations of the Court of Enquiry under any provision of the Industrial Disputes Act (Act No. 14 of 1947).

In that notification, the State Government did not act under the Industrial Disputes Act, 1947, at all but proceeded to exercise the powers conferred on it by Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947). Section 3 of the U. P. Industrial Disputes Act (U. P. Act 28 of 1947) is to the fol lowing effect :

> "3. If, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience, or the main tenance of public order or supplies and services essential to the life of the community or for maintaining employment, it may, by general or special order, make provision
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> (a) for prohibiting, subject to the. provisions of the order, strikes or lock-outs generally, or a strike or lock-out in connection with any industrial dispute;
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> (b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;
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> (c) for appointing industrial courts; (cc) for appointing committees representative both of the employer and workmen for securing amity and good relations between the employer and workmen and for settling industrial "disputes by conciliation; for consultation and ad-

vice on matters relating to production, organization, welfare and -efficiency.

(d) for referring any industrial disputes for conciliation or adjudication in the manner provided in the order;

(e) for requiring any public utility service, or any subsidiary undertaking not to close or remain closed and to work or continue to work on such conditions as may be specified in the order;

(f) for exercising control oven any public utility service, or any subsidiary undertaking by authorising any person (hereinafter referred to as ail authorised controller) to exercise, with respect to such service, undertaking or part thereof such functions of control as may be specified in the order; and, on the making of such order the service, undertaking or part, as the case may be, shall so long as the order continues, be carried on in accordance with any directions given by the authorised controller ia accordance with the provisions of the order; and every person having any functions of management of such service, undertaking or part thereof shall comply with such directions;

(g) for any incidental or supplementary matters, which appear to the State Government necessary or expedient for the purposes of the order : Provided that no order made under Clause (b)-

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;

(ii) shall, if an industrial dispute is referred for adjudication under Clause (d), be enforced after the decision of the adjudicating authority is announced by, or with the consent of, the State Government."

The State Government, in order to proceed under this provision of the U. P. Industrial Disputes Act, 1947, has to form an opinion that it is necessary or expedient to make an order under that section for securing the public safety or convenience or the maintenance of the public order or supplie and services essential to the life of the commu-nity, or for maintaining employment. If the State Government comes to that opinion, it is thereafter empowered to pass general or special orders, making provisions for the matters mentioned in Clauses (a) to (g) of that section. Notification No. 1425(ST)(ii)/XVIII-50, dated 5-7-1950, shows that, when this notification was issued, the Governor of Uttar Pradesh was of the opinion that it was necessary to pass orders contained in that notification for securing the public safety or convenience and the maintenance of the public order and supplies and services essential to the life of the community and for maintaining employment. The notification was, consequently, issued after the Government had formed the opinion which it was necessary for it to form as a preliminary for the exercise of its powers under Section 3, U. P. Industrial Disputes Act (U. P. Act NO. 28' of 1947).

The provisions of Section 3 and the remaining provisions of the U. P. Industrial Disputes Act, 1947, nowhere prescribed the materials on which this opinion of the State Government is to be formed, nor do they prescribe any procedure for arriving at that opinion. Clearly, therefore, the State Government is entitled to form its opinion on any or all material and information available to it. In this case, it appears from the notification, dated 5-7-1950, that the report of the Court of Enquiry, published under Section 17, Industrial Disputes Act, 1947, was considered by the State Government, the recommendations made in it were taken into account, the situation, in which the Court of Enquiry had been appointed and had made its report, was before the Government and it was on these materials that the State Government came to the opinion that it was necessary to pass the orders mentioned in that notification for the purpose of securing the public safety or convenience, and the maintenance of public order, and supplies and services essential to the life of the community, and for maintaining employment.

It cannot, therefore, be said that the State Government acted capriciously or without exercising its mind. Since Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) merely requires the opinion of the State Government as a preliminary to the exercise of powers under that section, this Court is not competent to see whether the opinion arrived at by the State Government is or is not correct. There being no bar in any law to taking into account the report of a Court of Enquiry appointed under the Industrial Disputes Act, 1947, an order passed under Section 3, U. P. Industrial

Disputes Act, 1947, on the basis of such report, cannot be challenged on the ground that the reference to the Court ,of Enquiry of the industrial dispute itself was not valid and was not in accordance with the provisions of the Industrial Disputes Act, 1947.

It appears, therefore, that, in these cases, the validity of the report of the Court of Enquiry and the competence of the Government to refer the industrial dispute to it for enquiry are matters not relevant to the validity of the order passed by the State Government under Section 3 of the U. P. Indus trial Disputes Act, 1947. The orders, contained in the notification of 5-7-1950, cannot, therefore, be challenged on these grounds. '

14. The fourteenth ground that Section 3, U. P. Industrial Disputes Act, 1947, is repugnant to the Industrial Disputes Act, 1947, and is, therefore, void was not seriously pressed before us by Shri Pathak, learned counsel for the petitioners. The U. P. Industrial Disputes Act (U. P. Act 28 of 1947) was reserved by the Governor of Uttar Pradesh for the assent of the Governor General whose assent was obtained on 21-12-1947, and thereafter the Act was published in the U. P. Government Gazette, dated 10-1-1948. Since this Act of the State Legislature had received the assent of the Governor General, if there be any repugnancy between its provisions and the provisions of the Central enactment contained in the Industrial Disputes Act (Act No. 14 of 1947), the U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) would prevail in Uttar Pradesh over the repugnant provisions of the Industrial Disputes Act (Act No. 14 of 1947).

It may also be mentioned that learned counsel for the petitioners was not able to point out whether the repugnancy between the two enactments existed. On these grounds, it must be held that the U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) is valid and binding in the State of Uttar Pradesh.

15. Shri Pathak, learned counsel for the petitioners, challenging the validity of Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947), principally contended that this section contained delegation of such legislative powers by the Legislature to the Executive as was unconstitutional and 'ultra vires' the Legislature. In support of this argument, learned counsel relied, mainly, on certain decisions of the Supreme Court of America and, for this purpose, read out before us portions, from' the American Administrative Law by Schwartz, the American Constitutional Decisions by Fairman and Introduction to Administrative Law by Hart. He also read out before us certain cases decided by the supreme Court of America and some decisions of their Lordships of the Privy Council.

It does not appear to be necessary for us to deal with these arguments in detail in view of a recent decision of our own Supreme Court which was interpreted and followed by another Full Bench of this Court. Shri Pathak's main contentions were that the U. P. Legislature, which enacted the U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947), could not delegate its legislative powers to the Executive as it had purported to do under Section 3 of the Act, that the delegation of the legislative powers was without any limitation and was not canalized within specified limits and that the powers conferred by Section 3, of the Act were capable of being applied by the Executive Government unreasonably, arbitrarily and capriciously.

The question how far the Indian Legislatures are competent to delegate their legislative powers-to the Executive Government was considered by the Supreme Court of India -- 'AIR 1951 SC 332 (A)', in the light of this decision of their Lordships of the supreme Court, a Full Bench of this-Court, in -- 'AIR 1952 All 866 (B)', had occasion-to consider the validity of Sections 3, 4 and 6 of the-Essential Supplies (Temporary Powers) Act (Act No. 24 of 1946). The observations of the seven learned Judges of the Supreme Court in -- 'AIR: 1951 SC 332 (A)', were summarised and considered by the Full Bench which also discussed the various American cases which have been relied upon by Shri Pathak before us.

After considering all the relevant case law, the Full Bench held that it would appear that the majority of the learned Judges of the Supreme Court had held that a Legislature cannot act beyond the limits laid down in the instruments-which gave it birth and that it cannot create another independent or parallel legislative power. In order to perform its functions effectively, the Legislature must, however, be able to delegate to another body or person the discretion to bring into effect an Act of the Legislature complete in itself but conditional upon the exercise of that discretion and to delegate to the subordinate bodies the power to make rules and regulations for the purpose of filling in matters of detail so as to make the legislative enactment effective. A third restriction concerning the power of delegation was held to be that the Legislature cannot abdicate its functions. Further abdication did not consist merely in creating an independent or parallel Legislature but there would be abdication, for instance, if the Legislature were to arm the delegate with the power to repeal existing laws. What precisely would amount to abdication had not been conclusively laid down by the majority of the learned Judges of the Supreme Court.

On this view, it was held that Section 3, Essential Supplies (Temporary Powers) Act, 1946, was 'intra vires' the Indian Legislature. Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, is very similar to Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947). Under Sub-section (1) of Section 3 of the Essential Supplies (Temporary Powers) Act, the Central Government is empowered, in so far as it appears to it necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution & availability at fair prices, to provide, by notified order, for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) of that section enumerates what kind of provisions can. be made by the Central Government under Sub-section (1) but the list given in this sub-section is not exhaustive so that the sub-section lays down that this enumeration is without prejudice to the generality of the powers conferred by Sub-section (1).

Section 3 of the U. P. Industrial Disputes Act, 1947, does not confer any general power to pass orders but, specifically, limits that power to making provision for specified purposes which are enumerated in Clauses (a) to (g) of that section. The power granted to the Executive Government by Section 3 of the U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) is thus very similar to the power conferred on the Central Government by Section 3 of the Essential Supplies (Temporary Powers) Act, 1946. If at all, the delegation of the power in Section 3, U. P. Industrial Disputes Act, 1947, is narrower and more precisely defined than the delegation of legislative power to the Central Government by Section 3, Essential Supplies (Temporary Powers) Act (Act No. 24 of 1946). Section 3 of the Essential Supplies (Temporary Powers) Act, 1946 having been held to be valid, Section 3, U.

P. Industrial Disputes Act, 1947' must also be held to be valid.

The view taken by the Pull Bench of the Court in -- 'AIR 1952 All 866 (B)', has binding effect in the present case and we may further say with, respect that we see no reason to differ from the view taken in that case. I, consequently, hold that Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) is valid and is not 'ultra vires' the Legislature on the ground of unauthorised delegation of legislative power.

16. Shri Pathak's next submission was that the provisions of Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) offend against the fundamental rights guaranteed in Article 19(1)(f) and 31 of the Constitution. I have not been impressed by this argument at all. Article 19 of the Constitution is a provision designed to safeguard certain freedoms which, according to the Constitution makers, ought to be guaranteed to all individuals as human beings. With reference to property, this Article guarantees to all citizens the right to acquire, hold and dispose of property subject to any law imposing reasonable restrictions either in the Interest of general public or for the protection of any scheduled tribe. Section 3 of the U. P. Industrial Disputes Act, 1947, does not purport to interfere, in any manner, with the right of a citizen to acquire, hold or dispose of property. It only deals with orders that might be made in relation to strikes, lock-outs, terms and conditions of employment, appointment of Industrial Courts, settlement of industrial disputes, and closure, non-closure and exercise of control over any public utility service or any subsidiary undertaking and similar matters. It cannot, therefore, be said that this section empowers the Executive Government to interfere with the right of a citizen to acquire, hold or dispose of property.

Shri Pathak urged that the order passed by the State Government in its notification, dated 5-7-1950, directs payment of bonus by the sugar factories to their workmen and provides for payment by them of retaining allowance to workmen periodically employed and such an order is an Interference with the right of the petitioners to acquire, hold or dispose of property. We are unable to accept this contention. An order for payment of bonus or retainer allowance in connection with the regulation of employment in a factory can, in no way, be said to interfere with the right of the proprietors of the factory to acquire, hold or dispose of property. Shri Pathak in the alternative urged that the order had the effect of depriving the petitioners of their property as it directed payment of money belonging to the petitioners to their employees and thus deprived them of that money.

Article 31, however, permits deprivation of pro-perty of a person by authority of law and, as we have held above, the law, under which the order purports to have been made by the state Government, is a valid law, so that, if the orders fall within the purview of Section 3, U. P. Industrial Disputes Act (u. P. Act No. 28 of 1947), they cannot be challenged on the ground that they infringe the fundamental right guaranteed by Article 31 of the Constitution. No question arises of applying Clause (2) of Article 31 of the Constitution as no property is being taken possession of or acquired for public purposes. It may further be noticed that, even if Clause (2) of Article 31 has been applicable, the U, P. Industrial Disputes Act (U. P. Act No. 28 of 1947) would not be affected by Clause (2) of Article 31, as provided in Sub-clause (a) of Clause (5) of Article 31 of the Constitution.

17. I, consequently, proceed to consider the next argument of Shri Pathak that the orders of the Government of Uttar Pradesh, contained in the notification of 5-7-1950, are not valid on the ground that they are not within the scope of the power granted to the State Government by Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947). The notification itself mentions that the orders were passed in exercise of the powers conferred on the State Government by Clause (b) of Section 3, U. P. Industrial Disputes Act, 1947. Clause (b) permits provision to be made by a general or special order for requiring employers, workmen or both to \ observe, for such period as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order.

The first contention on behalf of the petitioners waa that an order, requiring payment of bonus, was not an order regulating terms and conditions of employment and, consequently, no such order could be passed under Clause (b) of Section 3 of the Act. It does not appear to be necessary to enter into the history of the relations between the industrialists and their workmen in order to determine the nature of "bonus". There can be no doubt, however, that, in modern times, bonus is clearly regarded as deferred wages payable to employees which may be claimed by them as of right under the terms of employment. In the conditions, under which modern industries function, bonus has now come to be recognised as a right of employees which they can claim from their employers under certain circumstances.

18. In -- 'Baktavatsalu Nayudu v. Chrome Leather Co., Ltd.', AIR 1951 Mad 856 (D), a Division Bench of the Madras High Court held :

> "The granting of bonuses, gratuities, pensions, and the like to employees is not out of charity. They are given in order to make labour more contented and form part of the remuneration of the workers for their services. Bonuses, for example, may, in one sense, be regarded as a recognition of the right of the workers to share in some measure in the profits of the company and encourages workmen to work harder, in the knowledge that by doing so they will secure more gain to themselves."

In -- 'Sree Meenakshi Mills, Ltd., Madura v. State of Madras', AIR 1951 Mad 974 (E), another Division Bench of the Madras High Court remarked :

> "As pointed out in several decisions of this Court, bonus is not in the nature of an 'ex gratia' payment and it must be treated as comprised in the terms of employment."

In -- 'Indian Hume Pipe Co., Ltd. v. E. M. Nanavaty', AIR 1947 Bom 42 (F), a Division Bench of the Bombay High Court had to consider the question whether a dispute relating to payment of bonus was an industrial dispute within the meaning of the Trade Disputes Act (Act No. 7 of 1929). Stone, C. J., dealing with this question, held : "But even accepting that the primary meaning of the word 'bonus' is 'gift' or 'gratuity', it is not asked in this case as a matter of patronage or bounty. It is demanded, and strike action is threatened if such demand is not complied with. So that as soon as the demand is declined, all the elements of a trade dispute arise. I respectfully agree with the conclusion arrived at by the learned Judge in the Court below that the dispute between the appellant

company and their workmen relating to their demand for payment of bonus for the year 1944 is a trade dispute within the meaning of the Trade Disputes Act....."

Kania, J., in the same case, held:

> "In my opinion, it is clearly a dispute between the parties as regards the terms of employment and is covered by Section 3 of the Trade Disputes Act."

He went on to say :

> "It will, of course, be a matter for the decision of the adjudicator as to whether the claim is in respect of an 'ex gratia' payment or is a term of employment of the workmen."

The views, expressed in these cases, are clearly in line with my view expressed above that bonus can be a term or condition of employment and, consequently, an order can be made under Clause (b) of Section 3 of the U. P. Industrial Disputes Act (U. P. Act No, 28 of 1947) relating to payment of bonus. As regards the order relating to payment of retainer allowance, there can be no doubt at all that such an order is specifically made for the purpose of regulating the terms and conditions of employment and Shri Pathak also did not attempt to argue that such an order could not be passed under Section 3(b) of the U. P. Industrial Disputes Act.

19. I have finally to consider the submission of Shri Pathak that, in any case, the order contained in the notification of 5-7-1950, relating to payment of bonus for the years 1947-48 and 1948-49 cannot be held to be within the scope of Clause (b) of Section 3 of the U. P. Industrial Disputes Act as that order requires payment of bonus in respect of past years which, if at all, could be claimed by the employees who worked during those years and cannot, therefore, form part of the terms or conditions of service to be observed during the period specified in the order. In short, Shri Pathak's contention is that an order, under Clause (b) of Section 3, XT. P. Industrial Disputes Act (U. P. Act No. 28 of 1947), can only be a prospective order by which directions may be given to employers, workmen or both to observe the specified terms and conditions of employment in future during the future period that may be specified in the order. This provision of law would not justify any order with regard to terms & conditions of employment in respect of a period which has already elapsed.

20. Considering the language used in Clause (b) of Section 3 of the Act, the contention of Shri Pathak I mast, in our opinion, be accepted.

21. Maxwell, in his book on the Interpretation, of statutes on the basis of the decided cases in England, says that "the statutes are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect be clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

No rule of construction is more firmly established than this : that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.....

A statute is not to be construed to have a greater retrospective operation than its language renders necessary.....

It is chiefly where the enactment would pre- judicially affect vested rights, or the legality of past transactions, or impair contracts, that the rule in question prevails.....

Where vested rights are affected 'prima facie' it is not a question of procedure....."

Crawford, in his book on the Construction of Statute, has summarised the view of the American Courts on this question in the following words:

> "Retroactive legislation is looked upon with disfavour, as a general rule, and properly so because of its tendency to be unjust and oppressive. That disfavour is so great that some of pur state constitutions contain provisions which expressly prohibit the enactment of retrospective legislation. Nevertheless, even in the absence of constitutional provisions of this character, statutes, with but few exceptions, should, if possible, be construed so that they will have only prospective operation. Indeed, there is a presumption that the legislature intended its enactment to have this effect -- to be effective only 'in future'....
>
> Consequently, in the absence of any indication in the statute that the legislature intended for it to operate retroactively, it must not be given retrospective effect. If perchance any reasonable doubt exists, it should be resolved in favour of prospective operation....."

He further goes on to say that "The rule that statutes should not be given a construction which will give them retroactive effect, is, as already indicated, especially applicable to statutes where such a construction will either destroy or impair vested rights."

When dealing with the statutes creating any penalties and liabilities, Crawford has summarised the American view in these words :

> "In accord with the general principles already discussed, statutes which create new liabilities in connection with past transactions should be given a retroactive operation. This rule has been applied to enactments imposing penalties on delinquent tax-payers, statutes creating new principles concerning the liability of employers, and those giving an action for wrongful death....."

Particular reference may be made to the case reported in -- 'Georgianna Cote, Admrx., etc., of Zephirin Cote, Deceased v. Bachelder-Wor-cester Co.',- 82 American L. B. (Annotated), 1239 (G), wherein it was held :

> "It follows that the plaintiff's rights are limited by the provisions of the law in force at the time of the accident. In order to bring the present case within the provisions of chapter 131 of the Laws of 1931, it would be necessary to give retroactive effect to that statute. This result, if constitutionally permissible, would involve a violation of the principles which were stated and examined at length in -- 'Murphy v. Railroad', 77 N. H, 573, 944, 967 (H)." -
>
> In the annotation on this case at page 1244, reference is made to some other decisions of American Courts and the general principle deduced has been enunciated in the following words:
>
> "The right of the employee to compensation arises from the contractual relation between him and his employer existing at that time, and the statute then in force forms a part of the contract of employment and determines the substantive rights and obligations of the parties. No subsequent amendment in relation to the compensation recoverable can operate retrospectively to affect in any way the rights and obligations prior thereto fixed."

Examined in the light of these principles, it is clear that Clause (b) of Section 3, U. P. Industrial Disputes Act cannot be given any retrospective effect. There are no words at all in this section which may indicate that the legislature expressly intended that this provision of law should operate retrospectively so as to govern terms and conditions of employment agreed to between the employers & employees and already acted upon before orders are passed by the State Government in exercise of the powers conferred by Clause (b) of Section 3 of the Act. There are, in fact, no words at all in this provision to indicate that the legislature could even have impliedly intended to lay down that orders passed under Clause (b) of Section 3 might be given retrospective effect so as to alter terms and conditions of employment agreed upon and carried out prior to the passing of the orders. In our view, the language of this provisions is such as to give a clear impression of the intention of the legislature that orders under it must be purely prospective so as to govern future terms and conditions of service.

The section lays down that the State Government may, by general or special order, make provision for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order. The use of the words, 'requiring to observe for such period', is a clear indication that the order should lay down the course of conduct to be followed by the employers, workmen or both in future during the period which is to be specified in the order. There cannot be any question of making an order, requiring employers or workmen to observe, for the specified period, terms and conditions of employment which relate to the past employment before the passing of the order.

Obviously there can be no question of requiring any one to observe, in a future period, terms and conditions of employment which have already remained effective and have already been carried out by those persons. It also appears that, so far as past disputes with regard to terms and conditions of employment are concerned, the power, that was granted to the State Government to regulate them, is laid down in Clauses (c) and (d) of Section 3 of the Act whereby an industrial dispute relating to such past terms and conditions of service can be referred for conciliation or adjudication and, for such purposes, the State Govern-ment can appoint Industrial Courts. In this con-nection, notice may also be taken of proviso (1) to Section 3 which reads as follows:

> "Provided that no order made under Clause (b)--(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order."

It appears that, if it be held that the State Government is competent to pass an order under Clause (b) of Section 3, U. P. Industrial Disputes Act (U. P. Act 28 of 1947) so as to have retrospective effect in altering terms and conditions of employment which have already been observed in the past, the State Government would be in a position to completely nullify the proviso mentioned above. The State Government may, by an order under Clause (b) of Section 3, first alter the terms and conditions of service which have already been observed during the three months preceding the date of the order so as to make these terms and conditions less favourable to the workmen than those which were applicable to them during that period before that order and may, thereafter, require the employers, workmen or both to observe those very conditions in future during the period specified in the order under Clause (b) of Section 3 of the Act.

It is, therefore, clear that, giving retrospective effect' to an order passed under Clause (b) of Section 3 would be clearly against the intention of the legislature as it would permit the State Government to get round the limitation of its power specifically imposed by the legislature in the proviso. I, consequently, hold that, under Section 3(b) of the U. P. Industrial Disputes Act (U. P. Act 28 of 1947), the State Government's power was restricted to passing orders regulating terms and conditions of employment to be observed during a specified period after the date of the order and that no order could be passed by the State Government so as to alter terms and conditions Of service which had already been observed in the past. In the case before us, the order, contained in the notification of 5-7-1950, directs payment of bonus in respect of the years 1947-48 and 1948-49 which years had already run out before the order was passed. The order passed in respect of payment of bonus was, therefore, clearly a retrospective order which was not within the competence of the State Government in exercise of its powers under Section 3(b) of the U. P. Industrial Disputes Act.

In this connection, we may also take notice of one other circumstance. The order, contained in the notification of 5-7-1950, contemplates payment of bonus for the years 1947-48 and 1948-49 to employees of the sugar factories who were in service on 5-7-1950, or, at the most, those who may continue in service, or, enter service after 5-7-1950, within the period specified in the order. It is a reasonable presumption that the actual personnel, forming the employees of the factories in July,

1950, or, during the period specified in the order, could not be identical with the personnel that was in employment during the years 1947-48 and 1948-49. Payment of bonus in respect of those years could be a term or condition of service for only those employees who were in service during those years and any order, directing payment of bonus to a set of persons who might be different from the actual employees whose terms and conditions of service are said to be regulated with respect to bonus, would not be an order relating to terms and conditions of employment of the employees during those years.

I, consequently, hold that the order, contained in the notification of 5-7-1950, directing the petitioner-companies to pay bonus or arrears of bonus in respect of the years 1947-48 and 1948-49, was beyond the powers of the State Government and, consequently, void and cannot be given effect to. In passing this order, the State Government has acted beyond its statutory powers and in my opinion, this order must, therefore, be quashed.

22. So far as the retainer allowance is concerned, no objection can be taken on the ground that the order, relating to it, is retrospective in nature. The order was passed during the off season in 1950 and relates to payment of the retainer allowance for that off season. It also adds certain classes of skilled seasonal workmen and the clerical staff as employees entitled to the retainer allowance. Such an order is clearly a prospective order relating to the terms and conditions of employment and is, therefore, valid and must be upheld.

23. As a result, I would partly allow this petition, direct that a writ in the nature of 'mandamus' shall issue, directing the State Government not to enforce its order contained in Notification No. 1425(ST)(ii)/XVIII-13 (ST)-50, D/- 5-7-1950, ordering the sugar factories, to which the notification applies, to pay bonus in respect of the years 1947-48 and 1948-49 and quash that order. The order relating to payment of retaining allowance is held to be valid and effective. In the circum-jStances of this case, I would direct parties to bear their own costs.

24. This order shall also govern Misc. (Writ) Cases Nos. 282, 284, 285, 308, 309 and 314 of 1950 and No. 14 of 1951.

BY THE COURT :

25. These writ petitions under Article 226 of the Constitution are partly allowed. A writ in the nature of 'mandamus' shall issue directing the State Government not to enforce its order contained in Notification No. 1425 (ST)(ii)/XVIII-13 (ST)-50, dated 5-7-1950, ordering the sugar factories to which the notification applies, to pay bonus in respect of the years 1947-48 and 1948-49 and we quash that portion of the order. The order relating to payment of retaining allowance is held to be valid and effective.

26. In the circumstances we direct the parties to bear their own costs.