1955

December 23.

J. K. IRON AND STEEL CO. LTD., KANPUR

v.

THE IRON AND STEEL MAZDOOR UNION, KANPUR

(with connected appeal)

[VIVIAN BOSE, VENKATARAMA AYYAR and CHANDRASEKHARA AIYAR JJ.]

Industrial Disputes Act, 1947, (Act XIV of 1947), ss. 7 and 11—Adjudicator—Scope and authority of—Democratic Constitution—Essentials thereof—Rule of Law—Benevolent despotism—Foreign thereto.

Held, that adjudication by an adjudicator under the Industrial Disputes Act does not mean adjudication according to the strict law of master and servant and that an adjudicator's award may contain provisions for the settlement of a dispute which no court could order if it was bound by ordinary law. Thus the scope of an adjudication under the Industrial Disputes Act is much wider than that of an arbitrator making an award. Industrial Tribunals are not fettered by such limitations and an adjudicator has jurisdiction to investigate disputes about discharge and dismissal and where necessary, to direct reinstatement.

Nevertheless, wide as their powers are, these Tribunals are not absolute and there are limitations to the ambit of their authority. Though they are not courts in the strict sense of the term, they have to discharge quasi judicial functions and as such are subject to the overriding jurisdiction of the Supreme Court under Art. 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the "trappings" of a court and deprive them of arbitrary or absolute discretion and power.

Benevolent despotism is foreign to a democratic Constitution. When the Constitution of India converted this country into a sovereign, democratic, republic, it did not invest it with the mere trappings of democracy but invested it with the real thing, the true kernel of which is the ultimate authority of the courts to restrain all exercise of absolute and arbitrary power not only by the executive and by officials and lesser tribunals but also by the legislatures and even by Parliament itself. The Constitution established a "Rule of Law" in this land and that carries with it restraints and restrictions that are foreign to despotic power.

The courts, however, must always exercise caution and should not substitute their own judgment and discretion for that of such tribunals.

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In view of ss. 7 and 11 of the Industrial Disputes Act, 1947 and U.P. State Industrial Tribunal Standing Orders 1951 these Tribunals, though not bound by all the technicalities of Civil Courts must nevertheless follow the general pattern of the Civil Courts in the matter of taking the pleadings of the parties in writing and the drawing up of issues. It is not open to the Tribunals to disregard the pleadings and to reach any conclusion that they think are just and proper.

The Supreme Court remitted the case to the Labour Appellate Tribunal for a rehearing of the appeals as the Adjudicator and the Labour Appellate Tribunal had adopted the attitude of benevolent despots and had based their conclusion on irrelevant considerations and ignored the real questions that arose for decision and the issues that arose out of the pleadings of the parties.

Western India Automobile Association v. *Industrial Tribunal, Bombay* ([1949] F.C.R. 321, 345), *State of Madras* v. *C. P. Sarathy*, ([1953] S.C.R. 334, 348), *Bharat Bank Ltd.* v. *Employees of Bharat Bank Ltd.*, ([1950] S.C.R. 459, 497), *Muir Mills Co.* v. *Suti Mills Mazdoor Union, Kanpur* ([1955] 1 S.C.R. 991, 1001), referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 22 and 22-A and 301 of 1955.

Appeals by special leave from the judgment and order dated the 4th July 1952 of the Labour Appellate Tribunal of India, Lucknow in Appeals Nos. 391 and 392 of 1951 arising out of the Award dated the 1st November 1951 of the Adjudicator and Additional Regional Conciliation Officer, Kanpur in Case No. 53 of 1951.

G. S. Pathak, (*Rameshwar Nath* and *Rajinder Narain*), for the appellants in all the appeals.

G. C. Mathur, for the respondent in C. A. Nos. 22 and 22-A and respondent No. 4 in C. A. No. 301 of 1955.

K. B. Asthana and *C. P. Lal*, for the respondent No. 3 in C. A. No. 301 of 1955.

1955. December 23. The Judgment of the Court was delivered by

BOSE J.—We are concerned here with three appeals. They arise out of a dispute between the J. K. Iron and Steel Company Limited and the Iron and Steel Mazdoor Union. We will call them the

Company and the Mazdoor Union respectively. The facts are as follows.

The Company had its factory and other works at Kanpur in Uttar Pradesh. On 10-4-1948 the Ministry of Commerce in the Government of India ordered the Company to shift its Jute Baling Hoops factory from Kanpur to Calcutta.

As no land was available in Calcutta no effect could be given to this order till the year 1950-51. On 19-3-1951 the Iron and Steel Controller ordered the Company to stop the rolling of jute baling hoops at once. Accordingly, the production of these hoops was stopped from that date.

At the same time there was scarcity of scrap iron and the Company's case is that that forced it to reduce the working of its furnace from three shifts a day to one.

The Company states that because of these two causes it was obliged to retrench its staff. Therefore, it issued the following notice dated 15-5-1951 to 128 of its workers:

"Consequent to transfer of the Rolling Mill to Calcutta and want of scrap to Furnace Department in full, the services of the persons as per lists attached are dispensed with from today.

Their wages and other dues in full settlement will be paid after 2 P.M."

Twenty five of the 128 accepted their wages and other dues in full settlement but the remaining 103 refused. Their cause was accordingly espoused by the Mazdoor Union which made an application to the Regional Conciliation Officer at Kanpur on 16-5-1951 complaining that the retrenchment was illegal and asking that the workmen be reinstated with full payment of their wages for the period they were out of work.

This was forwarded to the Government of Uttar Pradesh and on 28-6-1951 the Governor of that State referred the following issue to the Regional Conciliation Officer at Kanpur under sections 3, 4 and 8 of the U. P. Industrial Disputes Act, 1947 for adjudication:

"Whether the retrenchment of the workmen

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given in the Annexure by Messrs J. K. Iron and Steel Co. Ltd., Kanpur,- is unjustified ? If so, to what relief are the workmen entitled ?"

The parties filed their written statements on 14-7-1951 and the Company filed a rejoinder on 20-7-1951. The Adjudicator thereupon took evidence, oral and documentary, and gave his award on 1-11-1951. But before that was done the case of one of the workmen (Kapil Deo Singh) was withdrawn and that left 102 for him to deal with.

The Adjudicator reached the following conclusions. The Mazdoor Union had contended that the retrenchment was not in good faith. The Adjudicator held that it was and that there was neither harassment nor victimisation. So also on the question about the shortage of scrap he held that there was a shortage but that it was only temporary and that it was not likely to last for more than 8 or 9 months. He then referred to the Standing Orders and said that the Company was not entitled to resort to retrenchment except as a last resort and that in the circumstances of the present case these workmen should (1) have been offered the option of employment in the new set up at Calcutta; and (2) those that did not want it should have been laid off in rotation instead of being retrenched. He accordingly ordered that that should be done and drew up a graduated scale of compensation.

We observe in passing that the expression used throughout has been "played off". The reason for that is that that is the phrase used in the Standing Orders and in the copy of the Act and Model Standing Orders reproduced by the U. P. Department of Labour in its Annual Review of Activities. But it seems to us that that was due to printer's error at some stage which has been repeated in various places. The correct expression is "lay off". That is the expression used and defined in the Act. The Standing Orders should have used the same phrase. Apart from the definition in the Act, "lay off" is a well-known industrial term meaning, according to the Oxford Dictionary, "a period during which

a workman is temporarily discharged". We will use the correct expression in this judgment.

Both sides appealed to the Labour Appellate Tribunal. The decision there was as follows. The Tribunal upheld the finding that there was in fact a shortage of scrap iron and also agreed with the Adjudicator that that was only likely to be temporary. Then it held, apparently as a matter of law, that under the Standing Orders it is not permissible to retrench workmen and deprive them of their maintenance when there is only a temporary shortage of material whatever the duration of the shortage; all that the employer can do in a case like that is to lay them off.

The Tribunal also upheld the finding that the Hoop Mill was in the course of transfer to Calcutta consequent on the orders of Government, but they held that there was nothing on the record to show which of the 105 persons (it should be 102) whose cases they were considering were "specifically engaged in the Hoop Mills and had become surplus by reason of the transfer to Callcutta".

This is one of the findings attacked before us by the Company on the ground that the Tribunal has failed to realise that the Company's operations must be considered as a whole and that because of the interdependence of its various departments a closure of one section, coupled with a shortage of materials in another, is bound to affect its all round working and therefore the question of retrenchment cannot be looked at from the narrow point of view of only one department but must be viewed in its all round setting. We will deal with this later.

Another of the Tribunal's findings on the "transfer" aspect of the case was that a cut in profits is not in itself a good ground for retrenchment. It held that retrenchment can only be made when there is a total closure of the mill "or when for any *such* other reason the workmen become surplus".

The final conclusion of the Tribunal was that the retrenchment was "wholly unjustified". Accordingly, it set aside the retrenchments and held that the

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affected workmen will be deemed to be "still in service", and directed that they be reinstated. The appeal of the Mazdoor Union was partly allowed and that of the Company dismissed.

This impelled the Company to do the following things:

(1) to file a writ petition in the Allahabad High Court on 4-8-1952. This was dismissed by that Court on 9-4-1953 and Civil Appeal No. 301 of 1955 is the appeal to us against that order;

(2) to file two appeals to this Court against the order of the Labour Appellate Tribunal. These appeals are Civil Appeal No. 22 of 1955 and Civil Appeal No. 22-A of 1955.

This judgment covers all three appeals.

Mr. G. C. Mathur, who appeared for the Mazdoor Union, raised a preliminary objection against the Company's appeals based on the following facts. The Company had appealed to this Court against the Labour Appellate Tribunal's decision on 26-8-1952. The petition was summarily dismissed on 10-9-1952. Counsel contended that that barred the present appeals: Civil Appeal 22-A of 1955 because it is an appeal against the very order that is now under appeal, and Civil Appeal 301 of 1955 on the basis of *res judicata* because it raises the same points as were raised in the petition for special leave which was dismissed.

We rejected this objection because the previous petition for appeal does not appear to have been dismissed on the merits but on two technical grounds. It is true order of dismissal is general but the office note states (1) that no certified copy of the decision appealed against was filed though Order 13, rule 4, of the Rules of the Supreme Court, requires that and (2) that the reliefs sought in the petition for special leave and in the writ petition before the High Court are the same. It is evident that that formed the basis of the order of dismissal especially as it is the usual practice not to entertain an appeal here when a similar matter is pending in the High Court.

Before we come to the merits it will be necessary to set out the grounds on which the High Court proceeded. The learned Judges were concerned with a writ for *certiorari* and so naturally focused their attention on questions of jurisdiction rather than on the merits. They considered that the Adjudicator was free to take into consideration *all* matters bearing on the question of retrenchment and to consider whether it was "absolutely necessary" to retrench the workmen. They looked at Standing Order 16(a) and decided that the Adjudicator had jurisdiction to determine the scope and meaning of this Order and that he and the Labour Appellate Tribunal were competent to hold that these orders meant that the Company was not entitled to take what the learned Judges called the "extreme step of retrenchment" so long as it was possible for it to "lay off" the workmen.

That at once raises quesions about the scope and authority of an adjudicator under the Industrial Disputes Act. But that we feel, is now settled by authority. The Federal Court held in *Western India Automobile Association* v. *Industrial Tribunal, Bombay*(1) that adjudication does not mean adjudication according to the strict law of master and servant and held that an adjudicator's award may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law. They held that Industrial Tribunals are not fettered by these limitations and held further that an adjudicator has jurisdiction to investigate disputes about discharge and dismissal and, where necessary, to direct reinstatement.

That decision was followed with approval by this Court in *State of Madras* v. *C. P. Sarathy*(2) and it was again pointed out that the scope of an adjudication under the Industrial Disputes Act is much wider than that of an arbitrator making an award. It would be pointless to cover the same ground; so we must take that now as settled law.

All the same, wide as their powers are, these Tri-

(1) [1949] F.C.R. 321, 345. (2) [1953] S.C.R. 334, 348.

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bunals are not absolute and there are limitations to the ambit of their authority. In *Bharat Bank Ltd.* v. *Employees of Bharat Bank Ltd.*(1) this Court held by a majority that though these Tribunals are not Courts in the strict sense of the term they have to discharge quasi judicial functions and as such are subject to the overriding jurisdiction of this Court under article 136 of the Constitution. Their powers are derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions. Those provisions invest them with many of the "trappings" of a court and deprive them of arbitrary or absolute discretion and power. There is, in our opinion, an even deeper reason which is hinted at in the judgment of Mahajan, J. (as he then was) at page 500 where he says that "benevolent despotism is foreign to a democratic Constitution". That, in our opinion, is the heart of the matter. When the Constitution of India converted this country into a great sovereign, democratic, republic, it did not invest it with the mere trappings of democracy and leave it with merely its outward forms of behaviour but invested it with the real thing, the true kernel of which is the ultimate authority of the Courts to restrain all exercise of absolute and arbitrary power, not only by the executive and by officials and lesser tribunals but also by the legislatures and even by Parliament itself. The Constitution established a "Rule of Law" in this land and that carries with it restraints and restrictions that are foreign to despotic power.

Despite this, however, the Courts must always exercise caution and see that they do not substitute their own judgment and discretion for that of these Tribunals, for, as Mahajan, J. said in *Bharat Bank Ltd.* v. *Employees of Bharat Bank Ltd.*(1) the overriding powers of this Court under article 136 are exceptional; and he went on to point out that—

"extraordinary powers of this character can only be justifiably used where there has been a grave miscarriage of justice or where the procedure adopted by

(1) [1950] S.C.R. 459, 497.

the Tribunal is such that it offends against all notions of legal procedure".

Now the position in the present case is this. The Tribunals are directed by section 7 of the Industrial Disputes Act to adjudicate industrial disputes "in accordance with the provisions of the Act" and section 11 directs them to follow "such procedure as may be prescribed". The procedure for the Uttar Pradesh Tribunals is laid down by the U. P. State Industrial Tribunal Standing Orders, 1951. Very broadly it follows the Pattern of the Civil Courts. Once the reference is made by Government, the Tribunal has to take the pleadings of the parties in writing and to draw up issues. Then it takes evidence, hears arguments and finally pronounces its "judgment" "in open Court". It is evident from this that though these tribunals are not bound by all the technicalities of civil Courts, they must nevertheless follow the same general pattern. Now the only point of requiring pleadings and issues is to ascertain the real dispute between the parties, to narrow the area of conflict and to see just where the two sides differ. It is not open to the Tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper.

What exactly was the dispute in the present case? The broad conflict was of course about the retrenchment and the Tribunal was asked to decide whether the retrenchment of these 103 persons was unjustified; but that by itself left the issue much too broad, so it was necessary to "particularise" and that was done in the pleadings.

The Company justified its action on two grounds: (1) because of the shortage of scrap and (2) because of the stoppage of work in the Hoop Department consequent on the orders of Government. But none of the persons retrenched came from the Hoop Department and the Company explained that that was because of the interdependence of its various departments and, taking the retrenchments in groups, department by department, it explained just why reduction was effected in those particular places. In

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this way, it dealt serially with the retrenchments in (1) the Scrap Department, (2) the Cast Iron Foundry, (3) the Punching and Pressing Department, (4) the Watch and Ward Department and (5) the Clerical Department.

The Company also made the following assertions, (1) that retrenchment is a necessary incidence of an industry and that the discretion of the management should not be interfered with; (2) that it is the exclusive function of the management to determine the size of its working force and (3) that the employer must be the sole judge as to how economically or efficiently its business is to be run.

The Mazdoor Union retorted that the retrenchments were not done in good faith. It denied that there was any shortage of scrap but admitted the interdependence of the various departments and used that fact as an argument to indicate the Company's bad faith. The Union said the very fact that there had been no retrenchment in the department that was directly affected, namely the Hooping Department, and that there was no retrenchment in certain allied departments that would have been the first to be hit, had there been any real shortage of scrap, showed that the reasons given by the Company for the retrenchment were untrue. In particular, the Union pointed out that there had been no retrenchment in the following departments which, accordingly to it, would have been the hardest hit had there been any truth in the Company's case, namely, (1) the Furnace Department, (2) Rolling Mill Department, (3) Workshop, (4) Painting and Bundling, (5) Works and Maintenance. Then, as regards the Foundry Department and the Scrap Department where there had been retrenchments, the Union said that these departments had sub-sections and yet there were no retrenchments in the sub-sections that would have been hit if the Company's allegations were true.

The Union gave no reply to the Company's assertions about its right to retrench in the absence of bad faith, its right to determine the size of its work-

ing force and its right to judge of the economy and efficiency of its business.

The Company filed a written rejoinder and explained in detail why there had been no retrenchments in the places where, according to the Union, there should have been on the facts alleged by the Company and it again explained why it had retrenched workers in the departments which, according to the Union, ought to have been the hardest hit. This explanation again brought out the interdependence of the various departments.

Instead of drawing up issues, as it is required to do by Standing Order 22 of 1951, and determining just where the parties disagreed, the Adjudicator at once proceeded to record evidence and entered upon a rambling enquiry which embraced questions which had not been raised at all. On the only point on which the parties were really at issue, namely the good faith of the management, the findings were in favour of the Company. So also the Adjudicator accepted the Company's assertion about its right to determine the size of its labour force and to effect retrenchment where necessary subject only to the proviso which the Adjudicator added, namely that this must be done in good faith; and indeed the Mazdoor Union had not challenged these assertions in its written statement. The Adjudicator said—

"It is however an accepted principle that such changes as are being done by the management now form a part of managerial discretion and cannot be interfered with unless it is coloured with the element of victimisation or unfair labour practice."

But despite this, and despite his findings about good faith, the Adjudicator considered that, in spite of it all, "the right of the workmen *has to be safeguarded* to certain extent".

What is left of the right if the "accepted principle" be what he says it is and if there is no victimisation or bad faith, he did not proceed to explain. If the principle he enunciated and accepted is sound, then the only rights they have are to complain of

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bad faith, victimisation and so forth. However, feeling under a compulsion to safeguard these unexplained rights he had recourse to Standing Order 16(a) and ignored Standing Orders 19 and 20.

The "accepted principle" to which the Adjudicator refers in the passage quoted above is implicit in Standing Orders 19(a) and 20(a). They deal with the termination of service by an industrial establishment and prescribe a certain quantum of notice in writing, and then comes this important proviso in Standing Order 19(a)—

"Provided that if a permanent workman feels that he has been discharged for reasons not connected with his employment or that the reason of discharge communicated to him is not genuine, he may make an appeal to the Labour Commissioner. The decision of the Labour Commissioner.....shall be binding on both the parties".

Reading the body of Standing Order 19(a) along with the proviso in the light of the "accepted principle", it is evident that the only right the workman has, when his services are lawfully terminated after service of due notice and so forth, is to question the order on only two grounds—

(1) that he has been discharged for reasons not connected with his employment, and

(2) that the reason of discharge communicated to him is not genuine.

There is nothing in these Standing Orders to indicate that retrenchment is a measure of last resort and that an employer must continue to lay off his workmen however uneconomical that may be to the business; still less that he must lay them off in rotation and thus affect other workmen who would not be affected by a legitimate order of retrenchment. That cuts at the root of the "accepted principle".

In any event, the ground on which the adjudicator proceeded was not a matter in dispute between the parties because it was not raised in their pleadings and could not have been put in issue had the Adjudicator troubled to draw up issues as he should have done. As Mahajan, J. said, adjudicators and tribu-

nals cannot act as benevolent despots and that is exactly what it comes to when an adjudicator, after setting out, correctly in our opinion, the Company's rights, holds against the Union on the only grounds that it did raise and then proceeds to give an award, not only on grounds that are not raised but on grounds that fly in the face of the very principles that he enunciated; and that only because he felt that he was under a compulsion to "safeguard" the workmen to "a certain extent".

Both sides appealed to the Labour Appellate Tribunal and the second ground of the appeal lodged by the Mazdoor Union was "that the award of the learned Adjudicator is quite arbitrary" which, of course, is exactly what it was

And so also ground No. 9:

"That the learned Adjudicator has gone beyond his jurisdiction in awarding relief on a question not referred to it by Government".

That again we feel is justified. What was referred was the question of the justification for retrenchment of certain specified workmen. What was awarded was the laying off of persons whose cases were not even considered, that is to say, when the Adjudicator directed laying off in rotation his order necessarily affected persons who had neither been laid off nor retrenched and whose cases not even the Union had in mind. It is to be observed that the Mazdoor Union complains about this part of the order in ground No. 11 though on a different ground.

The Company also appealed against the Adjudicator's order and grounds Nos. 6, 9 and 24 of their appeal are directed against that part of the order that deals with the lay off of the workmen. Among other reasons advanced is that this will adversely affect others who are not retrenched. The other grounds repeat what was said in the company's written statement though in different language.

The Labour Appellate Tribunal contrasted Standing Order 15(a) with Standing Order 16(a) but also ignored Standing Orders 19(a) and 20 which are the

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only ones that really apply to this case. It upheld the finding of the Adjudictor that there was a shortage of scrap but held that as the shortage was for only 6 months retrenchment was not justified.

In point of fact, the Labour Appellate Tribunal is wrong about the six months. It was under the impression that the Adjudicator had come to that conclusion. But what the Adjudicator said was that the shortage at best was for a period of 8 *or* 9 *months*. The passage which the Appellate Tribunal quotes is not the finding of the Adjudicator but the argument advanced on behalf of the Company. The full passage runs thus:

"Shri Mahalingam stated that Standing Order 16(a) which provides for a lay off of a maximum period of 12 days in a month contemplates a temporary shortage of very short duration. *It could not apply to shortage of raw materials lasting for more than 6 months* and hence the Company's right to retrench is not affected by the aforesaid Standing Order".

The Appellate Tribunal quoted the portion we have underlined but ignored the rest of the sentence and the part that went before and concluded that the portion underlined was a part of the Adjudicator's findings.

However, even if we assume that the Tribunal would have reached the same conclusion if it had realised that the shortage was for as long as 8 or 9 months, the error into which it has fallen is that the question of retrenchment cannot be made to depend on the duration of the shortage or even on the fact that those retrenched will be thrown out of employment but on the effect that an omission to retrench will have on the business. In some cases, laying off even for 6 or 8 or 9 months might make the Company bankrupt, therefore, if the Appellate Tribunal considered that it had power to stop retrenchment for reasons other than those given in the proviso to Standing Order 19(a) it was bound to look into the Company's finances and determine the question of justification on that basis. The only question referred was, was the retrenchment justified? and we find it

impossible to see how that can be determined without considering the question of good faith which in turn would largely depend on the finances of the Company, on the adverse effect that retention would have on the business and on whether retention would mean the deadweight of an uneconomic surplus and so forth.

Next, when the Appellate Tribunal turned its attention to the transfer of the Hoop Mill to Calcutta, it agreed that that would have been a good ground for retrenching those who were specifically engaged in the Hoop Mill but not the others. But this takes an impossibly narrow view and ignores the over-all working of a business concern and the repercussions that a transfer of this kind would have on other parts of the business. It totally ignores the pleadings of the parties and, like the adjudicator, bases its conclusion on some airy view of what it considers would be a good thing for the workmen. That is not a decision "given in accordance with the Act" and is as much open to objection on that score as the award of the Adjudicator.

It is pertinent at this stage to refer to a decision of this Court reported in *Muir Mills Co.* v. *Suti Mills Mazdoor Union, Kanpur*(1) where Bhagwati, J. delivering the judgment of the Court said—

"The considerations of social justice imported by the Labour Appellate Tribunal in arriving at the decision in favour of the respondent were not only irrelevant but untenable".

In the present case also we are of opinion that the Adjudicator and the Labour Appellate Tribunal had adopted the attitude of benevolent despots and have based their conclusions on irrelevant considerations and have ignored the real questions that arose for decision and the issues that arose out of the pleadings of the parties.

It would not be right for us to substitute our judgment and discretion for that of the Adjudicator and the Tribunal: accordingly, as we are of opinion that the real questions that were in dispute between the

(1) [1955] 1 S.C.R. 991, 1001.

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parties were neither appreciated nor considered we have no alternative but to remit the matter to the Labour Appellate Tribunal for a proper decision after drawing up issues that arise out of the pleadings, considering them and deciding the dispute accordingly, with liberty of course to remit the case to the Adjudicator for a retrial or for the taking of further evidence if it is of the opinion that the omission to draw up issues and focus attention on the points that seem to be in dispute has had the result of shutting out evidence that might otherwise have been led.

An agreement said to have been reached between the parties on 7-9-1953 was placed before us towards the end of the arguments but we have not looked at it because counsel for the Mazdoor Union said it did not cover the case of these retrenched workers. The Company insisted that it did. We were not prepared to investigate that dispute at that late stage but we make it plain that the Labour Appellate Tribunal will be at liberty to consider it or not as it deems right, after hearing what both sides have to say about it.

The award and the decision of the Labour Appellate Tribunal are set aside and the case is remitted to the Labour Appellate Tribunal for a re-hearing of the appeals filed before it and for a fresh decision in the light of the foregoing observations.

We will, however, have to make some interim arrangement for payment of what may be termed a sort of subsistence allowance to the affected workmen during the pendency of those further proceedings. As there is no agreement between the parties on the subject, we leave it to the Labour Appellate Tribunal or the Adjudicator, as the case may be, to make suitable orders in this respect.

There will be no order about costs as neither party is to blame for what has happened.