

ANDHRA PRADESH HIGH COURT

Workmen of Hindustan Shipyard

Vs

Industrial Tribunal

(Jaganmohan Reddy, J.)

14.03.1961

Jaganmohan Reddy, J.

ORDER

Jaganmohan Reddy, J.

1. By this petition, the workmen of the Hindustan Shipyard (Private), Ltd. Visakhapatnam, seek to have the award of the Industrial tribunal, Andhra Pradesh, dated 15 September 1960, published in the Andhra Pradesh Gazette, dated 26 September 1960 quashed by the issue of a writ of certiorari.

2. A brief history leading to the passing of the award by the industrial tribunal may be stated for an understanding of the contentions urged before me by the parties. The Hindustan Shipyard was originally started and owned by the Scindia Steam Ship Navigation Company, Ltd., and the working hours for the office staff were 9-30 a.m. to 12-30 p.m. and 1-30 p.m. to 5 p.m. with a recess of one hour between 12-30 p.m. and 1-30 p.m. thus making a working day of 6 hours. In 1946, a letter (Ex. M. 1), dated 15 November 1946 was addressed by 63 members of the staff through the president of their staff association to the joint resident representative of the shipyard that in view of the winter months the working hours left hardly any time either in the morning or in the evening to the staff to attend to their domestic needs, particularly, having regard to the various controls imposed and prevalent at that time. It was, therefore, suggested that the work should begin fifteen minutes early and the lunch interval could be reduced by fifteen minutes. The half an hour thus gained would facilitate the closing of the office half an hour earlier, viz., at 4-30 p.m. Instead of at 5 p.m. The office staff did not by this propose any reduction in the 6 hours of work. As this proposal was not agreeable to those members of the staff who resided in the colony, the management fixed the office hours by circular No. 100, dated 19 December 1946 (Ex. W. 1) according to which the working hours were fixed as 9-30 a.m. to 12-30 p.m. and 1-30

p.m. to 4-30 p.m. with a recess of one hour between 12-30 p.m. and 1-30 p.m. in the winter months of November, December and January and the rest of the year till 5 p.m. This concession by the management during the winter months amounted to a reduction of half an hour in the office hours. In 1948 also a similar request 'appears to have been made when it was decided by Ex. M. 2 after discussion with the staff association president for the present, to enforce winter timings as last year, but without prejudice to a different decision that may be taken later on. It is agreed by the staff association president that no overtime will be payable up to 5 p.m. (Vide Ex. M. 2, dated 29 October 1948.) This arrangement remained in force till a circular No. 414, dated 21 February 1951 (Ex. M. 3) was Issued which changed the timings for the rest of the months of the year from 9 a.m. instead of 9-30 a.m. and till 4-30 p.m. instead of 5 p.m. By it the only change from Ex. M. 1 is that for the rest of the months of the year, the timings were fixed from 9 a.m. instead of 9-30 a.m. and till 4-30 p.m. instead of 5 p.m. and the working hours for the rest of the year remained at 6 hours and for the winter months at six hours, as the case under circular Ex. M. 1. These timings continued in force till 29 October 1959 when the management by Ex. M. 5 as from 2 November 1959 required the office staff to attend office in the winter months also from 9 a.m. It may be stated that prior to the change discussions were held between the managing director Commander Leile and the representative of the staff association on 8 October, 29 October and 20 November 1959 and a formal order Ex. M. 7 was issued on 21 November 1959 which also gave the reasons for the alteration. On the same day the workmen Issued a directive to the staff that the order amounted to withdrawing the privilege in contravention of the provisions of the Industrial Disputes Act in force and that as such the office order attracted the second part of the resolution unanimously adopted by the executive committee at its meeting held on 20 November 1959 and duly communicated to the management under the association's letter No. hssa/19/59-60, dated 21 November 1959 and that under the circumstances it is for the members to honour the directive of the executive committee, viz., "to adhere only to time honoured winter timings." The Government considered that an industrial dispute had arisen and therefore by G.O. Ms. No. 1284, dated 9 June 1960, referred for adjudication of the industrial tribunal the following matters:

(a) whether the withdrawal of the concession of attending office late by half an hour in the winter months of November, December and January enjoyed by the section of the staff of the Hindustan Shipyard, Ltd. Visakhapatnam is justified; and

(b) if not, to what relief are the work men entitled.

3. The chairman of the industrial tribunal held that in war time because of controls the concession was given and though the concession was continued from 1946 to 1959, it was conditional on the reservation of the right of the employer to take a different decision, as such it can be withdrawn.

It was further held that the working hours remained only at 6 hours which are less than eight hours prescribed by the Factories Act and that there was justification for the withdrawal because the office had run into arrears.

4. The petitioners contend that the chairman, industrial tribunal, failed to exercise his jurisdiction when he observed that the Government have not referred to him whether the reduction of half an hour is or is not a condition of service, as such he was precluded from considering that it was a condition of service and has committed errors of law by misrepresenting Para. 7 of the standing orders and that while disregarding Section 9A of Act XIV of 1947 and while misinterpreting Rule 7 of the standing orders and also misstating the winter timings were unilaterally revocable concession, threw out the claim of the staff. It is further contended, by Sri Subrahmanyam that the winter; timings concession was a condition of service which could not be withdrawn contraire to the provisions of Section 9A of Act IV of 1947, that Ex. M. 2 being a unilateral decision is not binding on the staff, that the notice of withdrawal of the privilege on the 21 November 1959 is invalid as it does not conform to the provisions of the Industrial Employment Standing Orders Act and the standing orders made thereunder, and that the Madras Shops and Establishments Act is applicable to the members of the staff and the winter timings are protected by Section 50 of the said Act and inasmuch as these timings prevailed when that Act came into force, they cannot be altered to the detriment of the office staff.

5. Before the tribunal as well as before me it was contended that Exs. W. 1 and W. 3 are the only circulars fixing hours of work for the office staff which clearly show that for the three winter months, office staff were only required to work six hours between the hours specified therein and the employer did not reserve the right to withdraw the concession which for the past twelve years or more has been uniformly adopted. Thus, this concession became a privilege and a condition of service; if so, it is contended, that contrary to the procedure prescribed in Section 9A of the Industrial Disputes Act XIV of 1947, the management has changed the time. The Industrial tribunal considered Exs. W. 1 and W. 3 in the light of Exs. M. 1 and M. 2 which had to be read along with the above circulars. In its view the right to withdraw the concession was expressly reserved. It was also contended that no notice of this unilateral reservation was given, to the workmen, but that contention also was negated in view of the specific mention in Ex. M. 2 that the matter was discussed with the staff association president. Before the tribunal Sri Shastri for workmen conceded that the president of the staff association agreed that there shall be no overtime till 5 p.m. and this clearly indicated that in the winter months the timings till 4-30 p.m. was a concession which could be withdrawn. In support of this contention that overtime was not paid, the management furnished a statement appendix IX to the counter which clearly shows that in 1958 and 1959 overtime was not paid for the work done during the winter months. This statement was not seriously contested but it is alleged for the first time in the reply counter that

this is in accordance, with Rule 6 of the rules of overtime which" came into force on 1 February 1948 and therefore no overtime was being paid for the first half an hour in accordance with the rule and, not under any agreement. It may be that there is a rule In force since 1948 but the agreement alleged was prior to that date. If the rule relating to the overtime was operative at the time of Ex. M. 2, there would have been no point in specifically referring to it as one of the conditions of the concessions nor is there any justification In the assertion that the concession was not as a result of 63 persons asking for it, but that it was something which the management intended as a condition of service. In Ex. M. 3 it was specifically stated that "it was agreed by the staff association president that no overtime Is payable up to 5 p.m."

6. The above office order would show, firstly, that the winter timings ware fixed as a result of the discussion with staff association; in other words, it is the workers through their representative that moved to have the same timings as in the year before. Secondly, that the demand was conceded with prejudice to a different decision being 'made and thirdly, that the president agreed that no overtime is payable up to 5 p.m. It will be observed that in so Fares the overtime was concerned, there was no mention of half an hour or less as in Rule 6 because In Ex. M. 2 there is specific mention of overtime not being paid up to 5 p.m. In my view, the tribunal was fully justified in drawing the conclusion on the materials on record that the winter timings were conceded at the Instance of the office staff and was a concession which was subject to the conditions specified therein. There was no vested right to work half an hour less in winter months.

7. The learned Advocate-General for the management contends that even though the point that the number of hours of work is a condition of service, has not been taken before the tribunal, there is no prohibition In any of the Acts to which a reference has been made to alter them, as long as the total number of hours Is within the specified limits laid down therein. I will now deal with the several relevant provisions of the Acts referred to by the learned Advocates for the parties.

8. The Industrial Employment (Standing orders) Act (Act XX of 1946), hereinafter referred to as the Standing Orders Act, Is designed, as the preamble to the Act states:

to require employers In industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions of service, but it is only a measure to require the management to issue standing orders governing conditions of employment and the manner of notifying the changes, if any, made therein.

9. There is nothing In this Act, nor in the model standing orders, nor even in the standing orders of the employer (Ex. M. 10) about the hours of working being: a condition of service. All that they require is an Intimation in a particular manner of the hours of work or any change In these

hours to be notified by means of affixing them on the notice board. Model standing order No. 4 specifies that the periods and hours of work for all classes of workers in each shift shall be exhibited in the establishment on the notice boards mentioned at or near the main entrance of the establishment and at the time-keeper's office, if any while that in No. 8 enjoins that all workmen shall be at the establishment at the times fixed and notified under Para. 4. Standing orders Nos. 5 and 6 in Ex. M. 10 which came into force and applied to the office staff of the shipyard from 26 September 1951 deal with the manner of intimating periods and hours of work and the holidays. Both these standing orders require that intimation of period and hours of work and holidays to be through a notice to be posted in the office notice board. These orders further state that if any particular employee is required to work from a different period or on a holiday, he must be personally notified to that effect. It is, however, contended that the standing order No. 7 of Ex. M. 10 applies to change in times of work, if so, they cannot be altered except by mutual consent. Learned Advocate-General, however, submits that the above standing order does not relate to the period or hours of work, nor is there anything in it to justify the conclusion that there must be a mutual agreement before the hours of work are changed by the management. Standing order No. 7 in Ex. M. 10 is as follows:--Scales and Service conditions.--The scales and service conditions of the employees shall be those drawn up, agreed to between the company and the shipyard staff association, Visakhapatnam, and in force at present subject to such alterations that may be made or mutually agreed upon from time to time and subject also to standing orders for the time being in force. A record shall be maintained of all employees showing the date of joining, salary drawn and increments given from time to time. All employees shall intimate to the company their addresses, also any change thereto from time to time; if they fail to do this, the company will not be responsible for the delay or the non-delivery of any communication addressed to them. The tribunal interpreted this rule as giving the management a right to change the service conditions without agreement . of workmen, inasmuch as the alteration that they may be made is interspersed with the disjunctive "or" It is, therefore, said that if the management of the workmen (sic) the word "or" would not have been used, and the sentence would have run as "subject to such alterations as are mutually agreed upon." If some meaning is to be given to the use of the word "or" in his view, the right of the employer to change the service conditions is reserved by standing order No. 7 (sic) furnishes a clue to the interpretation of that rule. Further, though the last sentence of the first limb of standing order No. 7 makes the alteration subject also to the standing orders for the time being in force, there is nothing in the standing orders (Ex. M. 10) which indicates what the actual hours of work are, and except for the provisions contained in the standing orders Nos. 5 and 6 dealing with the manner of intimating of the periods of work and holidays, there is no other provision for which it can be gathered that the workmen are required to work for a particular period or for any number of hours. If the standing orders do not deal with the hours of work per day or per week, then the question of their modification under

Section 10 in that respect does not arise. It is also true, as contended by the learned Advocate, that no oral evidence having the effect of varying or adding to the final certificate under the Act shall be admitted in any Court. But that has no relevance, once it is determined that the question of alteration of the standing orders relating to the working hours is not the subject-matter in Ex. M. 7. On the other hand, it is clear from standing order No. 7 that it is not dealing with orders Nos. 5 and 6 which are definitely referring to periods and times of work and holidays and consequently when Rule 7 refers to scales and service conditions, it cannot be deemed to be dealing with periods and hours of work or holidays which are specifically fixed under the Factories Act and the Madras Shops and Establishments Act. Neither the Standing Orders Act nor the model standing orders, nor any of the orders in Ex. M. 10 purport to control any powers of the management to fix any particular times of work per day or week. These merely require intimation to be given in a precise way and have nothing to do with the power to fix the time per day or per week or holidays or overtime. It may be stated that when the Standing Orders Act was passed, the Factories Act of 1934 was in force and it had fixed hours of work. In the circumstances, it could not have been the purpose of the Standing Orders Act to deal with the same subject and as could be gathered by its provisions it was intended to define precisely the period of work and to provide for the due intimation thereof.

10. The provisions of the relevant Acts dealing with the hours of work, etc., may now be examined. Section 51 of the Factories Act LXIII of 1948 fixes 48 hours per week for any adult as the maximum number of working hours. Section 52 deals with weekly holidays, Section 54 fixes daily hours to be not more than nine hours, Sections 55 and 56 specify the intervals of rest and spread over, respectively, and Section 59 lays down that any worker working for more than nine hours in a day or for more than 48 hours in any week will be entitled to overtime at the rate of twice his ordinary rate of wages. Section 61 read with Section 108 requires that notice of periods of work should be displayed in English and in a language understood by the majority of the workers and at a conspicuous and convenient place at or near the main entrance to the factory. Under Section 63, no adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work of adults displayed in the factory made beforehand against his name in the register of adult workers of the factory.

11. The Madras Shops and Establishments Act fixes eight hours a day and at any rate not more than twelve hours a day along with hours of rest and 48 hours a week (vide Sections 14 and 15). The holidays and overtime are specified in Sections 16, 25, 27 and 31. Section 50 of the Act to which a reference has been made by the learned Advocate for the petitioners as lending support to his contention that a privilege, which the employee was entitled to, cannot be changed in the following terms: Nothing contained in this Act shall affect any rights or privileges which any person employed in any establishment is entitled to, on the date on which this Act comes into

operation In respect of such establishment, under any other law, contract, custom or usage applicable to such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act. The sections of the Factories Act and the Madras Shops and Establishments Act referred to above contain elaborate provisions regarding the number of hours of work per day, rest period, spread over, total number of hours per week, overtime, and the manner of intimation of these hours and holidays. The management has the power to vary the working hours within the limits prescribed by law. There is nothing in these Acts which enjoins that these working hours could be changed only on mutual agreement. It is not the policy of the aforesaid legislation to leave to mutual agreement the determination of such vital matters as daily and weekly working hours and holidays and overtime, for in a factory or establishment where the labour is not so well organized, it is possible to obtain agreement to adverse working conditions due to pressure of economic necessity. This would be contrary to the public policy as adumbrated in the law. The management, in my view, has clearly the right to alter the periods of work provided it gives the necessary intimation of the change as required by the standing orders and other provisions of law applicable to it. Section 50 of the Shops and Establishments Act also does not in any way confer rights on the employees. In this case as it cannot be said that the concession which they were enjoying in the winter months was a privilege to which they were entitled before the Act came into force in February 1948. I have already stated that the concession was subject to the condition of its withdrawal unilaterally and cannot, therefore, be said to have conferred any right on the employees to enjoy it as such.

12. The only question that remains to be considered is whether the notice given by Ex. M. 7 is sufficient notice as required by law, what is its effect, whether the tribunal was bound to consider this question as part of the reference and if it was a defective notice, would the petitioners be entitled to the issue of a writ of certiorari to quash the order changing the timings on the ground that the tribunal did not give a finding thereon. There is no doubt that Ex. W. 3 which was the notice relating to the winter timings which came into force on 1 March 1951 continued to be in force. The only way in which this could be altered was by a notice as required under standing order No. 5 read with Section 9A of the Industrial Disputes Act which is as follows:

9A. Notice of change.--No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in Schedule IV shall effect such change,--

(a) without giving to the workmen likely to be affected by such change, a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice;

Provided that no notice shall be required for effecting any such change:

(a) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950); or

(b) where the workmen likely to, be affected by the change are persons to whom the Fundamental Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians In Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government In the official gazette, apply. Item 4 of Schedule IV deals with the hours of work and rest intervals. From a reading of Section 9A along with item 4 of Schedule IV, it is clear that a change in the working hours could only be effected by giving 21 days' notice in the prescribed manner In Form E made under Rule 34 of the Industrial Disputes Rules of 1957. In this case, however, none of the provisions applied and consequently there is no doubt that the management of the Hindustan Shipyard (Private) Ltd., should have given a notice of the proposed change in the 'timings by a 21 days' notice in the prescribed form. It may here be "observed that Section 9A was inserted by Amendment Act XXXVI of 1956, the statement of objects and reasons of which stated that there has been a persistent demand that notice should be given whenever it is proposed to make a change in the condition of service of workmen. Therefore, a new chapter, viz., Chap. IIA was proposed to be Inserted to provide that the employer shall not Introduce any change In respect of certain specified matters without giving to the workman concerned 21 days' notice of his Intention to do so. It Is contended by the learned Advocate-General that the proceeding of the discussions with the representative of the staff association on 8 October 1959 (Ex. M. 3) and on 29 October 1959 (Ex. M:4) and the office-note of the same date expecting the staff to attend office in winter also as In summer months from 2 October 1959, as well as the further discussion with the staff association representatives on 20 November 1959, all furnished notice to the employees that the working hours have been changed, and consequently when notice was in fact given on 21 November 1959 of the change in hoars, they substantially conformed to the provisions of Section 9A. Even otherwise the terms of reference to the Industrial tribunal did not cover the question of whether the notice was sufficient under Section 9A or not and the only question referred to it was whether the withdrawal of the concession was justified, and it cannot, therefore, be said that the tribunal has erred in not exercising a jurisdiction vested in it. The tribunal observed that the question whether conditions of service can be changed by the employers was a general question with which it was not concerned and secondly, that the requirement of 21 days' notice clearly saves the employer's right to change hours and in respect of the matters specified at item 4 of Schedule IV. When the

tribunal considered the question of Section 9A from the point of view of whether the employer had the power and the right to change the timings, it did not concern itself with the further question whether in fact the timings were changed in conformity with the procedure prescribed under Section 9A probably because it was of the view that that question was not referred to it and further that Section 9A came into play only when the conditions of service were altered, but the workmen having agreed to the reservation of the employer to alter it, they have had the right to alter it also a condition of service and therefore the action in accordance with the said right can give no cause for complaint. Even so, In my view, Section 9A is not dealing with the question whether the management has a right to change the hours of work, but has merely prescribed the manner of change of hours by giving the requisite notice of change. I cannot, therefore, agree with the contention that Section 9A does not cover a case where the management has a right to withdraw a concession unilaterally and as rightly pointed out by the learned Advocate-General whether there was an agreement to justify the employer to alter the hours unilaterally or not has nothing to do with the mode of intimation. But he contends that the reference itself does not raise the question of validity of the intimation; It merely deals with the power, viz., whether It Is Justified. Further he says that this point of view, the tribunal held that originally It was a case of concession and the justification of the withdrawal was a question of fact which does not call for any interference by this Court in exercise of Its writ jurisdiction. He also contends that unless it can be shown that there was a failure of justice or there is manifest injustice, Courts will not interfere, namely; because there was a formal or technical error even though of law. On the other hand, Sri Subrahmanyam submits that in such matters the interpretation should be liberal and further under Section 10(4) of the Industrial Disputes Act, matters incidental to the reference are also within the purview of the tribunal and the tribunal should have exercised Its jurisdiction in deciding this incidental matter also. He further contends that if the procedure prescribed under Section 9A has not been followed, then effectively there has been no change in the timings and it cannot, therefore, be said that the employer is justified In changing the timings.

13. On a careful consideration of the contentions of either side, it appears to me that the tribunal was not called upon to consider the validity of the notice, but only of the power of the management to withdraw the concession and in so doing, it has not failed to exercise a jurisdiction vested in it or has in any way exercised it irregularly. It cannot be said, as was argued, that there was in fact no change in the timings by reason of the defect in the notice, for the reason that the request of the management to conform to the changed timings from 2 November was in fact complied with by about twenty per cent of the employees that day. At no time in the subsequent discussions held on the 20 November 1959 the representative of the staff association raised any question relating to the defective notice. On the other hand, It was treated as an effective withdrawal which was not justified and only the right to do so unilaterally was challenged. In my view it Is only after the dispute arose can the Government refer the matter to

one of the authorities or tribunals specified under Sections 7, 7A or 7B of the Industrial Disputes Act in respect of matter specified in Subs. II and III, item 4 of each of which relates to withdrawal of customary concession or privilege and hours of work and rest intervals respectively. Reliance has been placed by Sri Subrahmanyam in the case of Guest Keen Williams (Private) Ltd. v. Stealing, J. 1959-II L.L.J. 405 for the proposition that the tribunal should enquire into matters incidental to the reference also, the validity of the notice being one such matter. In that case three questions were referred to the Industrial tribunal, viz.:

- (1) If the system of forced retirement of workmen at the age of 55 as introduced by the management in May 1954 is justified ?
- (2) To what relief the workmen are entitled on retirement ?
- (3) If the forced retirement of the workmen named in the attached lists is justified, to what relief including reinstatement and or compensation are they entitled ?

These three questions were answered in favour of the appellant by the tribunal but on appeal by the respondent, the Labour Appellate Tribunal reversed the findings of the tribunal and has substantially answered the questions in favour of the respondent, the correctness of which was challenged. Before the Supreme Court several contentions were raised, two of which relate to the validity of the reference under Section 10 on the ground that the workmen were barred by acquiescence and estoppels with respect to some other relevant points and that in fixing the age of superannuation, the tribunal ought not to have taken into consideration the applicability of the rule to employees who had already been employed by the appellant in service without any limitation as to the age of retirement. Their lordships observed that in dealing with industrial disputes the application of technical legal principles should as far as is reasonably possible be avoided. While so stating they recognized that when a dispute is raised a "for a considerable delay, the tribunal would undoubtedly take that fact into account in dealing with the merits of the dispute, but unless the relevant facts clearly justify such a course, it would be inexpedient to throw out the reference on preliminary technical objections, such as acquiescence and estoppels, Secondly, with respect to the ambit of issue 1, question (1) of the reference, Gajendragadkar, J. speaking for the Court, observed thus at p. 412: There is no doubt that in dealing with issue 1 the tribunal had to consider not only the propriety, reasonableness and fairness of the rule, but it had also to deal with the question as to whether the said rule could and should be made applicable to employees who had already been employed by the appellant in service without any limitation as to the age of retirement. In fixing the age of superannuation industrial tribunals have often enough considered this dual aspect of the question and it is the same dual aspect that was intended to be examined when Issue 1 was framed. Indeed both the industrial and the Appellate Tribunals have considered this twofold aspect of the matter, though it may be conceded that the

discussion in both the judgments is somewhat confused and mixed up. There is, however, no doubt that the respondent's grievance about the application of the rule to the previous employees of the appellant was specifically urged before the tribunals. These observations do not, in my view, apply to a case where the substance of the dispute was the validity of the withdrawal of the concession. The question whether a particular age of superannuation is the one, that should be fixed or not, is always a substantial question affecting the retirement of the worker and a tribunal merely holding that the age of 65 was not the correct age would be leaving undecided the further question as to what is the appropriate age and it cannot be said that it has effectively dealt with the matter. The whole object of the reference in this case was to challenge the validity of the withdrawal which is what has in fact been done. Sri Subrahmanyam contends that if the 21 days' notice had been given, the workers would have time for conciliation under the provisions of the Industrial Disputes Act. Even where conciliation is not possible, the conciliation officer has only to report to the Government who may refer the dispute to a board of conciliation or to the industrial tribunal under Section 10. In the circumstances if the Government considered that there was a dispute and that the matter was essentially one fit to so referred to the tribunal, that is a power which it could exercise under Section 10 instead of acting under Section 12.

14. It is well settled that unless there is a manifest injustice or the error apparent on the face of the record is equally manifest, Court will not exercise their writ jurisdiction. The remedy by way of a writ of certiorari or mandamus is of a very special character. Writ of certiorari will only be issued if the conditions for its issuance existed which conditions have been formulated as below by an exhaustive review of the case-law by Venkatarama Ayyar, J., in Hari Vishnu Kamath v. Ahmed Ishaque 1955 S.C. 233:

...On these authorities, the following propositions may be taken as established:

- (1) Certiorari will be issued for correcting errors of jurisdiction as when an inferior Court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.
- (2) Certiorari will also be issued when the Court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decided without giving an opportunity to the parties to be heard, or violates the principles of natural justice.
- (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction.

At p. 244, it was further pointed out:...It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error, it must be one which must be manifest on the face of the record. The real difficulty

with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case.

Vide also 1954 S.C.J. 440 at 444. In a recent case, B.P. Sinha, J. (as he then was), viz., *Nagendra Nath Bora v. Commissioner, Hills Division*¹ observed as follows:

It is clear from an examination of the authorities of this Court as also of the Courts in England that one of the grounds on which the jurisdiction of the High Court on certiorari may be invoked is an error of law apparent on the face of the record and not every error either of law or fact, which can be corrected by a superior Court, in exercise of its statutory powers as a Court of appeal or revision. In so far as the case of *Standard Vacuum Oil Co. v. Additional Commissioner for Workmen's Compensation*² cited by Sri Subrahmanyam is concerned, the question that fell for decision there was whether the erroneous determination of status of a workman itself affects the jurisdiction of the tribunal. It was held that the question whether an employee fell within the ambit of Section 4(1)(a) of the Madras Shops and Establishments Act 36 of 1947, is a question of law to be decided on proved facts or at least a question of mixed fact and law and where the Commissioner of Labour approaching the question from an erroneous point of view based on a wrong construction of Section 4(1)(a), held that a certain employee did not fall within the scope of that provision, there is an error manifest on the face of the labour Commissioner's order and where as a result of such error, the Additional Commissioner for Workmen's Compensation entertains an appeal under Section 41(2) of the Act, the High Court has the power to issue writs at certiorari to quash their orders. No such adjudication affecting the jurisdiction of the tribunal is involved in the instant case. The Supreme Court in *North, Brook Jute Co. Ltd. v. their workmen*³ was dealing with the question as to at what point of time the employer has altered any conditions of service for purposes of Section 33 of the Industrial Disputes Act and it is in relation to this that the Supreme Court observed that this has to be ascertained with reference to the change of which notice under Section 9A was given was actually affected.

15. If at the time the change was effected, a proceeding was pending before a tribunal. Section 33 is attracted and not otherwise. The point of time when the employer proposes to change the conditions of service and the point of time when the notice is given are equally irrelevant.

16. In the result, I am of the view that there is no manifest injustice or any other valid reason for exercising the very special jurisdiction of this Court to issue a writ of mandamus or certiorari to quash the award of the tribunal. The petition is accordingly dismissed with costs. Advocate's fee Rs. 100.

Cases Referred.

21959--II L.L.J. 771
31960--I L.L.J. 580