BOMBAY HIGH COURT

Jagannath Vinayak Kale

Vs.

M.I. Ahmadi

O.C.J. Miscellaneous Application No. 356 of 1956

(K.T. Desai, J.)

06.02.1957

JUDGMENT

K.T. Desai, J.

1. The petitioner is an employee of the Mazagaon Dock, Ltd., respondent 3 herein. The petitioner is a member of the Dockyard Labour Union. Respondent 1 to the petition is Sri M. I Ahmadi, who has acted as an industrial tribunal under the Industrial Disputed Act, 1947. Respondent 2 is the State of Bombay. The petitioner has prayed for the issue of a writ of certiorari or a writ in the nature of a writ of certiorari or a direction or order and/or other appropriate writ under Art. 226 of the Constitution against respondent 1 calling for the record of the proceedings of this reference in (I.T.) No. 126 of 1954 and quashing and setting aside the award, dated September 20, 1956, made by respondent 1 in so far as it related to the reference (I.T.) No. 126 of 1954. He has further prayed for a writ of prohibition against respondent 1 or a writ in the nature of prohibition or an order or direction and/or other appropriate writ under Art. 226 of the Constitution of India restraining respondent 1 from acting as an industrial tribunal in the industrial dispute raised by the said union.

2. The facts giving rise to the petition, briefly stated, are as under : On April 19, 1948, the Government of Bombay, in exercise of the powers conferred by Section 7 of the Industrial Disputes Act, 1947, was pleased "to constitute an industrial tribunal consisting of Mr. Salim, M. Merchant, B.A. LL.B., for the adjudication of industrial disputes in relation to which the Central Government is not the appropriate Government in accordance with the provisions of the said Act." BY an order, dated September 15, 1954, the Government of Bombay in exercise of the powers conferred by Clause 1(c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred certain disputes that had arisen between respondent 3 and the workmen employed under it for adjudication to the said tribunal consisting of Sri Salim M. Merchant. Mr. Merchant thereafter proceeded with the matter and a number of meetings were held before him between

November, 1954 and July, 1955. The said reference is Reference (I.T.) No. 126 of 1954. In the beginning of August, 1955, Mr. Merchant was appointed a member of the Labour Appellate Tribunal with the result that his services ceased to be available for the purpose of adjudication of the disputes that had been referred to him as aforesaid. It is stated in the petition that after the services of Mr. Merchant ceased to be available as aforesaid, the hearing of the disputes was adjourned sine die. The Dockyard Labour Union, of which the petitioner is a member, thereupon wrote a letter, dated September 1, 1955, to the Honourable the Minister of Labour, Bombay Government, for having the matter transferred to another industrial tribunal. On September 23, 1955, the Government of Bombay, in exercise of the powers conferred by Sub-section (2) of Section 8 of the said Act, appointed Sri M. I. Ahmadi, respondent 1, in place of Sri Salim M. Merchant. On September 30, 1955, the Assistant Secretary to the Government of Bombay, Development Department, intimated to the General Secretary of the Dockyard Labour Union that "a successor to Sri Salim M. Merchant" had been appointed. Thereafter, on November 8, 1955, the Secretary of the industrial tribunal gave notice inter alia to the General Secretary of the Dockyard Labour Union that the matter would be taken up "for further hearing before Sri M. I. Ahmadi, Industrial Tribunal." The further hearing of the disputes before respondent 1 commenced on November 28, 1955, and went on without any objection on the part of the union or of the petitioner. The union appeared before the tribunal and the representatives of the union were fully heard in the matter. The hearing ended on June 28, 1956. On September 20, 1956, respondent 1 made his award - part I. The award is a lengthy document extending over 120 closely printed pages. The award appears at pp. 3895 to 4015 of the Bombay Government Gazette, dated October 18, 1956. Respondent 1 has left certain matters for decision at a later stage and has given his reasons therefor in Para. 22 of the award. These matters relate tot he classification of workmen under various categories in the event of the company and the union being unable to agree upon the appropriate category in which some of the workmen should be placed. On October 25, 1956, the petitioner filed the petition herein. A rule was issued by my brother Tendolkar J., on November 5, 1956.

3. The principal question raised before me relates to the validity of he appointment of respondent 1 as an industrial tribunal. It is contended that the appointment which is made under Section 8(2) of the Industrial Disputes Act, 1947, is invalid, and that respondent 1 had no jurisdiction to determine any of the disputes purported to have been referred to him.

4. Section 7 of the Industrial Disputes Act, 1947, which relates to the constitution of industrial tribunals, provides as under :-

> "7. (1) The appropriate Government may constitute one or more industrial tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.
> (2) A tribunal shall consist of such number of independent members as the appropriate Government may think fit to appoint, and where the tribunal consists of two or more members, one of them shall be appointed as the chairman thereof.

(3) Where a tribunal consists of one member only, that member, and where it consists of two or more members, the chairman of the tribunal, shall be a person who -
(a) is or has been a Judge of a High Court; or
(b) is or has been a District Judge; or
(c) is qualified for appointment as a Judge of a High Court.

Provided that no appointment under this sub-section to a tribunal shall be made of any person not qualified under Clause (a) or Clause (b) except with the approval of the High Court of the State in which the tribunal has, or is intended to have, its usual seat.

(4) Where a tribunal consists of two or more members, every such member (other than the chairman) shall possess such qualifications as may be prescribed, and where an industrial dispute affecting any banking or insurance company is referred to a tribunal, one of such members may be a person who, in the opinion of the appropriate Government, has special knowledge of banking or insurance, as the case may be :
(5) A tribunal, where it consists of two or more members, may act notwithstanding the casual and unforeseen absence of the chairman or any other member, and when the chairman or other member rejoins his office after such absence, the proceedings may be continued before the tribunal from the stage at which he so rejoins."

5. Section 8(2) of the said Act provides as under :

"8. (2) If for any reason a vacancy occurs in the office of the chairman or any other member of a court or tribunal, the appropriate Government shall, in the case of a chairman, and may, in the case of any other member, appoint another independent person, in accordance with the provisions of Section 6 or Section 7 as the case may be, to fill the vacancy, and the proceedings may be continued before the court or the tribunal so reconstituted from the stage at which the vacancy is filled."

6. The appointment of respondent 1 was challenged in the petition on the ground that respondent 1 was not qualified under Clause (a) or Clause (b) of Sub-section (3) of Section 7 and the approval of the High Court of the State of Bombay was not obtained. The said contention has, however, been given up in view of the fact that the approval of the High Court had been secured. The argument that was advanced by Mr. K. T. Sule, the learned advocate for the petitioner, was that Section 8(2) under which the appointment of respondent 1 was made was not applicable at all to a case where the services of a member constituting a single member tribunal ceased to be available. He urged that Section 8(2) was applicable only in the case of a multi-member tribunal. According to him, under Section 8(2) if a vacancy occurred in the office of the chairman or any other member of a multi-member tribunal, then the appropriate Government could appoint another person to fill the vacancy. According to him, the reference to the chairman indicated the existence of a multi-member tribunal. He urged that the words "any other member" postulated the existence of the chairman, and were not applicable when there was a tribunal without a

chairman, viz., a single-member tribunal. According to him, the only power which the Government had in a case where the tribunal consisted on a single member and he ceased to be available, was to constitute a fresh tribunal under the provisions of Section 7 of the said Act, and that the tribunal so freshly constituted would have to hear the matter de novo. It would not be open to such tribunal to proceed from the stage at which the matter had been left by the previous tribunal. He urged that if the tribunal was not duly constituted, it had no jurisdiction to decide any dispute, and that they acquiescence or want of objection on the part of the petitioner could not cure the defect and validate the proceedings before the tribunal. What I have to determine is whether under Section 8(2) the words "a vacancy occurs is the office of the chairman or any other member ..." necessarily imply that the tribunal must be one which had a chairman, i.e., a multi-member tribunal. Section 8 provides for the filling of vacancies and follows Section 5 dealing with the constitution of boards of conciliation, Section 6 dealing with the constitution of courts of inquiry and Section 7 dealing with the constitution of industrial tribunals. Section 8(1) deals with the vacancy in the office of the chairman or any other member of a board, i.e., a board of conciliation constituted under Section 5. Section 8(2) deals with vacancies occurring in the office of the chairman or any other member of a court, i.e., court of inquiry constituted under Section 6, and in the office of the chairman or any other member of a tribunal, i.e., a tribunal constituted under Section 7. In my view, all vacancies occurring in the board of conciliation, the court of inquiry and the industrial tribunal are intended to be filled under the provisions of Section 8 and the new incumbent or incumbents in office are entitled to proceed from the stage at which the matter was left by the board of conciliation, the court of inquiry or the tribunal in which the vacancy had occurred. Under the provisions of Section 8(1), if all the members of a board of conciliation vacated office, it would be open to the appropriate Government to fill in the vacancies, Similarly, under Section 8(2) if all the members of a court of inquiry vacated their offices, it would be open to the appropriate Government to fill in the vacancies. I do not see any reason why Section 8(2) should be so interpreted that in case a member of a single member tribunal vacated his office, Government could not fill in the vacancy so caused. The words "any other member" appearing in Section 8(2) mean "any member other than the chairman" and are applicable where there is no chairman by reason of the fact that no chairman is required to be appointed under the provision of Section 7, the tribunal being a single-member tribunal. Section 8 was intended to provide for continuity of proceeding so that proceedings which had taken place before a board of conciliation, a court of inquiry or a tribunal may not prove infructuous. The construction which I am putting on Section 8(2) found favor with the Division Bench of the High Court of Rajasthan consisting of the Chief Justice Wanchoo and Justice Daven In *M.S.U. Mills v. Industrial Tribunal, Jaipur*[1] In that case, the Government of Rajasthan, in exercise of the powers conferred upon it by Section 7 of the Industrial Disputes Act, 1947, had constituted an industrial tribunal of one member on June 2, 1953, and had appointed Sri Mehta on it for adjudication of certain industrial disputes referred to the tribunal. The notification in that case in Para. 2 provided as under : "The appointment is at present sanctioned for the financial year 1953-54." The tribunal so appointed took up adjudication of disputes, but the adjudication work was not finished till the end of the financial year 1953-54, i.e., up to March 31, 1954. On June 2, 1954, Government

issued another notification by which the words "the appointment is at present sanctioned for the financial year 1953-54" in the second paragraph of the aforesaid notification were deleted with the result that the tribunal was intended to function irrespective of the financial year 1953-54. It was contended that the tribunal ceased to have jurisdiction after March 31, 1954, and could not further hear the disputes after the June 2, 1954. Chief Justice Wanchoo dealing with the matter observed as follows :

> "..... As Section 7, Industrial Disputes act, contemplates constitution of the tribunal under Sub-section (1) and appointment of members under Sub-section (2) and these are, in our opinion, two steps, though they may be notified in one notification, we cannot agree with the contention of the applicants that the tribunal

[1][1954] A.I.R. Raj. 274

> also was constituted for a limited duration. The fact that it was a one-member tribunal would not necessarily make the duration of the tribunal the same as the duration of sole member appointed to the tribunal.This would be clear from a reference to Section 8(2), Industrial Disputes Act. That sub-section shows that if any vacancy occurs in the office of any member of a tribunal, the appropriate Government may appoint another independent person to fill the vacancy, and the proceedings may be continued before the tribunal so reconstituted from the stage at which the vacancy is filled. This sub-section, in our opinion, applies both to one-member tribunals and multi-member tribunals. As a matter of fact, Section 8 originally had three sub-sections, and they have now been replaced on amendment by two sub-sections, but in our view these provide for exactly the same things as before. Sub-section (2) as it originally stood-provided that where a tribunal consisted of one person only and his services ceased to be available, the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed. This, in our opinion, is also provided by the present sub-section (2), in the case of one-member tribunals with this difference that now it is left to the appropriate Government to fill the vacancy or not, as the word used in connexion with a member is 'may' and not 'shall'. So it is clear that a tribunal may continue even through its sole member may cease to act for one reason or another, and when the vacancy occurs another person may be appointed in his place, and the tribunal will then carry on from the stage at which the case was when the vacancy was filled. We have, therefore, no hesitation in coming to the conclusion that the notification in coming to the conclusion that the notification of June 2, 1954, constituting an industrial tribunal, did not put any limit on the duration of the tribunal, though it did limit the duration of the tribunal, though it did limit the duration of the member Sri Mehta to the period ending March 31, 1954."

7. Mr. Sule has pressed into service the legislative history in connexion with this section. The present Section 8 has been incorporated by the amending Act XL of 1951 in place of the original Section 8. The old Section 8 ran as follows :-

"(1) If the services of the chairman of a board or of the chairman or other member of a court or tribunal ceases to be available at any time, the appropriate Government shall, in the case of any other member, appoint another independent person to fill the vacancy, and the proceedings shall be continued before the board, court or tribunal so reconstituted.
(2) Where a court or tribunal consist of one person only and his services cease to be available, the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed.
(3) Where the services of any member of a board other than the chairman have ceased to be available, the appropriate Government shall appoint in the manner specified in Sub-section (3) of Section 5 another person to take his place, and the proceedings shall be continued before the board so reconstituted."

8. Mr. Sule urges that under the old Section 8 there was an express provision dealing with the matter when the tribunal consisted of one person only and that by not expressly providing for the same in the new Section 8, the legislature intended to effect a change in the provisions of that section so as not to make the new section applicable in the case of a single-member tribunal. There is nothing in the Act XL of 1951 or in the Statement of Objects and Reasons in connexion with it which would help Mr. Sule. Under the provisions of the old Section 8(1) it was provided that in case the services of the chairman of a board or of the chairman of a court or tribunal ceased to be available, Government was under an obligation to appoint a person in his place to fill the vacancy. In the case of any other member of a court or tribunal, Government had a right, but was under no obligation to appoint a person in his place and stead. In the case, however, of a single-member court or tribunal, by Sub-Section (2) of the old Section 8, Government was under an obligation to appoint another independent person in his place. The new Section 8(2) does not contain any provision corresponding to the old Section 8(2) inasmuch as it was not considered desirable to make it obligatory on Government to appoint a person in place of a member of a court or tribunal where such court of tribunal consisted only of one person. According to Mr. Sule, by reason of the omission of old Section 8(2) such a change was sought to be effected that Government could not appoint any person to fill in the vacancy where the court or tribunal consisted of one member only and the services of such member were not available. There does not seem to be any warrant for this conclusion. The only change effected by the new Section 8 is that whereas under the provisions of old Section 8 it was obligatory on the Government to appoint a person to fill in the place of a member where the court or tribunal consisted of a single member, now it is made optional on the Government so to do.

9. In view of the construction which I have placed upon Section 8, the petition fails on merits. As there are objections raised to the petition and the same have been argued before me at some length, I will deal with the same.

10. It is urged by Mr. M. J. C. Mistry, the learned counsel for respondent 2, and by Mr. P. P. Khambata, the learned counsel for respondent 3, that the question as regards the jurisdiction of

respondent 1 was not at any time raised by the petitioner or by the union of which he is a member or by any other person before the tribunal consisting of Sri M. I. Ahmadi; that the petitioner and the union took the chance of obtaining an award in their favour, and that, finding that the same is against them, have now sought to question the jurisdiction of Sri Ahmadi, and that the petitioner should not now be permitted in a writ petition to raise such an objection. In support of their contention both the said respondents have relied upon a decision of a Division Bench of our High Court in *Gandhinagar Motor Transport Society v. State of Bombay*[2] At p. 923 of the said judgment it is observed as follows :-

> "Now, as we shall presently point out, the English Courts have taken the view, and in our opinion rightly, that before a question of jurisdiction is raised on a petition, objection to jurisdiction must be taken before the tribunal whose order is being challenged. It is not as if by the petitioner not challenging the jurisdiction of the tribunal that he confers jurisdiction upon that tribunal if that tribunal has no jurisdiction. But what the English Courts have said is that the High Court has been asked to exercise a special jurisdiction, not an ordinary jurisdiction, and the High Court is entitled to know what the tribunal has to say on the question of

[2](1953) 55 Bom. L.R. 922

> jurisdiction which the petitioner wants to agitate before the Court. There is another principle underlying this view, and that is, that the tribunal which is brought before the Court shall itself be given an opportunity to decide that it has no jurisdiction, before the High Court is called upon to give its decision. It must be borne in mind that in exercising its jurisdiction under Arts. 226 and 227 the High Court is not exercising an ordinary jurisdiction. It is always open to a petitioner to assert his rights in a suit properly filed, but when he chooses to assert his rights by calling upon the High Court to exercise its special jurisdiction, the High Court must itself lay down certain principles for the exercise of that jurisdiction and must not make the exercise of that jurisdiction a matter of ordinary occurrence. A suit may well be filed within the period of limitation; the Judge trying the suit does not non-suit the plaintiff because he came to Court towards the end of the period of limitation; but this Court tells the petitioner 'you must come to this Court expeditiously.' Equally so a defendant may not raise the question of jurisdiction in the Court of first instance, he may not raise the question of jurisdiction in the appellate Court, he may postpone raising the question of jurisdiction up to the stage of the Privy Council or the Supreme Court; yet if the Court has no jurisdiction the highest court in the land will allow the point to be raised ad decide it in favor of the defendant. But the principle is different when the petitioner comes to this Court for a writ. The Court must tell the petitioner : 'It was open to you to raise that point before the tribunal, whose order you are challenging. You have sat on the fence, you have taken a chance of the tribunal deciding in your favor, and it is not open to you now to come to us and ask for a writ.'

11. At p. 924 of the said report a passage from the judgment of M. Justice Rowlatt in *Rex v.*

Williams : Phillips, Ex-parte[3] is quoted with approval. The said passage is as follows :

> "... It is a very salutary rule that a party aggrieved must either shew that he has taken his objection at the hearing below or state on his affidavit that he had no knowledge of the in support of the petition which would show that the petitioner had no knowledge of the facts which would have enabled him to raise the question of the jurisdiction of the tribunal before respondent 1. My attention has also been drawn to a recent decision of the Patna High Court in *National Coal Company, Ltd. v. L. P. Dave*[4] where a Division Bench of the Patna High Court has taken a similar view. In answer to these authorities, Mr. Sule has drawn my attention to a judgment in *Farquharson v. Morgan*[5] In that case Lord Halsbury has observed as follows :-
>
> "In this case, with every disposition to decline to interfere with the proceedings in the county Court on the ground that if it is possible for a person to render himself incapable of applying for a prohibition in such a case as this, the appellant has done so, I feel nevertheless constrained to decide that the writ must issue to prohibit further proceedings on the order of the county Court so far as it is applicable to that portion of the award which is in respect of matters outside the Agricultural Holdings Act. It has been long settled that, where an objection to the jurisdiction of an inferior Court appears on the face of the proceedings, it is immaterial by what means and by whom the Court is informed of such objection.

[3](1914) 1 K.B. 608 [5](1984) 1 Q.B. 552

[4][1958 - I L.L.J. 84)

> The Court must protect the prerogative of the Crown and the due course of the administration of justice by prohibiting the inferior Court from proceedings in matters as to which it is apparent that it has no jurisdiction. The objection to the jurisdiction does not in such a case depend on some matter of fact as to which the inferior Court may have been deceived or misled, or which it may have unconsciously neglected to observe, and the judge of such Court, therefore, must or ought to have known that he was acting beyond his jurisdiction. I find no authority justifying the withholding of a writ of prohibition in such a case. Under these circumstances, reluctant as I am to aid the appellant in this case. I am unable to resist the conclusion that the writ ought to issue."

12. Lopes. L.J., has in that very case drawn attention to the decision of Lord Mansfield in *Buggin v. Bennett*[6] where Lord Mansfied held that the Court was not bound to grant a prohibition to a party who had acquiesced in the proceedings of the Court below, except where the absence of jurisdiction was apparent on the face of the proceedings. At p. 559 of that report Lopes, L.J., has observed as follows :

> "The reason why, notwithstanding such acquiescence, a prohibition is granted where the want of jurisdiction is apparent on the face of the proceedings, is explained by Lord Denman in *Bodenham v. Ricketts*[7] to be for the sake of the public, let 'the case might become a precedent if allowed to stand without impeachment,' and, I will add for myself,

> because it is a want of jurisdiction of which the Court is informed by the proceedings before it, and which the Judge should have observed, and of which he himself should have taken notice.
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> Now, if it were possible for him to do so, it is abundantly clear that Mr. Farquaharson has by his conduct precluded himself from claiming the interposition of the Court in his favor. That he has acquiesced in the proceedings is beyond dispute. I cannot imagine a stronger case of acquiescence.
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> But I am of opinion that the award on the face of it discloses a want of jurisdiction. It contains and deals with matter which are not the subject of the Agricultural Holdings Act, matters outside the Act, and which cannot be enforced under the 24th section of that Act.
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> In such circumstances, most reluctantly I am compelled to hold that the writ of prohibition must issue."

13. Mr. Sule has further pointed out to me that the tribunal is still to function and that if the tribunal had no jurisdiction to do so, he was entitled to a writ of prohibition preventing the tribunal from further functioning, and that if for that purpose I come to the conclusion that the tribunal had no jurisdiction to act, It could not allow the award of the tribunal to remain unquashed. There is considerable force in the argument of Mr. Sule. If I had come to the conclusion that the absence of jurisdiction was apparent on the face of the proceedings, I would have treated the matter as an exception to the rule laid down by my lord the Chief Justice and Dixit, J., in the case *Gandhinagar Transport Society v. State of Bombay* and in spite of the conduct of the petitioner whereby he had precluded himself from claiming the interposition of the Court issued the necessary writ.

[6](1767) 4 Burr. 2035

[7](1836) 6 N. & M. 170

14. It is further urged on behalf of respondents 2 and 3 that Section 9 of the Industrial Disputes Act, 1947, is a bar to the present proceedings. Section 9 of the said Act provides as under :

> "No order of the appropriate Government appointing any person as a member of a board, court or tribunal shall be called in question in any manner."

15. Mr. Sule has urged that this section is no bar to the Court issuing a writ in a case where the tribunal has not not been duly constituted under the Act and is acting without jurisdiction. He has drawn my attention to a decision of the Punjab High Court in *K.R.D.N. Weaving Mills v. State of Punjab*[8] where Chief Justice Bhandari and Justice Dulat have held that Section 9 does not in any manner debar the High Court from considering the validity of an order appointing any person as a member of a tribunal in proceedings for a writ under Art. 226 of the Constitution on the ground that the appointment of the tribunal was in violation of the provisions of the Industrial Disputes Act, 1947. He has also drawn my attention to other cases under similar provisions contained in other Acts. It is not necessary for me to deal with the various authorities cited by Mr. Sule in view of the fact that the power of the Court to issue a writ under Art. 226 of the Constitution is not disputed where the tribunal is not duly constituted and is acting without jurisdiction. It is not

disputed that if a person who is disqualified is appointed as a member of at tribunal, Section 9 would not cure the defect. What is urged is that Section 9 would come into play in the case of an irregularity in the appointment of a tribunal. The learned counsel for respondent 3 has relied upon a case in *G. C. Bezbarua v. State of Assam*[9] where Chief Justice Sarjoo Prosad and Justice H. Deka have relied upon Section 9 for the purpose of curing the defect in the appointment of a member of a tribunal when the appointment was made under Section 8(2). Chief Justice Sarjoo Prosad has observed as follows :

> "If Government have the power to constitute the tribunal, as Government certainly have, and if that power has been in effect exercised, the reference to any irrelevant section in the notification or the omission to refer to any relevant section is hardly material. In fact, the notification need not have referred to any section at all. It is laid down in Section 9(1) of the said Act that an order of the appropriate Government appointing any person as a member of the board or tribunal shall not be called in question in any manner. Thought the language of the section is somewhat broadly worded and cannot over-ride the powers of this Court to question the appointment of persons not possessing the requisite statutory qualification, the section is at any rate a conclusive answer to the contention that the form of the notification affects the validity of the order appointing Mr. Gohain to constitute the tribunal.

16. Relying upon that judgment it is urged that even if an appointment is required to be made under Section 7 and is made under Section 8(2), it is a defect in procedure cured by Section 9. I find considerable difficulty in accepting this argument. The difference between an appointment under Section 7 and an appointment under Section 8 is that in the case of an appointment under Section 7 the tribunal would have to proceed de novo as

[8](1953) 5 F.J.R. 402

[9] (1954) A.I.R. Ass 161

a new tribunal whilst in respect of an appointment made under Section 8 the reconstituted tribunal would have a right to proceed with the matter from the stage where it had been left by the previous holder or holders of the office. It is not necessary in these proceedings to decide the question. I am inclined to take the view that the defect would not be cured by Section 9.

17. There is one more point which was urged before me which remains to be considered. It is that the award is in any event bad to the extent that it gives reliefs which were not asked for and has reduced the basic wage-scales. My attention has been called to Paras. 68, 70 and 77 of the award in this connexion. Mr. Sule urged that it appears from Para. 68 that a semi-skilled workman was under the then existing scales entitled to receive ₹ 1-10-5 under sub-item (iii) as shown at p. 3969 of the gazette, whereas a semi-skilled workman under grade I was entitled to receive ₹ 1-9-6 as appears at p. 3976 of the gazette which constituted a reduction. He has similarly drawn up my attention to what appears at p. 3972 of the gazette in connexion with the scales for workmen in

the skilled category. Sub-item (ii) on that page shows the minimum to be ₹ 2-1-7 whilst at p. 3976 in the gazette for skilled workmen in grade I the minimum is ₹ 2. He has further invited my attention to p. 3972 where it appears that the item 6 shows the minimum for workmen in the skilled category to be ₹ 3-7-2 whilst the minimum provision for the highly skilled workmen at p. 3976 is ₹ 3-6-0. There is no substance in this contention. What appear at pp. 3969 and 3972 of the gazette are the scales of pay according to each category of workmen as shown by the company while the scales shown at p. 3976 relate to the new categories of workmen to be constituted under the provisions of the award. Mr. Sule has failed to satisfy me that any reduction has in fact been made. At p. 3982 of the said gazette, however, it has been expressly stated as under :

> "If the present wage (including additional pay) of a workman is higher than the wage that he would be entitled to under the prescribed scale and the directions given above, he shall continue to draw that higher wage."

18. When this was pointed by Mr. Mistry, Mr. Sule urged that the award would affect future workmen. Mr. Sule has not seriously pressed this contention. The petitioner is in any event not entitled to urge such a contention in a writ petition.

19. In the result, the petition fails and is dismissed with costs. The rule is discharged.
Rule discharged.