1968 *Present:* **H. N. G. Fernando, C.J., T. S. Fernando, J., Abeyesundere, J., G. P. A. Silva, J., Siva Supramaniam, J., Samerawickrame, J., and Tennekoon, J.**

THE COLOMBO APOTHECARIES CO. LTD.,
Petitioner

v.

1. E. A. WIJESOORIYA,
2. M. T. MARIKAR BAWA,
3. M. H. MOHAMED (Minister of Labour),
4. N. L. ABEYWIRA (Commissioner of Labour).
5. W. E. M. ABEYSEKERA (President, Labour Tribunal),

Respondents

S. C. 232/67 (ID/LT/121/67)—In the matter of an Application for a Mandate in the nature of a Writ of Prohibition under s. 42 of the Courts Ordinance

Industrial dispute—Termination of a workman's services—Dispute arising therefrom between the employer and the dismissed workman—Whether it is an "industrial dispute"— "Dispute or difference between an employer and a workman"— "Employer"—"Workman"—Interpretation Ordinance, s. 2—Industrial Disputes Act (Cap. 131), as amended by Acts Nos. 25 of 1956, 14 and 62 of 1957, 4 of 1962, ss. 2, 3, 4, 17, 31A (1), 31B (1), 31B (2) (b), 32 (2), 33 (1) (b), 33 (1) (c), 33 (1) (d), 33 (3), 33 (5), 33 (6), 47C, 48, 49.

The 2nd respondent was employed by the petitioner-Company as an Assistant. On or about 5th April 1965 his services were summarily terminated on the ground that he had been "guilty of gross insolence, rudeness, disobedience, defiance of authority and disrespect". Subsequently he disputed the legality and propriety of his dismissal by the Company and brought his dispute with the Company to the notice of the Commissioner of Labour and, through him, to the Minister of Labour. The Minister then, claiming to act under section 4 (1) of the Industrial Disputes Act, referred the matter in dispute to a Labour Tribunal (the 5th respondent). The matter in dispute was whether the termination of the services of the 2nd respondent was justified and to what relief he was entitled.

It was contended on behalf of the petitioner-Company that after the services of the 2nd respondent were terminated by the Company, the employer-workman relationship between them had ceased to exist at the date of the reference and that a dispute arising between the ex-employer and the ex-workman as to whether the dismissal was justified was not a dispute between an employer and a workman and could not fall within the definition of "industrial dispute" in s. 48 of the Industrial Disputes Act unless it was raised by another workman who was still in the employ of the petitioner or by a trade union.

1*—H 15038—2,130 (7 68)

Held, by T. S. FERNANDO, G. P. A. SILVA, SIVA SUPRAMANIAM and SAMERAWICKRAME, JJ. (H. N. G. FERNANDO, C.J., ABEYESUNDERE and TENNEKOON, JJ., dissenting), that the dispute between the petitioner-Company and the 2nd respondent was an " industrial dispute " within the meaning of s. 48 of the Industrial Disputes Act and the Minister had the power to refer it for settlement by arbitration under s. 4 (1) of the Act. The 5th respondent, therefore, had jurisdiction to hear and determine the dispute.

APPLICATION for a Writ of Prohibition against a Labour Tribunal. This application was referred to a Bench of seven Judges in terms of section 51 of the Courts Ordinance.

H. V. Perera, Q.C., with *H. W. Jayewardene, Q.C.*, *Vernon Wijetunge* and *Ben Eliyatamby*, for Petitioner.

Walter Jayawardena, Q.C., Acting Attorney-General, with *H. L. de Silva*, Crown Counsel, for 1st, 3rd, 4th and 5th Respondents.

N. Satyendra, with *S. Ponnambalam*, for 2nd Respondent.

Cur. adv. vult.

February 29, 1968. H. N. G. FERNANDO, C.J.—

I must confess that I had much doubt during the course of the argument of this case, as to the correct answer to the question which arises in this case, namely whether a dispute between a single employer and an employee whom he has dismissed is an " industrial dispute " contemplated in the Act. Because it appeared during the argument that my brothers Samerawickrame and Tennekoon each had fairly definite and opposing views on the problem, they prepared at my request draft judgments setting out those contrary views, and I am sure my other colleagues on this Bench have derived as much assistance as I have from a study of those draft judgments, which quite fairly set out the pith of the arguments addressed to us by opposing counsel. Having enjoyed the benefit of the assistance to which I have just referred, I find myself now able to accept the answer in the negative which my brother Tennekoon gives to the question which here arises and to accept also his reasons for that answer. That being so, and also because the judgment of Tennekoon, J., was prepared earlier and does not refer to some of the points which have influenced the reasoning of Samerawickrame J., my own statement of opinion has necessarily to take the form of a comment on the latter reasoning. In the circumstances, I trust that it is scarcely necessary for me to disclaim any intention of disparaging that reasoning in the course of the expression of my disagreement.

When the petitioner in this case summarily dismissed the 2nd respondent from service, there undoubtedly arose a " dispute " between the two parties in the ordinary sense of that term, and that dispute

apparently came to the notice of the Minister. At this stage, the question which concerned the Minister would have been whether (if I may state it this way) he could do anything about the matter. The Minister's statutory powers under the Act are set out in s. 4 of the Act, each sub-section of which empowers him to refer an " industrial dispute " for settlement by arbitration. Thus the particular question which arose was whether this particular dispute is or is not an industrial dispute, and it seems to me beyond argument that the Minister's first duty (having regard to the form and structure of Acts of Parliament) was to seek a solution to the question in the Act's definition of the expression " industrial dispute ". While definitions in our Statutes take various forms, this particular definition commences thus " industrial dispute *means* . . . . . ", a formula intended to exclude any meaning other than the meaning which the Legislature proposes to assign in the definition itself. The citation from Craie's Statute Law, on which my brother Samerawickrame relies for the proposition that a word can be given its ordinary meaning in a particular context is wholly applicable where a word or expression is not defined at all, and may also be applicable in other cases, where for instance the definition of a word or expression commences " ' X ' *includes* . . . . . ". But where a definition does commence " ' X ' *means* . . . . . ", a Court cannot in any opinion look for a meaning outside the terms of the definition save *in extremis*, i.e., to avoid manifest absurdity, or to disregard manifest error in the actual definition.

The dispute which came to the notice of the Minister in this case was one between a single employer and a person who, though previously employed by that employer, was not so employed at the time when the dispute arose ; and the dispute related to the termination of the services of that person. Taking first the subject-matter of the dispute, there is no question but that the subject-matter fell within the scope of the definition : a dispute as to " the termination of the services of any person " is expressly mentioned in the concluding part of the definition of " industrial dispute " in the Act.

But in relation to each other, the parties to this dispute, at the time when it arose, were not an employer and a workman (in the ordinary sense of those words) but an employer, or perhaps an ex-employer, and an *ex-workman*. Hence I am in entire agreement with my brother Tennekoon that, when one has regard only to the definition of " industrial dispute ", there was here no dispute between an employer and a *workman*. But that is not an end of the matter, for the words " employer " and " workman "are both defined in the Act in what I might term " *compelling* " definitions, because they employ the term *means*. In order therefore to determine what the Legislature intended by the word "workman", the Minister was bound by the definition of that word. Accepting Tennekoon J.'s clear and obvious division of this definition into three parts, I have no doubt that an ex-workman, i.e., a person whose employment has been terminated, is not contemplated in the first part ; indeed no argument to the contrary was addressed to us.

But the question whether a workman whose services are terminated is nevertheless included in the second part of the definition of " workman " is not so easily answered. Had there been no third limb in the definition, the construction that the second part was intended to include any dismissed workman might have been reasonable.

The third limb or part of the definition, when read separately, is " 'workman', *for the purposes of any proceedings under this Act in relation to any industrial dispute*, includes any person whose services have been terminated." One cannot I fear ignore the apparent intention of the Legislature evidenced in the words which I have just italicized. Whereas the first two meanings which are assigned can apply whenever the word " workman " occurs in the Act, this third meaning can attach only when the word has to be construed in relation to *proceedings . . . . . dispute*. Hence it seems to me that, if the Court were to hold that the second limb contemplates a workman whose services have been terminated, the Court would be transgressing the limitation deliberately stated in the third limb of the definition. Indeed, the construction that the second limb of the definition of " workman " does include a dismissed workman is negatived by the third limb, in which the Legislature assumes that a dismissed workman is not caught up in the earlier parts of the definition.

I am satisfied, on this examination of the definition of " industrial dispute ", read as it must be with the first two limbs of the definition of " workman ", that a dispute between an employer and his dismissed workman is not an industrial dispute. I trust I am right in thinking that Samerawickrame J. is thus far at one with me, because he relies only on the third limb of the definition of " workman " for his conclusion.

The next, and last, matter which arises in the inquiry, whether the dispute in the present case is an " industrial dispute " within the definition of that expression, is to consider whether that definition can properly be read, together with the third limb of the definition of " workman ". Expressing the question in another way, is there anything in that third limb which has the effect of giving to the word " workman ", when it occurs in the definition of " industrial dispute ", the meaning " ex-workman or dismissed workman ", I see no alternative but to hold that the third limb can have no such effect, because the introductory words of the third limb assign a meaning to the word " workman ", not for all purposes, but only for the purposes of any proceedings under the Act in relation to an industrial dispute.

In my opinion, the proper approach of the Minister to a dispute which is brought to his notice is the approach which I have myself made, namely to inquire whether the dispute is one to which the Act applies, that is to say, an " industrial dispute " as defined in the Act. If by that test, a particular dispute is not an industrial dispute as so defined, then it is something unaffected by the Act, and the Minister has no statutory

power to take any action concerning it ; he cannot initiate a proceeding under the Act except in relation to a dispute which first satisfies this test.

With much respect, I must express disagreement with the opinion that there were in this case any "proceedings under the Act" at any stage before the Minister made a reference under s. 4. There is in existence a proceeding under the Act only when, and after, a reference under s. 4 is made ; and the third limb of the definition can operate only for the purpose of a proceeding thus in existence. At the stage when the Minister merely considers whether he should make such a reference, he is not exercising any power or function under the Act. Perhaps the very words of the preceding sentence convey adequately the distinction between the mere contemplation of the commencement of a proceeding, and the actual commencement of a proceeding. Perhaps also a valid analogy can be drawn with the principle of the criminal law that the mere contemplation or intention of doing a criminal act is (save very exceptionally) not a criminal offence. The reason of course is that it is only the doing of the act that the criminal law covers, and not the desire to do it. So also the " proceeding " which s. 4 of the Industrial Dispute Act covers or authorises is the making of a reference, and not the idea or intention to make it. Nothing is a statutory proceeding unless it has some legal effect or legal consequence, and the mere contemplation or intention of the Minister to make a reference has no legal effect or legal consequence and is not a proceeding under the Act. For these reasons, I am unable to agree with my brother Samerawickrame that a dispute between an employer and a dismissed workman can be construed to be an " industrial dispute " by calling in aid the third limb of the definition of " workman ".

When a Statute contains a definition of a subject or matter to which the Statute will apply, and especially when the definition uses the word " means ", the Statute will apply only to such a subject or matter as passes the test that it falls within the description, conditions and other particulars specified in that definition. In addition, if any word or expression which occurs in that definition is itself defined in another definition, then resort must also be had (in applying the test) to the meaning thus assigned to such a word or expression ; that precisely is the reason why, in this case, it is legitimate and necessary to read the definition of " industrial dispute " together with the definition of " workman ". But the third limb of the latter definition (unlike its first two limbs), while assigning a third meaning to " workman ", only does so " for the purposes of any proceedings in relation to any *industrial dispute* ". The third limb thus pre-supposes the existence of an industrial dispute and enacts some provision concerning it. Hence this third limb cannot form part of the test to which I have referred, because it pre-supposes that the test has already been satisfied. In testing the point whether some dispute is an " industrial dispute " as defined, it is in my opinion contrary, both to

common sense and to the rules of statutory construction, to call in aid a provision which pre-supposes that the case under consideration has passed that very test.

My opinion, that the third limb of the definition of " workman " is not relevant in a consideration of the question whether a particular dispute is an industrial dispute as defined in the Act, does not have the consequence that this third limb was enacted without purpose and is tautologous. There are in the Act many provisions, applicable in relation to proceedings under the Act, where the word " workman " occurs in contexts in which it might be doubtful whether reference to a dismissed workman is also intended. The third limb of the definition serves the useful purpose of avoiding such possible doubts. Statutory provisions of this kind are not uncommon, and indeed are often efficacious.

My brother Siva Supramaniam is of opinion that there was a dispute or difference between the petitioner and the 2nd respondent which arose before the termination of the services of the 2nd respondent, but the statement of the matter in dispute, namely " whether the termination of the services of the 2nd respondent was justified ", do not indicate that there was any industrial dispute prior to that time. If a workman conducts himself in a manner which appears to his employer to constitute gross inefficiency or impertinence, and if the employer immediately dismisses the workman, there would be no dispute in existence prior to the dismissal. If thereafter the workman acquiesces in his dismissal there will be no dispute at all; but if the workman questions the propriety of the dismissal then there will arise the dispute whether his dismissal was justified. While there may be cases in which dismissal is the culmination of a pre-existing industrial dispute, the present case has not been shown to be of such a nature.

I cannot agree that the case of *R. v. National Arbitration Tribunal*[1] relates to facts similar to those of the present case. The judgment of Lord Goddard makes it clear that between November 1946 and March 1947 the Company's workmen and their Union had made demands for changes in wages and in conditions of service, and that the Company had always resisted those demands. At the time of the termination of the services therefore, there was in existence a dispute as to those matters. Immediately after the passage cited by my brother Siva Supramaniam from the judgment, these observations follow :—

> " It is, in my opinion, quite clear that there was here a trade dispute existing at any rate down to the date of the dismissal of the workmen ..... If there was a trade dispute it can, in my opinion, be referred to the tribunal whether or not the dispute has resulted in workmen being dismissed or in their having discharged themselves."

[1] *(1947) 2 A. E. R. 693.*

As I understand it the decision in that case proceeds on the common-sense principle that once a dispute has arisen, an employer cannot avoid the operation of the machinery for settlement by terminating the employment of his workmen. The reference actually made in that case included several matters regarding conditions of service which had been in dispute prior to the termination. In the instant case, however, the reference to arbitration does not refer to any matter alleged to have been in dispute prior to the termination of the employment of the 2nd respondent.

The conclusion which I reach in this case means that the machinery of settlement by arbitration is not available in the case of a dispute between an employer and an individual workman whose services are terminated before the dispute arises. That conclusion is unfortunate for the employee in the instant case, because apparently there is not now available to him the remedy provided in Part IVA of the Act. But that consequence is entirely fortuitous ; it was probably due to the fact that the present dispute arose at a time when this Court had decided, in the case of *Walker Sons & Co., Ltd. v. Fry* [1], that the provisions of Part IVA of the Act were *ultra vires* of the principle of Separation of Powers. Now that our decision has been reversed by the Privy Council, there is no longer any doubt that relief under that Part of the Act can be sought in cases like the present one. And if an individual's grievance does become the subject of a dispute to which a trade union or an actually employed workman is a party, then the procedure of settlement by arbitration is also available.

For these reasons, I agree to the order proposed by my brother Tennekoon.

T. S. FERNANDO, J.—

I agree to the making of the order proposed by Samerawickrame J. and with the reasons therefor set out by him in his judgment.

ABEYESUNDERE, J.—

The dispute between the 2nd respondent and the petitioner in regard to the termination of the former's services by the latter was considered by the 3rd respondent, who was the Minister of Labour, to be an industrial dispute within the meaning of the Industrial Disputes Act (hereinafter referred to as the Act). Purporting to exercise the powers under section 4 (1) of the Act, the 3rd respondent referred such dispute for settlement by arbitration to the 5th respondent who is the President of a Labour Tribunal. The petitioner prays for a writ of this Court prohibiting the 5th respondent from continuing the proceedings in relation to the alleged industrial dispute between the 2nd respondent and the petitioner.

[1] *(1965) 68 N. L. R. 73.*

Mr. H. V. Perera, Q.C., who appeared for the petitioner, contended that the dispute between the 2nd respondent and the petitioner was not an industrial dispute within the meaning of the Act as the 2nd respondent, having ceased to be a workman when the dispute arose, was not competent to be a party to an industrial dispute, that consequently the reference made by the 3rd respondent to the 5th respondent was invalid, and that therefore the petitioner's application for a writ of prohibition should be allowed. Mr. N. Satyendra, who appeared for the 2nd respondent, sought to counter Mr. Perera's contention with the argument that, by reason of the second part of the definition of " workman " in section 48 of the Act, the 2nd respondent was a workman for the purposes of the Act despite the termination of his services. Mr. Perera submitted that the second part of the definition of " workman " was intended to apply to the word " workman " in the expression " trade union consisting of workmen " occurring in the definition of " industrial dispute " in the Act and that it did not apply to the 2nd respondent. In connection with that submission Mr. Perera drew attention to the fact that the expression " trade union " was defined in the Act to be any trade union registered under the Trade Unions Ordinance and that the meaning of the word " workman " as expressed in the second part of the definition of that word in the Act occurred in the definition of " workman " in the Trade Unions Ordinance.

The second part of the definition of " workman " in the Act provides that " workman " includes any person ordinarily employed under a contract of service with an employer whether such person is or is not in employment at any particular time. The third part of the definition of " workman " in the Act provides that, for the purposes of any proceedings under the Act in relation to any industrial dispute, " workman " includes any person whose services have been terminated. If, as argued by Mr. Satyendra, the second part of the definition of " workman " has an unrestricted application in the Act, a person whose services have been terminated would be a workman within the meaning of the Act and consequently the third part of the definition of " workman " would be redundant.

Mr. Satyendra submitted that if Mr. Perera's interpretation of the definition of " workman " in the Act was correct, that definition would not apply to the word " workman " in section 31B of the Act which provided that a workman may make an application to a Labour Tribunal for relief in respect of the termination of his services by his employer. That submission is correct. But the inapplicability of the definition of " workman " in the Act to section 31B does not matter as it is clear that the context of that section requires the word " workman " occurring therein to mean a person whose services have been terminated and the definition of " workman " in section 48 of the Act is subject to the words " unless the context otherwise requires ".

With regard to the third part of the definition of " workman " in the Act, Mr. Perera's submission was that it was necessary as awards and other proceedings under the Act in relation to an industrial dispute were sometimes required to apply to persons whose services had been terminated. Mr. Perera also examined the question whether the third part of the definition of " workman " in the Act applied to the 2nd respondent. He submitted that the consideration by the 3rd respondent whether the dispute between the 2nd respondent and the petitioner was an industrial dispute was not a proceeding under the Act in relation to an industrial dispute as there should first be an industrial dispute before any proceeding in relation thereto under the Act could arise and that therefore the third part of the definition of " workman " in the Act could not be relied on to determine the question whether the dispute between the 2nd respondent and the petitioner was an industrial dispute. I agree with Mr. Perera that such question must be determined without having regard to the third part of the definition of " workman " in the Act.

Unlike Mr. Satyendra's interpretation of the definition of " workman " in the Act, Mr. Perera's interpretation of that definition does not have the effect of making any part of that definition redundant. I accept Mr. Perera's interpretation. The dispute between the 2nd respondent and the petitioner is not an industrial dispute within the meaning of the Act because the parties to it are not competent under the Act to be parties to an industrial dispute as, at the time when the dispute arose, the 2nd respondent had ceased to be a workman of the petitioner and also the petitioner had ceased to be the 2nd respondent's employer.

I hold that, as the dispute between the 2nd respondent and the petitioner is not an industrial dispute within the meaning of the Act, its reference by the 3rd respondent to the 5th respondent for settlement by arbitration is invalid and consequently the petitioner is entitled to the writ of prohibition prayed for by him. He is also entitled to his costs, one half of which shall be paid by the 2nd respondent and the other half by the 3rd respondent.

G. P. A. SILVA, J.—

I have had the advantage of reading the judgments of My Lord the Chief Justice and my brothers Samerawickrame and Tennekoon. In agreeing with the conclusion reached by my brother Samerawickrame I wish to express my own views which have persuaded me to that course. As the facts preceding the application as well as the substance of the arguments advanced by counsel at the hearing have been fully set out in the judgments of my brothers Samerawickrame and Tennekoon, I shall not repeat them.

In considering the question at issue it is of the utmost importance that one should always have in the forefront the broad purpose of the Industrial Disputes Act. It is agreed by all the counsel associated with the discussion of the legal aspects of this matter—and there can be hardly any doubt—that the sole object of the Act is the promotion and maintenance of industrial peace. It is therefore reasonable to assume that the legislature at least intended that any industrial dispute which is or is likely to be a threat to industrial peace should be brought within the scope of the Act. When I consider the definition of the words "industrial dispute" in the present Act, I cannot help thinking that it is wide enough to include every serious problem that can arise between an employer and employee in relation to the employment. It is not as it were that the Act was silent as regards termination of employment and one is left to interpret whether that too was in contemplation but the Act specifically deals with it. Even if the Act was silent, reason and common sense would preponderate towards the view, unless there is good reason to the contrary, that, when less serious matters affecting industrial peace were brought within the purview of industrial disputes the subject of termination of employment, which is the most serious matter that can affect the relations between an employer and employee, should have been in contemplation. So far as the powers of the Minister under section 4 of the Act are concerned, experience has shown too often that the termination of services of one employee has resulted in considerable or complete dislocation of an industry with which he was associated. In these circumstances the question suggests itself whether a sagacious and prudent Minister, having all the data before him, would not be in the best position to consider whether the termination of services of a particular worker is or is not of such a nature as to be likely to lead to unrest in one or more industries and, when he so feels, whether he would not be justified in setting in motion the machinery contemplated in section 4 of the Act.

It is in the above background that I desire to consider the present question. In interpreting the provisions of this Act it would not be desirable to interpret one particular section in isolation and it is necessary to appreciate the scheme of the Act considered as a whole. At the outset, Part II of this Act deals with the functions of the Commissioner and the powers of the Minister in regard to industrial disputes. In setting out the functions of the Commissioner, section 2 requires him, on notice being given or otherwise, if he is satisfied that an industrial dispute exists or is apprehended, to take such steps as he may consider necessary with a view to promoting a settlement of the dispute. It seems to me that this section not only empowers but requires the Commissioner to adopt every means at his disposal, whether such means is specifically provided for in the Act or not, in order to promote a settlement of the dispute. As this court is not immediately concerned with the latter means, it is sufficient to concentrate on the machinery provided in the Act, namely, the proceedings contemplated in section 3 relating to the

powers of the Commissioner. To my mind the words " that any industrial dispute is. . apprehended " in section 2 (1) and similar words in section 3 (1) " where he apprehends an industrial dispute " have a very important significance in considering the present question. For, an industrial dispute need not exist before he commences to perform his functions and it is sufficient if he apprehends an industrial dispute. Under these two sections, he would be the final arbiter as to whether there is such an apprehension or not and that apprehension may well be based on the dismissal of one workman. Where such an apprehension is entertained, therefore, the dispute which he will have to refer for settlement or endeavour to settle by conciliation will be the dispute as to the dismissal and no other. The only basis on which this dispute can be called an industrial dispute over which alone the Commissioner can exercise his powers under section 3 is in terms of the last limb of the definition 'workman' which includes a person whose services have been terminated, read together, of course, with the definition of ' industrial dispute '.

Although sections 2 and 3 are not the sections which this court is called upon to interpret I think their implications have a bearing on the interpretation of the next section. Having regard to the sequence of the sections and the general functions of a Minister and a Head of a Department under him, it is not unreasonable to think that a dispute will reach Ministerial level only if the Commissioner as the Head of the Department fails to settle it by means provided for by the Act or otherwise. In addition to the reasons which I set out below independently for considering that the present dispute is an industrial dispute for the purposes of section 4, if the construction which I have placed on the words " industrial dispute " in section 3 is correct I feel fortified in giving the same meaning to the words in the next section where the Minister would be having recourse to his own powers to settle the dispute after the Commissioner himself has failed. For, it is fair to assume that in two consecutive sections in the same chapter where the functions and powers of the Commissioner and the Minister respectively in relation to industrial disputes are dealt with, the legislature intended to give the same meaning to the same words.

When the matter in dispute reaches the Minister, in my view, there is only one purpose for which he will consider it, namely, for the purpose of proceedings under section 4 of the Act in relation to the existing dispute. For this purpose he has to satisfy himself first that there is an industrial dispute and, if so, for the purposes of exercising his powers under subsection (1), to form an opinion as to whether or not it is a minor dispute. In regard to the first matter I think he will be fully justified in deciding that there is an industrial dispute in this case by reference to the definitions of the words " industrial dispute " read with the definition of the word " workman " which includes, for the purpose of any proceedings under the Act in relation to an industrial dispute, a person whose services have been terminated. It seems to me to be an unwarranted restriction

of the meaning of this definition to hold that the Minister should first consider whether an industrial dispute in terms of the definition exists independently of the purpose for which he is indulging in such consideration. In my view he has necessarily to consider the meaning of the words, having the purpose of that consideration in the forefront, namely, to take proceedings under section 4. Else there is no occasion for him to consider whether there is an industrial dispute or not.

On an examination of the various provisions of the Act I think there is a good reason for the limitation which the legislature has imposed on the meaning of "workman" which in turn restricts the meaning of the words "industrial dispute" where proceedings under the Act in relation to an industrial dispute are not in contemplation. There are several sections in the Act making reference to the word 'workman' which clearly refer to a workman in the service of the employer and in which the concept of a discontinued workman will be quite inapplicable. A definition had therefore necessarily to be evolved where a person who was a workman at some stage and whose services had been terminated before any relevant question arose, had to be excluded. At the same time the legislature was anxious to empower the Minister to exercise powers under section 4 in regard to a dispute of such a person whenever the dispute was one which threatened industrial peace. The definition was, I think, the outcome of these two considerations and there is no justification in my view for this Court to impose any limitation on this definition. Indeed such a limitation would defeat the very object that the definition was intended to achieve and would deprive a dismissed worker of the possibility of availing himself of a right which the legislature conferred on him.

It was contended in the course of the argument that the remedy for a dismissed workman was to avail himself of the provisions of Part IVA and to seek redress before a Labour Tribunal which could take cognizance of an individual workman's complaint regarding the termination of his services by his employer. Instances are not rare where the legislature has provided for more than one remedy even in respect of the same grievance. Quite apart from that, as I have already referred to earlier in regard to proceedings under Chapter II by the Commissioner or the Minister, having regard to the possible impact on industrial peace, there may be certain considerations which persuade a Minister in possession of all the relevant material, to take proceedings under section 4 even in a case where the workman whose services have been terminated can independently have recourse to a Labour Tribunal. Furthermore, there is nothing in Chapter IVA of the Act, which provides for Labour Tribunals, to suggest that individual grievances relating to termination of services should be exclusively dealt with by such tribunals nor is there any provision earlier to exclude such grievances from the purview of industrial disputes regarding which the Minister is empowered to take certain proceedings.

Perhaps the most persuasive provision in the Act in favour of the interpretation that a termination dispute of an individual workman, which is not taken up by a Trade Union, can form the subject of a reference by the Minister under section 4 (1) is to be found in section 33 which sets out some of the decisions that may be contained in an award. If it was the intention of the legislature that such a dispute should be cognizable only by a Labour Tribunal established under Part IVA, the provisions of section 33 (1) (*b*) or (*c*) or 33 (3), (5) and (6) all of which make pointed reference to dismissal and reinstatement of a workman will cease to have any meaning in the context in which they occur. The conclusion therefore seems to me unescapable that the Minister's reference in this case is one which is justifiable in law. The petitioner's application cannot therefore succeed.

SIVA SUPRAMANIAM, J.—

I have had the opportunity of perusing the judgments of my Lord the Chief Justice and my brothers Samerawickrame and Tennekoon.

The facts have been fully set out in the judgment of Tennekoon J., and it is unnecessary for me to recapitulate them. The question that arises for decision is whether, on the facts stated, there existed an industrial dispute which the Minister had jurisdiction to refer for settlement by arbitration under S. 4 (1) of the Industrial Disputes Act (Cap. 131, as amended by Acts Nos. 25 of 1956, 14 and 62 of 1957 and 4 of 1962, hereinafter referred to as the Act). I am in agreement with the answer given to that question by Samerawickrame, J.

It has to be borne in mind that although the Legislature had by Act No. 62 of 1957 introduced Part IVA into the original Act and had provided a remedy to a workman whose services had been terminated by his employer, namely, the right to make an application for relief to a Labour Tribunal, it enlarged the definition of an "industrial dispute" in 1962 by expressly adding to that definition "any dispute or difference between an employer and a workman". Had this amendment not been effected, it might have been contended that the Legislature did not intend that the machinery of settlement by arbitration should be available in the case of a dispute between an employer and an individual workman whose services had been terminated, on the footing, perhaps, that such a dispute cannot endanger industrial peace. The amendment, however, made it clear that the Legislature intended that the machinery should be available to an individual workman in addition to the remedy provided under Part IVA of the Act. The relevant sections of the Act should, therefore, be construed in a manner which will give effect to that intention of the Legislature, unless, of course, such a construction is not possible.

The definition of " workman ", as it stood before the amendment of 1957, included a person ordinarily employed under a contract with an employer " whether such person is or is not in employment at any particular time ". Any dispute or difference between " employers and workmen " fell within the definition of an " industrial dispute ". The words " employers and workmen " include " an employer and a workman " (S. 2 of the Interpretation Act). On the plain meaning of the words, therefore, a person, other than a casual employee, who had ceased to be in the employment of his employer was, nevertheless, a " workman " for the purpose of the Act and could have been a party to an " industrial dispute ". Can it be said that the Legislature, when it effected the amendment in 1957, by adding to the definition of " workman " the words " and for the purpose of any proceedings under this Act in relation to any industrial dispute, include any person whose services have been terminated," took away a right to which a workman was already entitled ? In my opinion, the amendment was only intended to make the position clear since, under the same amending act, " the termination of the services or the reinstatement in service " of a workman was specifically included in the definition of " industrial dispute " as a subject matter of an " industrial dispute ", although such a dispute was already within the ambit of an " industrial dispute " by reason of the words " connected with the employment or non-employment " contained in the earlier definition. (*Vide* the judgment of the Federal Court of India in *Province of Bombay v. West India Automobile Association* [1].)

There was no corresponding amendment in the definition of ' employer ' to include a person who had ceased to be an employer. Since the employer was a person against whom orders for the payment of money or the reinstatement of workmen could be made and enforced, the Legislature provided for those matters in respect of a person who had ceased to be an employer by enacting a new section 47C instead of amending the definition of " employer ", as the aforesaid matters cannot be adequately dealt with by an amendment of the definition.

With great respect, I find it difficult to agree that the provisions of this section lead to a necessary inference that a dispute connected with the termination of services can be referred to an Industrial Court or a Labour Tribunal for settlement only if the dispute arose while the relationship of employer and workman subsisted.

On the facts of the instant case, however, I am of opinion that the dispute which was referred for settlement by arbitration arose when the relationship of employer and workman subsisted between the petitioner and the 2nd respondent. Under S. 48 of the Act, " industrial dispute " means, *inter alia*, " any dispute or difference between an employer and a workman . . . connected with . . . the termination of the services . . . of any person." ' Any person " will, of course, include the workman

[1] *A. I. R. 1949 Federal Court, page 111.*

whose services had been terminated. The " industrial dispute " that was referred by the Minister for settlement by arbitration was set out as follows :—" Whether the termination of the services of Mr. M. T. Marikar Bawa is justified and to what relief is he entitled."

The contention on behalf of the petitioner is that on the date on which the dispute arose the relationship of employer and workman had ceased to exist between the petitioner and the 2nd respondent and consequently there was no " dispute or difference between an employer and a workman " which would constitute an " industrial dispute " in terms of S. 48 in respect of which the Minister could make an order under S. 4 (1) of the Act. It was submitted, however, that the dispute as to whether the termination of the services of the 2nd respondent was justified will fall within the definition of " industrial dispute " if it was raised by another workman who was still in the employ of the petitioner or by a trade union but not by the 2nd respondent himself, although the 2nd respondent was the person most vitally and directly concerned in the dispute.

It is necessary to examine when the " dispute or difference " in connection with the termination of the services of the 2nd respondent arose between the parties. What are the differences between the parties which the arbitrator will be called upon to consider in connection with the termination of the services of the 2nd respondent to determine *whether the termination was justified*? They will necessarily be differences that arose between the parties which culminated in the termination of the services and not differences which arose thereafter. Where the propriety of a summary dismissal is questioned by a workman, the dispute or difference arises at least contemporaneously with the communication of the order of dismissal. The dispute or difference between the petitioner and the 2nd respondent which formed the subject of the reference therefore arose before the relationship of employer and workman came to an end. Any dispute or difference that arose between the parties after the termination of the services of the 2nd respondent will be irrelevant for a consideration of the question whether the termination was justified. The dispute that existed between the parties which was referred for settlement by arbitration by the Minister was therefore an " industrial dispute " within the meaning of S. 48 of the Act. The fact that at the date at which the order was made by the Minister under S. 4 (1) of the Act the relationship of employer and workman had ceased to exist cannot affect the Minister's power to make an order in respect of the " industrial dispute " which had already arisen.

A contention similar to that advanced by the petitioner in this case was considered by the Court of Appeal in England in the case of *R. v. National Arbitration Tribunal, Ex parte Horatio Crowther & Co. Ltd.*[1] The Conditions of Employment and National Arbitration Order, 1940, made under certain Defence Regulations, provided as follows :—Article 2 (1) " If any trade dispute exists or is apprehended, that dispute . . . . may be reported to the Minister."

[1] *(1947) 2 A. E. R. 693.*

Article 7. " Trade dispute means any dispute or difference between employers and workmen or between workmen and workmen connected with the employment or non-employment or the terms of employment or the conditions of labour of any person. "

" Workman means any person who has entered into or works under a contract with an employer . . . ."

A dispute arose between a company and certain workmen in November 1946 over the terms and conditions of service. On 4th April 1947 the company terminated the services of the workmen after giving them notice of termination on 28th March 1947. On 14th April 1947 the matter was reported to the Minister who referred the dispute to the National Arbitration Tribunal. The validity of the order made by the Tribunal was attacked on the ground, *inter alia*, that no dispute existed or was apprehended on the date on which the dispute was reported to the Minister and that as the workmen had ceased to be in the employment under the Company at the date of reference, there was no matter on which the tribunal could arbitrate. The Court (Lord Goddard C.J. and Humphreys and Croom-Johnson JJ.) held that although the contract of service between the Company and the workmen had been terminated at the date of the report to the Minister, there was nevertheless a trade dispute within the meaning of Article 7 (supra). In the course of his judgment, Lord Goddard said :

> " It was submitted by counsel for the company that as at the date of the reference due notice had been given to the workmen to terminate their employment and their employment had thereby been terminated, there could be no trade dispute to refer, because there could not be a dispute or difference on any subject between those employers and workmen as the workmen were not in the service of the employers, and he reinforced this argument by reference to the definition of " workman" which he submitted contemplated an existing contract of service so, as he put it, that there must be some contract on which the reference could " bite ". I cannot agree with that submission. If effect were given to it, it would mean that any employer, or, indeed, any workman, could nullify the whole provisions of the Order and the object of the regulation under which it was made by terminating the contract of service before a reference was ordered, or even after the matter was referred but before the tribunal considered it."

I am of opinion that in the instant case there was an " industrial dispute " within the meaning of S. 48 of the Act and that the order under S. 4 (1) was properly made by the Minister. In the result, the petitioner's application fails and must be dismissed with costs payable to the 2nd and 3rd respondents. I agree to the amounts fixed by my brother Samerawickrame.

SAMERAWICKRAME, J.—

The Petitioner, the Colombo Apothecaries Company Limited, has made an application for a mandate in the nature of a writ of prohibition, forbidding the 5th respondent, who is the President of a Labour Tribunal, from hearing, determining and continuing proceedings in respect of a dispute referred to him by the 3rd respondent. The matter in dispute was whether the termination of the services of Mr. M. T. Marikar Bawa (who is the 2nd respondent) was justified and to what relief he was entitled. The 3rd respondent, who is the Minister of Labour, referred the matter in dispute to the 5th respondent, claiming to act under Section 4 (1) of the Industrial Disputes Act.

Mr. H. V. Perera, Q.C., appearing for the petitioner, supported his application on the ground that the 3rd respondent had no power under the Statute to refer the dispute for settlement by arbitration, because the dispute which had arisen upon the summary dismissal of the 2nd respondent was one between an employer and a person whose services had been terminated and was, therefore, not a dispute between an employer and a workman within the relevant provisions of the Act.

The last part of the definition of " workman " in Section 48 of the Industrial Disputes Act is as follows :—" and, for the purposes of any proceedings under this Act in relation to any industrial dispute, includes any person whose services have been terminated ". The term " Industrial Dispute " has itself been defined in this Section, but appearing as it does in the provision defining " workman ", it need not be given the meaning set out in the definition in Section 48, for that definition itself uses the word " workman ". Again, it is a rule of construction that though the meaning of a term is defined in the Interpretation clause of an Act, the definition is not necessarily applicable on every occasion where the word interpreted is used in the Act. *Vide Craies on Statute Law, 5th edition, page 200.* A term should be given its ordinary meaning in the context in which it occurs and recourse need be had to the definition in the interpretation clause only where the meaning is not clear.

It is necessary, therefore, to interpret the words " for the purposes of any proceedings under this Act in relation to any industrial dispute " without reference to the meaning given to the term " Industrial Dispute " in Section 48. On an examination of the provisions of the Industrial Disputes Act, it appears that sections 2 (1), 3 (1), 4 (1) and 4 (2) of the Act provide that proceedings in respect of an industrial dispute may be initiated or commenced either by the Commissioner or the Minister, in the circumstances and for the purposes set out in those provisions. I am, therefore, of the view that the words set out above do no more than state in compendious form what may be stated at length by the following " for the purposes of any proceedings that may be initiated or commenced either by the Commissioner or by the Minister under Sections 2 (1) or 3 (1) or 4 (1) or 4 (2) of this Act ".

It follows that for the purposes of proceedings that may be commenced or initiated by the Minister under Section 4 (1) of the Act, a workman includes a person whose services have been terminated. Section 4 (1) of the Act is as follows :—" The Minister may, if he is of opinion that an industrial dispute is a minor dispute, refer it, by an order in writing for settlement by arbitration to an arbitrator appointed by the Minister or to a Labour Tribunal, notwithstanding that the parties to such dispute or their representatives do not consent to such reference ".

This provision sets out the first step to be taken in a proceeding in relation to an industrial dispute : it states that the Minister may, if he is of opinion that an industrial dispute is a minor one, refer it by an order in writing for settlement by arbitration. Accordingly, as for the purposes of such a proceeding, a " workman " includes a person whose services have been terminated, the Minister should, in forming an opinion whether a dispute is an industrial dispute, consider whether the dispute is between an employer and a workman and/or an employer and a workman whose services have been terminated.

Learned Counsel for the petitioner urged that the object of legislation like the Industrial Disputes Act was the preservation of industrial peace ; that it has been held that a dispute between an employer and a single workman or an employer and a dismissed workman was not an industrial dispute unless the dispute had been taken up by the other workmen, because the absence of support for such disputes from other workmen prevented them from presenting any threat to industrial peace. It may be that one view is that it is sufficient for the preservation of industrial peace to provide remedies for disputes which affect or are taken up by a number of workmen or by a Trade Union. Another view is that industrial peace is best secured if protection is given to the individual worker by extending legislation relating to industrial disputes to afford remedies for a dispute between an employer and a single workman and redress for a workman whose services have been terminated, whether or not such matters are taken up by other workmen. Legislation amending the Industrial Disputes Act enacted in 1957 and thereafter have been based on the second view. Act No. 4 of 1962 has introduced an amendment which expressly makes a dispute between employer and workman an Industrial Dispute. Amending Act No. 62 of 1957 has introduced Part IV A enabling a workman or a Trade Union on behalf of a workman who is a member of it to make an application for relief or redress to a Labour Tribunal in respect of the termination of his services. I am, therefore, of the view that, at the lowest, there is no ground for assuming that our Legislature was unlikely to make a dispute between an employer and a dismissed employee an industrial dispute and to provide a remedy for it on the ground that it presented no threat to industrial peace.

I have considered the submissions made by learned counsel for the petitioner on the footing that the object of the Industrial Disputes Act was the preservation of industrial peace because it cannot be denied

that whether it is so stated therein or not it must necessarily be the ultimate purpose of any legislation similar to that Act. There is, however, substance in the contention of Mr. Satyendra, Counsel for the 2nd respondent, that if one is seeking aid for the interpretation of the Act, one should look to the preamble of the Act to ascertain its purposes. The preamble to the Industrial Disputes Act does not mention the preservation of industrial peace and is as follows :—" An Act to provide for the prevention, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto ".

Section 31 A (1) provides for the establishment of Labour Tribunals " for the purposes of the Act ". If the establishment of a Labour Tribunal to receive applications for relief or redress in respect of the termination of the services of a workman falls within the purposes of the Act, it cannot reasonably be said that the settlement by arbitration of a dispute between an employer and a dismissed workman does not also fall within those purposes.

The application for relief or redress to Labour Tribunals in respect of termination of services of a workman provided for by Part IV A is an application to be made directly by the workman or his Union on his behalf. The workman or those acting as agents for him will be the party applicant and have control over the conduct and presentation of his case. Where an industrial dispute is referred by the Minister for settlement by arbitration under Section 4, the arbitrator is required to hear such evidence as may be tendered by the parties to the dispute, vide Section 17 of the Act. Section 31B (2) (*b*) requires a Labour Tribunal, if it is satisfied that the subject matter of an application before it forms part of an industrial dispute referred by the Minister for settlement under Section 4, to make order dismissing the application without prejudice to the rights of parties in the industrial dispute. If the contention made on behalf of the petitioner is correct, a workman who has made an application for relief or redress in respect of the termination of his services may have his application dismissed if it forms part—perhaps an incidental part—of an industrial dispute which has been referred for settlement by arbitration and to which dispute he cannot in law be a party. Consequently, he would be deprived of the opportunity of seeking relief in proceedings in which he would have control personally or by his agents over the conduct and presentation of his case and he would be referred for relief to arbitration proceedings in which the arbitrator is not required to hear such evidence as he may adduce because he is not a party to the dispute. I do not think that the Legislature could have intended a result of this kind and I am of the view that the provision in Section 31 B (2) (*b*) was made because the Legislature contemplated a workman whose services have been terminated being a party to an industrial dispute which may be referred by the Minister for settlement by arbitration.

Learned Counsel for the petitioner raised the question whether if a dismissed employee could be a party to an industrial dispute, he may, without seeking reinstatement for himself, raise a dispute with regard to the rates of pay and other terms of employment of the other workmen. To fall within the Act a dispute must, in my view, not be merely a theoretical or academic disagreement. It must be a real dispute between employer and workman or ex-workman and must be connected with the terms of employment of a person. A dismissed workman who is not seeking reinstatement for himself is not personally interested in the terms of employment nor does he have such interest in or duty towards the workmen who continue in employment, that he can be a party to a dispute in respect of their terms of employment within the meaning of the Act, even if there is a disagreement between the employer and himself in regard to the propriety of such terms. *In R. v. Industrial Disputes Tribunal* [1] it was held that workers may be parties to a dispute though they are not workers to whom the award will apply, but the judgment of Devlin J. indicates that they should have some interest in having the dispute resolved. He stated, " The mere fact that a person is not materially affected by decisions on the subject-matter of the dispute does not appear to us automatically to prevent him from being a party to a dispute. There are all sorts of industrial disputes which arise out of a difference between the employer and the employees in a factory in relation to a claim made merely by one man, cases for example, where one man is unfairly victimised, or is unfairly victimised in the estimation of his fellow employees, and his fellow employees may make themselves parties to the dispute because they may say : " Unless this man is treated in the way in which we think that he ought to be treated, there is going to be trouble ". Or there may be other reasons which cause men to be interested and to wish to make themselves parties to a dispute which concerns only the claim of one man. Without being materially affected, other people may feel that their prospects of promotion are injured generally. They may be interested in the principle of the thing. They may say : ' If a person of the length of service of Mr. Carreck is not promoted, what is going to happen to us when we get to that stage ?'. Or there may be, on the facts which I have recounted, some general principle involved in the dispute on which this particular claim happens to be founded which is selected as a test action,..... ". He stated later, " We think that there is no reason why persons should not make themselves parties to a dispute although they are not workers to whom the award applies. For the reasons which we have given, questions of general principles, matters of supporting or assisting a fellow worker, make them parties to the dispute although they are not people to whom the award is going to apply. I suppose that somewhat similar considerations apply to the ordinary case where a guarantor is interested in the construction of a contract although he need not be strictly a party to whom the contract

[1] *(1957) 2 A. E. R. 776.*

applies ". Again, where a Union boycotted a company claiming to act in furtherance of a trade dispute and the Court found that the Union was actuated by inter-union rivalry rather than interested in the terms of employment of the workers, an injunction was issued on the ground that it did not appear that there was any trade dispute, *vide J. T. Stratford & Son Ltd. v. Lindley and another.*[1]

I should state that the learned Acting Attorney-General, who appeared for the 3rd respondent, submitted that documents before this Court showed that the employee had been suspended by the petitioner-Company without any reason being assigned for his suspension; that the employee requested the petitioner-Company to state the grounds of his suspension and that he received no reply to his request but was summarily dismissed. He, therefore, contended that the dismissal of the employee was in consequence of an industrial dispute that had arisen between the parties and he further submitted that if there was in fact an industrial dispute the faulty formulation of the dispute at the time it was referred for settlement by arbitration did not afford a sufficient basis for the exercise of the powers of this Court to issue a writ of prohibition. Learned Counsel who appeared for the 2nd respondent, who is the person most nearly concerned in the success or failure of the application, was content to have the matter decided on the footing that the dismissal of the employee, the 2nd respondent, was not consequent upon a prior dispute between the parties. In view of this and in view of the finding I have made in regard to the matters argued, it was not necessary to deal with or decide the matters raised by the learned Acting Attorney-General.

Upon a consideration of all the matters set out above, I hold that the dispute between the petitioner-Company, and the 2nd respondent, was an industrial dispute which the Minister had power to refer for settlement by arbitration and that consequently the 5th respondent has jurisdiction to hear and determine that dispute. The application of the petitioner is accordingly dismissed with costs payable to the 2nd and 3rd respondents. The amount of costs payable to each of the said respondents is fixed at Rs. 1,050.

TENNEKOON, J.—

This is a case in which the petitioner, the Colombo Apothecaries Company Limited (hereinafter referred to as " the Company ") applies for a Mandate in the nature of a Writ of Prohibition on the 5th respondent who is a Labour Tribunal President forbidding him from entertaining, hearing or determining or continuing the proceedings in relation to an Industrial Dispute referred to him by the Minister of Labour for settlement by arbitration under section 4 (1) of the Industrial Disputes Act (Chapter 131).

[1] *(1964) 3 A. E. R. 102.*

The Minister's order was accompanied by a statement prepared by the Commissioner of Labour (4th respondent) setting out, in terms of section 16 of the Act, the matter in dispute in the following terms :—

" In the matter of an industrial dispute

between

Mr. M. T. Marikar Bawa, No. 9, Zaleski Place, Colombo 10, and the Colombo Apothecaries Company Ltd, P. O. Box 31, Prince Street, Colombo, is whether the termination of the services of Mr. M. T. Marikar Bawa is justified and to what relief he is entitled.

Date at the Office of the Commissioner of Labour Colombo this 12th day of April, 1967."

The same dispute had earlier been referred to one Mr. E. A. Wijesooriya (1st respondent) who declined jurisdiction on the basis of certain Supreme Court decisions prevailing at that time. Those decisions of the Supreme Court were overruled by the decision of the Privy Council in the case of *The United Engineering Workers' Union v. K. W. Devanayagam*[1] prononunced on March 9, 1967. The Minister's reference of the same dispute to the 5th respondent was made after the Privy Council's decision. The present application to this Court was based on the ground *inter alia* that the 5th respondent had no jurisdiction to deal with the dispute referred to him for the reason that such of the provisions of the Industrial Disputes Act which gave power to Labour Tribunals to hear and determine disputes of this nature were unconstitutional. When this matter was first listed before a Bench of two Judges, of whom My Lord the Chief Justice was one, Counsel for the petitioner indicated that despite the Privy Council decision in *The United Engineering Workers Union v. K. W. Devanayayam*[6] the constitutional attack on the Industrial Disputes Act was still open to him, as in his submission, any pronouncements made by their Lordships of the Privy Council on the question arising in this case were *obiter* or at least that the facts relating to the question of jurisdiction in the Privy Council case were capable of being distinguished from the facts that arise in the instant case. My Lord the Chief Justice being of opinion that it was desirable in the public interest that a question of such a nature should be clearly and finally settled, referred the matter to a Bench of seven Judges. It is in this way that this matter has come up before the present Bench consisting of that number of Judges.

At the argument, however, Counsel for the petitioner indicated that having examined the matter further he found it unnecessary to support his case on the ground that so much of the Industrial Disputes Act which authorises the Minister to refer a dispute relating to termination of the services of a workman for settlement to a Labour Tribunal was unconstitutional and void ; he stated that he intended to support the

[1] *(1967) 69 N. L. R. 289.*

application on a ground which, if it was narrower because it had nothing to do with constitutional law, was equally important, viz. that the 5th respondent's lack of jurisdiction arose not from any unconstitutionality in the enabling Act, but for the reason that the dispute referred to the 5th respondent was not an " industrial dispute " within the meaning of the Industrial dispute Act.

It would appear from the affidavit of the petitioner—and these facts are not disputed by any of the respondents—that the 2nd respondent Marikar Bawa was employed by the Compnay as an Assistant ; and that his services were summarily terminated on or about the 5th of April 1965 on the ground that he had been ' guilty of gross insolence, rudeness, insubordination, disobedience, defiance of authority and disrespect ' ; subsequent to the said termination of his services the 2nd respondent disputed the legality and propriety of his dismissal by the Company and brought his dispute with the Company to the notice of the Commissioner of Labour, and through him to the Minister of Labour.

It is contended by Counsel for the petitioner that *at the time this dispute arose* the relationship of employer and workman no longer existed between the Company and the 2nd respondent. It is therefore submitted that although it may be said that there was and is a dispute or difference connected with the termination of the services of a person, i.e., the 2nd respondent, that dispute was not one " *between an employer and a workman* " within the meaning of that expression as used in the definition of the term " industrial dispute " as found in the Act.

The expression " industrial dispute " has been given the following definition in the Act :—

> " In this Act, unless the context otherwise requires—
>
> ' industrial dispute ' means any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, or the termination of services, or the reinstatement in service, of any person, and for the purpose of this definition ' workmen ' includes a trade union consisting of workmen. "

It is necessary for the purpose of examining the meaning of the expression " any dispute or difference between an employer and a workman ", in the first instance to look at the meaning attributed to the words ' employer ' and ' workman ' in the Act. These two words are defined as follows :—

> " Employer " means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade union) and any person who on behalf of any other person employs any workman.

> " Workman " means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time, and, for the purposes of any proceedings under this Act in relation to any industrial dispute, includes any person whose services have been terminated.

" Employer ", one observes at once, is defined by reference to " workman " ; the verb " employs " occurring repeatedly in the definition is in the present tense ; the grammatical ' object ' of that verb is ' any workman ' (in the singular) and not ' any workmen ' (in the plural) ; if the plural was used it would have suggested a continuum of activity as the test for identifying an " employer ". But the contrary is the implication here. It seems to me that a person is an ' employer ' within the meaning of this definition only in relation to another or others (i.e., a workman or workmen) with whom there is a subsisting contract of service. A may be an employer in relation to X or in relation to X, Y, and Z who are workmen serving under him, but not in relation to M or M, N and O who are not employed under any person or who are employed under B but not under A.

To turn now to the definition of the word " workman " ; it falls into three parts, the 2nd and 3rd only serving to extend its ordinary meaning :

(i) any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour,

(ii) any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time,

(iii) for the purposes of any proceedings under the Act in relation to any industrial dispute, any person whose services have been terminated.

The third part is an extension of the meaning to be applied in limited circumstances and will be considered later.

The first two parts of the definition are a verbatim reproduction of the definition of the word " workman " occurring in the Trade Unions Ordinance. This had necessarily to be so because the expression " Trade Union " occurs repeatedly throughout the Act and is defined as " any trade union registered under the Trade Unions Ordinance ".

The first part of the definition gives the primary meaning of the expression. What is important to note about it is that it postulates a subsisting contract of service. Thus, under this part, if the contract is at an end there would be no employer (so far as that workman is concerned) and no workman.

The second part of the definition of ' workman ' partially overlaps the first. It deals with persons who belong to a particular class, i.e., persons who are ordinarily workers whether or not they are under contracts of service at any particular given time. This part in so far as it catches up a person who has at any given time a contract of service is tautologous as such a person is already a workman under the first part of the definition. The importance of this part however lies in the fact that it brings within the meaning of the term ' workman ' persons who are ' ordinarily ' employed under contracts of service but who at any given time are not employed under such contracts of service. Thus we have the word ' workman ' catching up within its meaning a person who at any particular given time has no contract of service *and no employer.* This extension of the meaning of the term ' workman ' is understandably important in Trade Union Law where it is necessary to enable a workman to remain a member of his trade union notwithstanding the termination of his contract of service by dismissal, resignation, retrenchment or laying off. In the Industrial Disputes Act which itself gives such a prominent and significant place to trade unions, the work ' workman ' when used in relation to trade unions would naturally bear the meaning signified in both parts of the definition. Vide such expressions as " a trade union of workmen " or " a trade union consisting of workmen " ; but even a cursory examination of the Act will show that the word ' workman ' in other contexts bears only a limited meaning and that too the meaning set out in the first part of the definition : for example, in the expressions " reinstatement of any workman ", " discontinuance of any workman " and " workman who was dismissed " the term ' workman ' means a person who (immediately prior to termination of his services) was a workman within the meaning of the first part of the definition ; in the expression " no workman shall commence, or continue, or . . . . a strike " (section 32 (2)) the word workman means a workman within the first part. Thus in many contexts the second part of the definition does not come into play at all.

If we may now come back to the difinition of the term " industrial dispute ", this too falls readily into three parts :

(i) there must be a dispute or difference

(ii) the dispute or difference must be between an employer and a workman or between employers and workmen or between workmen and workmen (the word ' workmen ' being read as also including a trade union consisting of workmen),

(iii) the dispute or difference must be connected with the employment or non-employment or the terms of employment, or with the conditions of labour or the termination of the services or the reinstatement in service of any person.

The first part refers to the *factum* of a dispute or difference ; the second part to the parties to the dispute and the third to the subject matter of the dispute.

The nature of the submission made by Counsel for the petitioner is such that it is necessary before examining it to have some regard to the true scope and effect of the definition in its wider aspects.

If we look first at the third part of the definition (i.e., the nature of the subject matter of the dispute) one important feature to be noted is that while in the second part the parties are described by reference to such words as "employers" and "workmen", the legislature in describing the subject matter of the dispute did it by reference not to ' any workman ' but by reference to ' *any person* '. Now it becomes obvious upon a careful examination of the definition that the expression ' any person ' is not as wide as it at first sight appears. It cannot include for instance a person in the employment of the Crown or the Government (see section 49 which provides that the Act is not to apply to the Crown or the Government or to workmen of the Crown or the Government) ; further limitations on its meaning became apparent when one reads it in the various permutations and combinations of words of which the definition is capable. For example when read with the words " non-employment " the words ' of any person ' can only mean a candidate for employment under the employer with whom the dispute or difference has arisen ; when read with " the termination of the services or the reinstatement in service ", the expression " of any person " can only refer to a person recently discharged from the service of the employer who is one of the parties to the dispute that has arisen. Thus it would appear that the words ' any person ' refer to a person in service, or a person discharged from service or a candidate for employment. But it is unnecessary, at least for the purposes of this case, in which the question does not directly arise for consideration, to

give an unduly restricted meaning to the words ' any person ' ; while *prima facie* they appear to refer to any person who is in service or has been recently discharged from service or who is a candidate for employment, it can also catch up a person in whose employment, non-employment, terms of employment or conditions of labour or in whose termination of services or reinstatement in service the workman or workmen raising the dispute have a substantial interest or a community of interest. It is in this sense that the words ' any person ' occurring in a somewhat similar definition of ' industrial dispute ' in the Industrial Disputes Act (1947) of India has been understood by the Indian Courts (see the case of *Workmen D. T. E. v. Management D. T. E.*[1].) What is important to note, of course, is that the legislature, in using the expression 'any person ' instead of the term ' workman ' in that portion of the definition of ' industrial dispute ' which relates to the subject matter of the dispute, used an expression wide enough to include a person who is not a *de facto* or *de jure* workman in its primary sense and into this class would fall both a person who has never had employment before and also a person who having been in service has been discharged.

To turn now to the parties to an industrial dispute : Under the definition an industrial dispute can arise only—

(i) between an employer and a workman,

(ii) between employers and workmen,

(iii) between workmen and workmen.

It should be noted that in (i) the word ' workman ' can also be read in the plural and that the word ' workmen ' includes a Trade Union consisting of workmen.

Before proceeding to examine the question whether the expressions " employer " and " workman " as used in the definition of ' industrial dispute ' are subject—if at all—to any contextual limitation, it is necessary to remind oneself of the scope and objects of the Act. The long title of the Act reads :

> " An Act to provide for the Prevention, Investigation and Settlement of Industrial Disputes, and for matters connected therewith or incidental thereto."

It has been said frequently, and quite recently reiterated by their Lordships of the Privy Council that the purpose and object of the Act is the maintenance and promotion of industrial peace ; and it may be added

[1] *A. I. R. 1958 S. C. 353.*

that the preservation of industrial peace is directed not to the redress of private and personal grievances but to the securing of the uninterrupted supply of goods and services to the public by employers engaged in such enterprises. The Act takes as the prime danger to industrial peace that kind of situation which is capable of endangering industrial peace and given it the name " industrial dispute ". In the definition of industrial dispute the emphasis is thus not on the denial or infringement of a right of a workman by his employer but on the existence of a dispute or difference between given parties connected with the rights not merely of a party to the dispute but also of third parties. (I use the word ' right ' and ' wrong ' in this context not in the sense of legal rights and wrongs but in the larger sense in which right and wrong may be determined by reference to equitable standards of employment and labour.) The reliefs contemplated are not mere redress of individual wrongs. The purport and direction of the proceedings in relation to an industrial dispute is *settlement* of the dispute and the avoidance of a disturbance of industrial peace ; relief or redress to individual workmen is only incidental to the more important function of restoring peace. It is in this background that one must examine the meaning and intent of such phrases as " a dispute or difference ", " between an employer and a workman " or " between workmen and workmen " occurring in the definition of industrial dispute. I am not for a moment suggesting that the words ' employer ' and ' workman ' appearing in the definition of " industrial dispute " can be given a meaning outside the sense in which they have been defined. What Counsel for the petitioner submits, and I think correctly submits, is that the words ' employer ' and ' workman ' receive a limitation in their meaning from the context and that, that limited meaning is still within the definitions.

Take for instance the following collocation of words from the definition of " industrial dispute " :—

> " a dispute or difference between an employer and a workman connected with the non-employment of a person. "

In my opinion the phrase " between an employer and a workman " can only mean " between an employer and one of *his* workmen ". This is the result (i) of the juxtaposition of the word ' employer ' and the word ' workman ' each of which is necessary to complete the meaning of the other and (ii) of the concept of an industrial dispute as one which is capable of disrupting industrial peace and one which must be settled to remove the danger to industrial peace. If A is the employer, B one of

his existing workmen, and C a person who has been discharged and refused re-employment by A, a dispute or difference between A and B in connection with A's non-employment of C would be an industrial dispute, because, granted a community of interest between B and C, B's dispute with his employer A can snowball into a dispute between A and many more of his existing workmen resulting in a strike in A's establishment, and reducing or stopping production. On the other hand a dispute between employer A and the applicant for employment C who it must be assumed has been unable to find any support among the existing workmen of A does not contain any danger to industrial peace either in A's establishment or elsewhere. This would be so even if C is indeed a workman under another employer E at the time A rejects his application for employment under him.

A similar analysis can be made of the collocation of words " a dispute or difference between an employer and a workman connected with the termination of the services of any person ". It is only necessary to emphasise that a dispute between the one-time employer and his one-time employee who is unable to find one single workman in the service of his former employer to take up his cause, constitutes no danger to industrial peace. Thus in the context under consideration ' employer ' means the person under whom the workman with whom the dispute arises *has* a subsisting contract of service or under whom he is actually working under a contract of service ; and ' workman ' similarly means a person who has a subsisting contract or works under a subsisting contract of service with the employer with whom the dispute arises. In short the expression " a dispute or difference between an employer and a workman " means only a dispute or difference between an employer and one of *his workmen* and not between an employer and any person who is a prospective or discharged employee of his or a person who is a workman under some other employer.

Even if the plural form of the word ' workman ' is taken the result is the same. Counsel for the 2nd respondent suggested that it would be anomalous if in a case where an employer dismissed all his workmen the dismissed ex-workmen could not raise a dispute amounting to an industrial dispute within the meaning of the Act ; the answer in my opinion is that a dispute between the dismissed workmen and their former employer constitutes no danger to industrial peace ; there is no danger to the community by a possible cessation of production or the supply of services. The ' employer ' in question may have dismissed all his workmen because he was selling the business, or because he was

employing a whole set of new hands or because he was closing down his business completely; in the first two cases production or supply will go on despite the dispute between the ex-employer and ex-workmen, and in the third case the stoppage of production or supply of services is caused not by reason of the dispute between the two parties but by reason of the exercise of the ordinary right of an entrepreneur to give up his business, which is not a matter which the Act as it stands at present concerns itself with.

This view of the meaning of the term " workman " when used in the expression " a dispute or difference between an employer and a workman " receives support from other parts of the Act. The most important of these is the last part of the definition of the word " workman " :

> " and, for the purposes of any proceedings under this Act in relation to any industrial dispute, includes any person whose services have been terminated. "

Now it seems to me that this part of the definition (which was introduced by an amendment in 1957 (Act No. 62 of 1957) contemporaneously with the insertion of the words " or the termination of the services or the reinstatement in service " into the third part of the definition of " industrial dispute ") only makes explicit what was implicit before. It is not strange to find the legislature doing this in an Act which gives judicial (or at least quasi-judicial) functions to lay persons and before whom experience has shown, lawyers spend interminable hours splitting hairs on the meaning of words. Whatever else it does this amendment does not import any new meaning to the expression ' industrial dispute ' as defined in the Act. The amendment does not say that *for the purposes of determining whether an industrial dispute exists or has arisen* connected with the termination of the services of any person, the word ' workman ' shall include the person whose services have been terminated. There is no need, even were it a proper function of interpretation, to take such liberties with the language used by Parliament when one has regard to the scope and object of the legislation. Indeed, when one bears in mind the fact that Act No. 62 of 1957 also brought in Part IVA into the Act enabling a dismissed workman to seek private relief and redress in connection with the termination of his services even in cases where such termination has not given rise to an industrial dispute calling for the intervention of the public authorities, the need for straining the language used by the legislature under a supposed spirit of giving a liberal interpretation to social legislation does not at all

arise. The amendment to my mind merely, *ex abundanti cautela*, removed a terminological anomaly of referring to a person no longer in service as a workman in numerous provisions of the Act dealing with proceedings and powers of various authorities and tribunals in relation to an industrial dispute. If the amendment has done anything it has finally closed the door to any suggestion or contention that a person whose contract of service has been terminated is still a workman for the purpose of deciding the question whether an industrial dispute connected with the termination of services exists between an employer and a " workman ".

Further indication of the legislative intent is to be found in section 47 C which is also a provision that was introduced by Act No. 62 of 1957. It reads as follows :—

" 47 C. Notwithstanding that any person concerned as an employer in any industrial dispute has ceased to be such employer—

(*a*) such dispute may be referred for settlement to an industrial court or for settlement by arbitration to an arbitrator and proceedings on such reference may be taken by such court or arbitrator ;

(*b*) if such dispute was so referred for settlement while such person was such employer, proceedings on such reference may be commenced or continued and concluded by the industrial court or arbitrator to which or whom such reference was made, and

(*c*) in any award made by such court or arbitrator such person may be ordered to pay to any other person concerned in such dispute as a workman employed by the first-mentioned person while he was such employer any sum whether as wages in respect of any period during which such other person was employed by the first-mentioned person or as compensation as an alternative to the reinstatement of such person, and such order may be enforced against the first-mentioned person in like manner as if he were such employer."

This section is dealing with a case where the employer-workman relationship between one person and another or others contemplated in the definition of the term ' employer ' and in the first part of the definition of the term ' workman ', has ceased. It is also evident from the wording

of the section that the dispute under contemplation had arisen prior to the cessation of that relationship. It then goes on to provide in sub-paragraph (*a*) that such a dispute may be referred for settlement to an Industrial Court or to an arbitrator (which expression includes a Labour Tribunal) ; and sub-paragraph (*b*) further provides that if such dispute had been referred while the employer-workman relationship subsisted, proceedings may be commenced and/or continued by the Industrial Court or arbitrator.

This section to my mind completely supports the submission made by Counsel for the petitioner that a dispute connected with the termination of services can be referred to an Industrial Court or a Labour Tribunal for settlement only if the dispute arose while the relationship of employer and workman subsisted ; and on the principle *inclusio unius exclusio alterius* a dispute on such a matter which arises between an ex-employer and an ex-workman after the employer-workman relationship has ceased to exist is not an industrial dispute within the meaning of the Act.

It has been contended by Counsel for the 2nd respondent that the word ' workman ' is used in other parts of the Act to include a person who *had* a contract of service which had been terminated. He referred us to some instances of which I will take three (i) 31B (1) which enables a *workman* to apply to a Labour Tribunal for relief or redress in respect of the termination of his services by his employer ; (ii) section 33 (1) (*b*) which speaks of *the reinstatement in service of his former employer of any ' workman '* and (iii) section 33 (1) (*d*) which speaks of *payment by any employer of compensation to any ' workman '*. Counsel for the 2nd respondent submits that in all these cases the legislature was applying the term ' workman ' to a person whose contract of service had been terminated and there is no reason why the word ' workman ' should not be read in that sense in the definition of " industrial dispute ".

What is important to note here is that the legislature is using the word ' workman ' in referring to a person who *was* once *within the first part of the definition of the term ' workman '* and whose contract has been terminated ; it is not suggested that a person who had a contract of service which has been terminated is a workman by virtue of the second part of the definition ; indeed such a contention is not possible for the reason that, as noted earlier in this judgment, the essence of the second part of the definition of ' workman ' is the absence of a contract of service

and an employer to complete the concept of a workman, whereas in each of the instances under consideration there is an employer in contemplation who has terminated the contract of service.

It will now be seen that in sections 31B (1), 33 (1) (*b*) and 33 (1) (*c*) the context, which presupposes a termination of services, requires the attribution of a meaning to the word ' workman ' which is even *outside the definition given in the Act* ; for his contract having been terminated he does not fall into the first part of the definition ; nor into the second part for the reasons noted above ; nor into the third part unless the question arises in the course of proceedings in relation to an industrial dispute. Is there any similar contextual compulsion in the definition of the term ' industrial dispute ' ? It seems to me there is clearly no such compulsion for here the expressions ' termination of services ' and ' reinstatement in service ' are coupled not with the expression ' of a workman ' but with the expression ' of a person '.

To uphold the contention of Counsel for the 2nd respondent would be to subscribe to the proposition " once a workman always a workman ". If the contention that a person whose contract of employment has been terminated still remains a workman for the purposes of the definition of " industrial dispute " is correct it would mean that such a person could raise an industrial dispute not only in regard to the termination of his own services or the reinstatement of himself but also in regard to the employment, non-employment, terms of employment or condition of labour of any person other than himself, while he himself remains unemployed or has become a servant under the Crown or indeed has turned to business and become an employer himself.

For the reasons stated above I am of opinion that at the time the dispute arose neither the company nor the 2nd respondent qualified as ' employer ' or ' workman ' respectively within the meaning of those words in the phrase ' dispute or difference between an employer and a workman ' occurring in the definition of industrial dispute ; I accordingly hold that the Minister's order referring the alleged dispute between the Company and the 2nd respondent is *ultra vires* section 4 (1) of the Act and would allow the application for a Mandate of Prohibition on the 5th respondent with costs payable by the 2nd respondent as to one half and by the 3rd respondent as to the other.

Application dismissed.