ARTICLE REVIEW: SETTLEMENT OF INDUSTRIAL DISPUTE BY AHMEDULLAH KHAN

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ABSTRACT

Settling disputes is one of the most important functions of the labour laws in India. Recently certain changes were adapted in Indian labour law to solve the existing problems. This is an article review the work done by Ahmedullah Khan in his article "Settlemnent of Industrial disputes" This whole article talks about the problem of industrial dispute which has gained momentum recently in the national arena because it is directly related to the national economy. The definition of "Industrial dispute" has been given under section 2(k) of the Industrial Dispute Act, 1947, as

"Any dispute or difference between employers and employers, or between employers and workmen, or between workmen and work- men, which is connected with the employment or non-employment or the terms of employment or with the conditions of labor, of any person."

As per the statistics, which are mentioned in the Article shows that industrial machinery in our country has not been adapting the changing circumstances which demands quick resolution of disputes. Then discussion further leads to anatomy of industrial machinery which basically deals with the industrial relations machinery in the centre and, with some changes in the states. There are three methods to resolve the industrial dispute: conciliation, voluntary arbitration, and adjudication. Due to existence pre-existence, collective bargaining in some state is partly successful. The central industrial relations machinery for the settlement of industrial dispute is provided under the Industrial Disputes Act, 1947.

Moreover, this article also discussed the problems which are generally attached to the conciliation and it discusses about what should be the approach which is adopted by the conciliator so that the party can trust on him and rely on his merit. Further, it has also discussed about the what are the hurdles which comes before the successful conciliation.

After the amendments of Industrial Disputes Act, 1947, section 10-A was inserted to provide for voluntary reference of disputes to arbitration. Section 10-A provides that if the parties have given their consent and agree to terms

of the agreement which is reduced in writing in the prescribed manner then parties have to adhere to those terms of the agreement. Adding to these, the article has identified the factors which have contributed to the slow progress of voluntary arbitration.

Collective bargaining is the process of determining the terms and conditions of employment and settling disputes arising from those terms by negotiation between the employer and employees. The conciliation machinery can be used to improve collective bargaining.

AGREEMENT

Settlement of industrial dispute has national importance today as its speedy settlement is directly proportional to the National economy of the country but if we look at the statistics the industrial machinery in our country is not functioning properly. It is evident from the number of work stoppages due to strikes and lock-out in the central sphere, during 1976, was more than thousand.

If we analyze the anatomy or structural framework of industrial machinery in India it is basically two tier system: at central level and with some modifications at state level. It consists of conciliation, voluntary arbitration, and adjudication at both levels. Conciliation machinery which is provided under the industrial Dispute Act, 1947 is the prominent machinery with an objective to promote settlement between the parties by the help of a conciliation officer. While conciliation is mandatory in all public utility services, it is just an option in non-public utility services. Now coming to the point of how can we determine the factors which result into the success or failure of a conciliation process. Essentially the statistical data of National Commission on Labour has drawn certain inferences with regard to functioning of this machinery.

The line of thought which is mentioned in the article is totally aligned with the problems involved in the conciliation. Before discussing the problems, we have to understand what are the powers given under the Act? The conciliation officer is given a discretion to conduct conciliation proceedings non-utility services specifically where a notice under section 22 has been given. He can take cognizance of not only the existing disputes but also of the apprehended disputes. Since conciliation involves settlement of industrial disputes by persuasive methods. The conciliation officer is given full power to conduct the proceeding in any manner he likes and to do anything which he deems necessary for arriving at just and

reasonable settlement of the industrial disputes. He is conferred with the power of a civil court under the Code of Civil Procedure of 1908 only for the production of documents and material objects. Additionally, the board of conciliation has been given certain additional powers of a civil court to compel the attendance of witnesses and examine them on oath and issue commissions for the witnesses. To examine the success or otherwise of the performance of the conciliation machinery, the best indicator would be the statistical data on which the National Commission on labour too had relied for drawing its inferences and making recommendations. According to the commission the percentage of the industrial dispute through conciliation during 1959-66, the data reveals disheartening results. The National Commission on Labour had suggested the two prominent key factors which are responsible for the failure of conciliation. First, "we feel, however, that the attitude of the parties to conciliation is extremely important for the success or failure of the officer's efforts", and secondly, "conciliation is looked upon very often by the parties as merely a problem stage to be crossed for reaching the next stage".

Now if we analyze these two problems which are responsible for the failure of a conciliation two things comes up: firstly, the success of conciliation depends on the whole hearted discussions freely entered into between the parties without any mental reservations but the presence of adjudication will be easily available, conciliation on most pertinent issues becomes a formal and fruitless phase. The apprehension that the other party is likely to take the dispute to the adjudication and tant any concession shown during the conciliation might prejudice their case before the adjudicator, is strong enough to stifle any genuine negotiation.

However, conciliation is regarded as a necessary evil the problems which are attached to the conciliation can be removed by amending the present law. To remove the element of casualness from the attitudes of the parties during conciliation it becomes natural that should not remain easily available. It should be made a condition precedent for the government to satisfy itself before exercising its power under section 10 of the Industrial Dispute Act that the parties have exhausted the avenues of negotiation and conciliation with all seriousness. There is a concept which is prevailing in the conciliation is de novo conciliation. Even if the conciliation fails the government can, in appropriate cases refer the industrial disputes for "compulsory arbitration under section 10-A as suggested by the present writer.

The attitude of the parties is very important for the success or failure of the officer's efforts. The author of the article has totally different view with regard to attitude is sole determining

factor which can be responsible for the success or failure of the conciliation but as per the author viewpoint the "success or failure of the conciliation officer's efforts" does not depend on the attitude of the parties as these are dependent on the officers efforts. If the conciliation officer is skilled, efficient and has specific knowledge for conciliation he can create a sense of seriousness in the attitude of the parties as his role is more psychological than administrative. He has to command respect rather than demand it. If he is able to exercise his influence over the parties, he can induce the parties to come a fair compromise by making suggestion at the crucial moments of the negotiation. Presently, the matter is generally decided by the conciliation officer who belongs to labour department and this creates a problem as officer from the labour department neither well versed with the labour laws nor given any special training for the task. As has been recommended by the commission that additional power should be given to the conciliation officer, thus we are equally align with the basic understanding of the author that the attitude of the parties are based on the efforts of the conciliation officer and he can mould the attitude of the parties according the to the changing circumstances and help them to arrive at a compromise.

To meet this objective a conciliation officer should have the following pre-condition:

1. He should have adequate knowledge of labour laws for a correct realization of the scope and purpose of his role;]
2. He should have courage to point out the mistakes of the parties at proper time without any fear or favour
3. He should be impartial and have clear image
4. He should have strong patience to tolerate short tempers of the parties
5. Build strong reputation as an impartial conciliator.

As per the section 10-A of the voluntary arbitration is an effective method of settlement of industrial dispute. Arbitrator has given specific power to resolve the dispute or come to an alternative solution which is beneficial for both the parties under the Act but if we look upon the statistics the voluntary arbitration is not as much effective. The main reasons for the slow progress of the voluntary arbitration are: firstly; easy availability of adjudication machinery, dearth of suitable person who command the confidence of both the parties, the fact that no appeal was competent against the arbitrator's award. The main purpose behind the insertion of section 10-A (2) to encouraging the parties to resolve their dispute by mutual negotiation.

However, to make the voluntary arbitration more acceptable to the parties a little element of 'compulsion' can also be introduced in the scheme by the statutory amendment. This can be achieved by voluntary arbitration under section 10-A compulsory as normal course on failure of course of conciliation.

Another important point which is discussed in the Article is how much governmental intervention is justified in the arena of industrial dispute. To determine the scope of intervention, the justification of State intervention lies in the fact that the relation between employer and employees cannot be left out to be controlled by the unequal bargaining power of the employer and government through its statutory mechanism has to get into the relation harmonious. Secondly, it is also felt that if the parties fail to resolve their disputes by mutual negotiation. After enactment of the Trade Dispute Act, 1929, government intervention in the matter of industrial dispute can be justified. But due to change in the circumstances, the industrial unrest increased but there is no set criteria which suggest which could guide the government to exercise its power under the Act.It has been pointed out in the Article that labour court and industrial tribunal and the courts give their award on the basis of the merits of the case after hearing both the parties.

The industrial courts in India have played a vital role in India. The industrial courts in India have played an important role in India in improving the working conditions of the workers and securing for higher rates of wages. The facts that the courts have adopted a method which is basically engaged with the idea that strikes and Lock out thus contributing to the national economy cannot be denied.

DISAGREEMENT

The author begins with discussing the settlement of dispute has acquired paramount importance and why is it so. Since there is no issue with regard to how settlement of industrial Dispute is important in national arena, however, article fails to discuss about the most basic question why industrial dispute arises in the first place. Then author discussed the structural framework of the industrial relations machinery on the State level and Central level. Further, he discussed about the conciliation and how it is important machinery in India to resolve the industrial dispute. But there are certain hurdles which comes up before the successful conciliation, firstly, attitude of the parties in looking upon conciliation. Author has pointed out that, however, this argument can be rebutted by the fact that if the conciliation officer is a meritorious one or

expertise in Labour Law then this problem can be easily overcome. While adjudication considered as a necessary evil which cannot be avoided, grounds of conciliation can be modified through amendment. It is stated in the Article that adjudication is a stage which cannot be avoided and that's why it becomes cumbersome process to solve the industrial dispute through conciliation because parties do no play all their cards as it might be detrimental for the parties in adjudication process. Impartiality of conciliation officer is very important to consider. Now coming to the point of arbitration which is given in Act which deals with the voluntary arbitration as an option that is given to both employer and employee to deal with the disputes. As per author a little element of compulsion can also be added but we are not align with the notion of author as arbitration can never conceived with the element of compulsion.

The whole idea of collective bargaining is based on the understanding that it is method of settling dispute arising from those terms by negotiation between the parties between employer and employees. Compulsory adjudication is just opposite of collective bargaining. However, parties reserve the ultimate right to use economic weapons of lock-out and strike encouraging the parties to arrive at a conclusion. If we analyze the situations of collective there can be three situations which come up before the court. The true collective bargaining agreements which have been arrived at by direct negotiation between the parties. Agreements which have been arrived between the parties during conciliation proceedings with the help of conciliators. In conciliation there is a third party intervention but still terms of the agreement is still decided by the parties because conciliation officer only assist the parties. As per the article collective bargaining is the foremost requirement however to reach an amicable settlement there should be a specific body in every industry which decides the terms of the agreement between the parties. There should be a impartial body with specific knowledge of negotiation can be a best alternative.

Subsequently, Article deals with the state intervention in the industrial dispute matter. Due to unequal bargaining power of the employer in the agreement of industries government is justified in interfering this matter however government can only interfere when there is a question of public policy and terms of agreement which is against the principle of our constitutional mandate because sometimes inequality leads to violence in society. Lock out and strikes can be an alternative method but still it has still bad effects on production and national economy. This power of government to interfere in industrial dispute matter leads to some extent biasness on the part of government and there is no upper body that can cheque the actions

of the government and this ultimately results into the petition in the courts which usually take a long time. This non-resolution of dispute on time leads to frustration to both the parties.

It has been pointed out in the Article that labour court and industrial tribunal and the courts give their award on the basis of the merits of the case after hearing both the parties. It is an enormous power given to the government to reject or modify the award. It is also debated in the Article that like civil courts labour court should also be allowed to pronounce their awards in the open court and such awards should be made immediately executable. this argument is totally a valid argument as government would always tries to gain benefit from the big corporation in the maters such as negligence.

Recently, awards of labour courts are properly implemented and parties are really adhering to the awards.

Apex court and High courts have given enormous power under article 32 and 226 of the constitution in case of violation of any fundamental rights or any legal rights but generally it takes a lot of time in the where industrial worker do not have knowledge about the proper mechanism of legal system, however, courts have tried to speedily dispose of this type of cases. Role of courts cannot be denied as it is playing a very important role in improving the working conditions of the workers and securing them for higher rates of wages and this leads to a very favourable result of reducing the number of strikes and lock- outs in the national arena.

CONCLUSION

Labour management relations are a dynamic socio-economic process. Both parties, namely, employer and employee constantly strive to maximize their preferred values by applying resources to institutions. In their efforts they are influenced by and are influencing others. In order to meet this situation labour law seeks to evolve a rational synthesis between conflicting claims of the employers and employees. It examines the merits of the rival contentions and seeks to resolve the conflict by evolving solutions which without causing any injustice to the employers meet the employees legitimate claims. Thus, labour law seeks to regulate the relations between employers and employees. The access of this law is wider than any other law as it touches the lives of billions of workers beside employers and consumers. Like Anglo-American laws, the law of labour relations in India springs from a rather a random mixture of statutes and judicial decisions. Among the earliest statutes, in tracing back its geneology, are

the Workmen's breach of contract Act. These legislations, however, hardly protected the interest of the workers.

It is desirable to appreciate what is settlement as understood in the Industrial Disputes Act. In essence, it is a contract between the employer and the workmen prescribing new terms and conditions of service. These constitute a variation of existing terms and conditions. As soon as the settlement is concluded and becomes operative, the contract embodied in it takes effect and the existing terms and conditions of the workmen are modified accordingly. Unless there is something to the contrary in a particular term or conditions of the settlement the embodied contract endures indefinitely, continuing to govern the relation between the parties in the future subject of course to subsequent alteration through a fresh settlement award or valid legislation.