
(1982) 10 KL CK 0003
In the High Court Of Kerala

Umayammal

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-10-1982

Acts Referred:

Constitution of India, 1950 — Article 124, 14, 146, 148, 154
Government of India Act, 1935 — Section 240
Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H, 25J

Citation : (1983) 1 ILR (Ker) 317 : (1983) 1 LLJ 267

Hon'ble Judges : Subramonian Poti, Acting C.J.; George Vadakkal, J.; Chandrasekara Menon, J

Bench : Full Bench

Judgement

Chandrasekara Menon, J.—In these cases, provisional or temporary employees working in Government Departments, Government Companies, Statutory Corporations and Local Bodies question the action of the respective authorities concerned taken for terminating their services. Many of them were appointed being sponsored by the Employment Exchange and engaged invariably for varying periods of short duration. The foremost contention raised in these proceedings is that these employees are all governed by the Industrial Disputes Act, 1947- the Act, for short. Discharge of the persons or refusal to continue their employment after the stipulated period, according to the petitioners amounts to retrenchment under the Act. The petitioners take up the position that such retrenchment, even in respect of posts under the Government has to conform to the requirements under the Act - provisions under Chapter V-A of the Statute.

2. A question will certainly arise in the case of Government employees and certain statutory corporations whether the claims of the temporary employees for continuance in service on the basis of the rights under the Act will conflict with or infringe the rights of those persons who are regularly recruited to the posts concerned on advice by the Public Service Commission. Article 315 of the Constitution mandatorily requires the establishment of Public Service

Commission for the Union and a Public Service Commission for each State. And under Article 320 the Public Service Commission have to be consulted on all matters relating to methods of recruitment to civil services and for civil posts, on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions and transfers. Further it is the duty of the Public Service Commission to conduct examinations for appointments to the service of the State. Besides sections like the Scheduled Castes and Scheduled Tribes as well as the backward classes who enjoy the protective discrimination constitutionally sanctioned, benefit by the selection process through the Public Service Commission. Article 321 empowers extension of the functions of the Public Service Commission "as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution". However, in none of these cases any of the petitioners claim the right to continue in service as against a regularly recruited appointee advised by the Public Service Commission. Therefore such a question -right of a provisional hand vis-a-vis right of an advisee by the Public Service Commission, is not being considered here. Such a question would certainly raise very serious issues in the light of the constitutional provisions. Articles 14 and 16 of the Constitution guarantee equality before law and equality of opportunity in matters of public employment. Every citizen is entitled to be considered for appointment for any post under the State. And it could very well be said that the Constitution has designed a highly placed institution the Public Service Commission to do the duty of selection to the service in accordance with the constitutional provisions. We will leave those issues to cases where they actually arise on the pleadings.

3. We come back to the question of benefits under the Act-more specifically under Chapter V-A of the Act. There the question is, can these provisional employees be taken as workmen and further can they be considered to be employed in an industry as defined in the Act. A workman is defined in Section 2(s) of the Act to mean:

any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be expressed or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act. 1934 (34 of 1934); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in supervisory capacity, draws wages exceeding live hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

We may also here extract the definitions of "employer" and "industry" given in the Act. employer [S.2(g)] means:

(i) in relation to an industry carried by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the "chief executive of that authority;.

"Industry" is defined in Section 2(j) of the Act. It means:

any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

4. In considering the questions posed before us on the basis of the above definitions it may well be necessary to take note of certain well known principles in the matter of construction of the provisions in what may be termed as Welfare Statutes. The Act as similar welfare statutes is aimed at ameliorating economic position and improving the working conditions of the working people. Such statutes will have to be liberally construed so as to make the power conferred by them as real and not illusory with a view to achieve the purpose for which the power was conferred, Justice Bhagawati pointed out in *The Workmen of Indian Standards Institution Vs. The Management of Indian Standards Institution*,

It is necessary to remember that the Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony between "management" and "labour" in an industry so that production does not suffer and at the same time, labour is not exploited and discontented and therefore, the test must be so applied as to give the widest possible connotation to the term "industry". Whenever a question arises whether a particular concern is an industry, the approach must be broad and liberal and not rigid or doctrinaire. We cannot forget that it is a social welfare legislation we are interpreting and we must place such an interpretation as would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective.

This does not mean that in adopting a flexible approach our imagination should run riot. Justice Krishna Iyer cautioned in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*,

The literal latitude of the words in the definition cannot be allowed grotesquely

inflationary play but must be read down to accord with the broad industrial sense of the nation's economic community of which labour is an integral part. To bend beyond credible limits is to break with facts, unless language leaves no option.

What is an industry under the Act? The definition Section 2(j) is both exhaustive and inclusive. The first part states that industry means any business, trade, undertaking, manufacture or calling of employers. Then it goes on to say that it includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The definition thus speaks from the respective stand points of employers and employees. It might be noted that the second part of the definition of the term "industry" designedly includes something more than what the term primarily denotes. It might be noted here that the word "service" in the second part is a word of very wide import.

5. The earliest case decided by the Supreme Court on the construction of the definition was *D.N. Ranerji v. P.R. Mukherjee* 1953 I L.L.J. 195. This case dealt with the question whether the activity of a municipal Corporation would fall within the ambit of the definition. Justice Chandrasekhara Aiyar speaking for a Bench of Five Judges stated there that the words "industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests-such as wages, bonuses, allowances, pensions, provident fund, number of working hours per week, holidays and so on. The learned Judge referred with approval the following observations of Isaacs and Rich JJ. in *Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation* 26 WLR. 508:

Industrial disputes occur when, in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants and desire, those engaged in co-operation dispute as to the basis to be observed, by the parties engaged, respecting either a share of the product or any other terms and conditions of their cooperation.

After giving copious extracts from the report of the Royal Commission appointed in 1980 in England to deal with labour problems, they summed up their final conclusion in these words at page 564:

The question of profit-making may be important from an income tax point of view, as in many municipal cases in England; but, from an industrial dispute point of view, it cannot matter whether the expenditure is met by fares from passengers or from rates.

It was concluded in that decision that having regard to the definitions found in the Act, the aim or objective that the Legislature had in view, and the nature, variety and range of disputes that occur between employers and employees, the definition in the Act include also disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the

carrying out of a trade or business. There it was felt that it was unnecessary to decide whether disputes arising in relation to purely administrative work fall within their ambit.

6. The matter was examined in greater detail by the Supreme Court in *The Corporation of the City of Nagpur Vs. Its Employees*, Justice Subba Rao, as he then was, speaking for a Bench which consisted of besides himself, Justice Gajendragadkar (as he then was) and Justice Das Gupta, referred to the fact that the definition of "industry" is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. His Lordship further said that the history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. It was explained there that if a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and others non-industrial activities, the predominant functions of the department shall be the criterion for the purpose of the Act. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity. In other words, whether these functions are carried out by one department or divided between more than one department, the entire organizational activity would be an industry. Integrated activities of a municipality cannot be separated to take in some under the definition of "industry" and exclude others from it. On the above basis most of the departments of the corporation were held to be governed by the Act. Justice Subba Rao quotes with approval the following words of Justice Issacs in his dissenting judgment in *Federated State School Teachers' Association of Australia v. State of Victoria* 1928 41 CLR. 569:

The material question is: What is the nature of the actual function assumed—is it a service that the State could have left to private enterprise, and if so fulfilled, could such a dispute be "industrial"?

It is also pointed out by Justice Subba Rao that the conception that unless the public who are benefitted by their service in cash, the service so rendered cannot be an industry is based upon an exploded theory. The learned Judge quotes Justice Issacs who had elaborated the theme in his dissenting judgment referred

to earlier:

The contention sounds like an echo from the dark ages of industry and political economy. ...Such disputes are not simply a claim to , share the material wealth jointly produced and capable of registration in statistics. At heart they are a struggle, constantly becoming more intense on the part of the employed group engaged in co-operation with the employing group in rendering services to the community essential for a higher general human welfare, to share in that welfare in a greater degree. All industrial enterprises contribute more or less to the general welfare of the community, and this is a most material consideration when we come to determine the present question apart from the particular contention raised at the Bar.

The same Bench speaking through justice Gajendragadkar said in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*,

...as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the matter in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) of the Act applies.

On the above view the hospital run by Government was considered to be an industry. The doctrine of *quid pro quo* have no application in the consideration. Justice Gajendragadkar said that the fact that the Hospital is run by the Government does not make any difference in the interpretation of the word. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j); who conducts the activity and whether it is conducted for profit or not do not make any material difference. It was stressed there that the conventional meaning attributed to the words ""trade and business" has lost some of its validity for the purpose of industrial adjudication. Industrial adjudication has necessarily to be aware of the current of socio-economic thought around; it must recognise that in the modern welfare State healthy industrial relations are a matter of paramount importance and its essential function is to assist the State by helping a solution of industrial disputes which constitute a distinct and persistent phenomenon of modern industrial States. In attempting to solve industrial disputes industrial adjudication does not and should not adopt a doctrinaire approach. In construing the wide words used in Section 2(j) it would be erroneous to attach undue importance to attributes

associated with business or trade in the popular mind in days gone by. We might note here that the principles enunciated by Justice Issacs in his dissenting judgment in *Federated State School Teachers' Association of Australia v. The State of Victoria* 41 CLR 569 earlier referred to have been referred with approval in this decision.

7. It might be noted that subsequently the Supreme Court in some of its decisions seems to be hesitant to give logical extension to the principles enunciated in the cases of *D.N. Banerji*, *Hospital Mazdoor Sabha* and *Nagpur Corporation*, For example, in regard to the liberal professions in the *The National Union of Commercial Employees and Another Vs. M.R. Meher*, *Industrial Tribunal, Bombay and Others*, Justice Gajendragadkar, who had rendered the judgment in *Hospital Mazdoor Sabha* case said:

When in the *Hospital* case this Court referred to the organisation of the undertaking involving the co-operation of capital and labour or the employer and his employees, it obviously meant co-operation essential and necessary for the purpose of rendering material service or for the purpose of production. It would be realised that the concept of industry postulates partnership between capital and labour or between the employer and his employees. It is under this partnership that the employer contributes his capital and the employees their labour and the joint contribution of capital and labour leads directly to the production which the industry has in view. In other words, the co-operation between capital and labour or between the employer and his employees which is treated as a working test in determining whether any activity amounts to an industry, is the co-operation which is directly involved in the production of goods or in the rendering of service. It cannot be suggested that every form or aspect of human activity in which capital and labour co-operate of employer and employees assist each other is an industry. The distinguishing feature of an industry is that for the production of goods or for the rendering of service, co-operation between capital and labour or between the employer and his employees must be direct and must be essential.... Co-operation to which the test refers must be co-operation between the employer and his employees which is essential for carrying out the purpose of the enterprise and the service to be rendered by the enterprise should be the direct outcome of the combined efforts of the employer and the employees.

The learned Judge also said:

Looking at this question in a broad and general way, it is not easy to conceive that a liberal profession like that of an attorney could have been intended by the Legislature to fall within the definition of "industry" u/s 2(j). The very concept of the liberal professions has its own special and distinctive features which do not readily permit the inclusion of the liberal professions into the four corners of industrial law. The essential basis of an industrial dispute is that it is a dispute arising between capital and labour in enterprises where capital and labour combine to produce commodities or to render service. This essential basis would

be absent in case of liberal professions. A person following a liberal profession does not carry on his profession in any intelligible sense with the active co-operation of his employees and the principal, if not the sole, capital which he brings into his profession is his special or peculiar intellectual and educational equipment. That is why on broad and general considerations which cannot be ignored, a liberal profession like that of an attorney must, we think, be deemed to be outside the definition of "industry" u/s 2(j).

In the case *University of Delhi and Another Vs. Ram Nath*, Justice Gajendragadkar narrowed down the concept of service and held that the educational institutions would not fall within the meaning of industry. Their aim was education and the teachers' profession was not to be equated to industrial workers. The Court however reiterated that this must not be understood to be a general proposition laid down by it. In *Ahmedabad Textile Industry's Research Association v. State of Bombay* 1960 II L.L.J. 820, the question was whether an association for research maintained by the textile industry and employing technical and other staff was industry. Applying the tests laid down in *Hospital Mazdoor Sabha* the Supreme Court held that the activity of the association was "industry" because it was providing material services to a part of community, was carried on with the help of employees, was organised in a manner of which trade or business is organised and there was co-operation between employers and employees. But the Supreme Court was to take a narrower view of the definition in the *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, The main theme of this case was whether the activities of the Madras Gymkhana Club which was a members' club, fell within the definition of industry. Justice Hidayathullah summed up on the principles, settled by the earlier case, in the following words:

The principles so far settled is this. Every human activity in which enters the relationship of employers and employees, is not necessarily creative of an industry. Personal services rendered by domestic and other servants, administrative service of public officials, service in aid of occupations of professional men, such as doctors and lawyers, etc, employment of teachers and so on may result in relationship in which there are employers on the one side and the employees on the other but they must be excluded because they do not come within the denotation of the term "industry".

The court said there that the Madras Gymkhana Club was a members' club, though the activity of the club may be falling in the second part of the definition inasmuch as the work of the club is conducted with the aid of the employees who follow a "calling" or an "avocation" it cannot be described as "trade", "business", "manufacture" or "calling" of the members of the Managing Committee of the Club. It was also held that the activity of the club is also not an "undertaking" analogous to trade or business as this element is completely missing in a members' club. The members' club therefore was held not to be an industry. The same view was also taken in *Cricket Club of India Vs. Bombay Labour Union*

and Another, A bench of six Judges of the Supreme Court observed in *The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi*, that the reason given in the above two cases, particularly the *Madras Gymkhana Club*, lies in the kind of establishment with which the Court is concerned. It was further said that there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workman in aid of the employers' enterprise.

8. Thus for certain time narrow interpretation was given to the term "industry". But the Supreme Court again went back and a Bench of seven Judges in *Bangalore Water Supply and Sewerage Board v. Rajappa* (supra), expanded to its logical length the principles enunciated in the cases of *D.N. Banerji* (supra), *Corporation of the City of Nagpur* (supra) and *Hospital Mazdoor Sabha* (supra). It was held there that the term "industry" as defined in the Act has a wide import:

(a) Where there is (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services, calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prima facie, there is an industry in the enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

(2) Although the sub-section uses the words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) "Undertaking" must have a contextual and associated meaning as explained in *Banerji's* case; so also service, calling and the like. Hence all organised activity possessing the triple elements of systematic activity, organised co-operation between employer and employee and production and distribution of goods and services calculated to satisfy human wants and wishes, although not trade or business may still be industry provided the nature of the activity, namely, the employer-employee basis bears resemblance to what is found in trade or business. This takes into the fold of industry, undertakings, callings, services and adventures "analogous to the carrying on of trade or business". All features other than the methodology of carrying on the activity, namely, in organising the co-operation between employer-employee may be dissimilar but it

does not matter if on the employment terms there is analogy.

(3) The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between the employer and workmen the range of this statutory ideology must inform the reach of statutory definition and taken to the logical conclusion without any preconceived notions.

(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests, cannot be exempted from the scope of Section 2(j),

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research laboratories may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion substantively, no employees are entertained, but in minimal matters marginal employees are hired without destroying the non-employee character of the unit.

(c) If in a pious or altruistic mission, many employ themselves free or for small honoraria or like return, mainly drawn by sharing in the purpose of cause such as lawyers volunteering to run a free legal services, clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the Holiness, divinity or like central personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship then the institution is not an industry even if stray servants manual or technical are hired. Such eleemosynary or like undertakings alone are exempted - not other generosity, compassion, developmental passion or project.

(4)(a) Where a complex of activities some of which qualify for exemption and others not, involves employees on the total undertaking, some of whom are not workmen as in the University of Delhi case or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur case will be the true test. The whole undertaking will be industry although those who are not workmen by definition may not benefit by the status.

(b) Sovereign functions strictly understood alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

The decisions in *The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi*, *National Union of Commercial Employee's case* (supra) and *Delhi University's case* (supra) were overruled. The majority of the Judges, Beg, C.J., Chandrachud, Bhagwati, Krishna Iyer and Desai, JJ., were in agreement with regard to this. Justice Chandrachud went further. According to him:

To concede the benefit of an exception to the State activities which are in the nature of sovereign functions is really to have regard not so much to the nature of the activity as to the consideration who engages in that activity, for, sovereign functions can only be discharged by the State and not by a private person. If the State's inalienable functions are excepted from the sweep of the definition contained in the sub-section one shall have unwittingly rejected the fundamental test that it is the nature of the activity which ought to determine whether the activity is an industry. In this respect it should make no difference whether on the one hand an activity is undertaken by a corporate body in the discharge of its statutory functions or on the other by the State itself in the exercise of its inalienable functions. When undertaken by a private individual if they are industries when undertaken by the State they are also industries. Items 8, 11, 12, 17 and 18 of the First Schedule read with Section 2(n)(vi) of the Act show that conceivably a defence establishment, a mint, or a security press can be an industry even though these activities are ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions.

Justice Krishna Iyer, who wrote the main judgment said:

In *Banerji's case* 1953 I L.L.J. 195, the Supreme Court held that "industries" cover all branches of work that can be said to be analogous to the carrying out of a trade or business. Thus "analogous to trade or business" cuts down the wide scope of "undertaking", so that, spiritual undertakings, casual undertakings, domestic undertakings, war-waging, policing, justicing, legislating, tax collecting and the like are, prime facie, excluded, though charitable undertakings and undertakings sans profit may be included. The analogy with trade or business is in the "carrying out" of the economic adventure. So, the parity is in the *modus operandi*, in the working - not in the purpose of the project nor in the disposal of the proceeds but in the organisation of the venture, including the relations between the two limbs, namely, labour and management. If the mutual relations, the method of employment and the process of co-operation in the carrying out of the work bears close resemblance to the organisation, method, remuneration, relationship of employer and employee and the like, then it is industry, otherwise not. It is the nature of actual function and of the pattern of organised activity that is decisive. There is no merit in the plea that unless the public who are benefited by the services pay in cash, the services so rendered cannot be industry. The pith and substance of the matter is that the structural, organisational, engineering aspect, the crucial industrial relations like wages, leave and other service conditions as well as characteristic business methods (not motives) in running the enterprise, that govern the conclusion. If the nature

of the activity is para-trade or quasi-business, it is of no moment that it is undertaken in the private sector, philanthropic sector or labour sector; it is industry. It is the human sector, the way the employer-employee relations are set up and process that gives rise to the claims, demands, tensions, adjudications, settlements, truce and peace in industry. That is the *raison d'être* of industrial law itself.

Even though sovereign functions of the State cannot be included in industry, if there are industrial units severable from the essential functions and possess an entity of their own it may be plausible to hold that the employees of those units are workmen and those undertakings are industries. Regarding liberal profession, Justice Krishna Iyer observed that the test of "direct" co-operation between capital and labour in the production of goods or in the rendering of service, and to hold the same to be essential for carrying out the purposes of enterprise is unworkable. According to him:

Every employee in a professional office, be he a para-legal assistant or full-fledged professional employee or, down the ladder, a mere sweeper or janitor, every one makes for the success of the office, even the mali who collects flowers. In the sophisticated organisation of expert services, all occupations have central skills, an occupational code of ethics, a group culture, some occupational authority and some permission to monopoly practice from the community. But a professional in our egalitarian ethos is like any other man of common clay plying a trade or business and assent cannot be given to the cult of the elite in carrying out islands of exception to "industry". The contribution to the success of the institution every professional unit has an institutional good-will and reputation - comes not merely from the professional or specialist but from all those whose excellence in their respective parts makes for the total proficiency. Therefore, the claim for exclusion on the score of liberal professions is unwarranted. Even so, a single lawyer, a rural medical practitioner or urban doctor with a little assistant and/or menial servant may ply a profession but may not be said to run an industry. That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connotations but because there is nothing like organised labour in such employment. The image of industry or even quasi-industry is one of plausibility of workmen, not an isolated or single little assistant or attendant.

9. As regards the educational institutions if the triple tests of systematic activity, co-operation between employer and employee and production of goods and services were to be applied, a university, a college, research institute or teaching institution will be "industry". So long as services are part of wealth of a nation and it is obscurantist to object to it, educational services are wealth and are industrial.

10. There Justice Krishna Iyer very pertinently pointed out that it is one thing to say that an institution is not an industry and an altogether different thing to say that since a large number of its employees are teachers and not workers, they

cannot avail themselves of the benefits of the Industrial Disputes Act, and the test is not the predominant number of employees enabled to enjoy the benefits of the Act, but the predominant nature of the activity. In the case of a university or educational institution, the nature of the activity is education, which is a service to the community hence university is an industry. We may point out here that Justice Singh and Justice Tulzapurkar, though concurred with the final decision, took a rather dissenting view. According to them the definition of the word "industry" is limited to those activities systematically or habitually undertaken on commercial lines by private entrepreneurs with the cooperation of employees for the production or distribution of goods or for rendering material services to the community at large or a part of such community. In the case of liberal professions the contribution of the usual type of employees employed to the value of the end-product is so marginal that the end-product cannot be regarded as a fruit of co-operation between the professional and his employees.

11. In the light of the decision of the Supreme Court in Bangalore Water Supply case the concept of the expression "industry" has been put on a very wide canvass. Therefore those who contend that a particular establishment is not an industry, should satisfy the Court that the said establishment falls outside the limits prescribed by the Supreme Court. Where there is systematic activity organised by co-operation between employer and employee (the direct and substantial element is chimerical) and for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not purely spiritual or religious where no material things or services as such come in) there is apparently an industry. Absence of profit motive, or gainful objective is irrelevant whether the venture be in the public, joint, private or other sector. The true test is the nature of the activity where there is employer-employee relationship. And a trade or business does not cease to be one because of philanthropy behind the undertaking. When one goes by the principles formulated in the judgment of Justice Krishna Iyer who speaks for the majority of the Court an establishment can be taken out of the pale of industry only if it exercises inalienable Governmental functions -- sovereign functions strictly understood.

12. In this context we may note here the argument advanced by the learned Additional Advocate General, Mr. T.C.N. Menon, in respect of provisional appointees to Government service, appointed under Rule 9(a)(i) of the Kerala State and Subordinate Services Rules. These rules were originally framed under Article 309 of the Constitution and thereafter they are continued in force by virtue of the provisions contained in the Kerala Public Services Act which again is enacted by the legislature as enabled by Article 309 of the Constitution. Mr. Menon's argument is that an employee whose conditions of service are regulated by Rules framed either under Article 309 of the Constitution or under enactment brought by virtue of the enabling provisions under Article 309 will not be a workman employed in industry to whom the provisions of the Industrial Disputes Act are applicable.

13. The learned Additional Advocate General sought sustenance for his contentions on the following observation of Justice Krishna Iyer in the Bangalore Water Supply case:

The Court proceeded to carve out the negative factors which, notwithstanding the literal width of the language of the definition, must for other compelling reasons, be kept out of the scope of industry. For instance, sovereign functions of the State cannot be included although what such functions are has been aptly termed "the primary and inalienable functions of a constitutional government". Even here we may point out the inaptitude of relying on the doctrine of regal powers. That has reference, in this context, to the Crown's liability in tort and has nothing to do with Industrial law. In any case, it is open to Parliament to make Law which governs the State's relations with its employees. Articles 309 - 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947. That is a question of interpretation and statutory exclusion; but, in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who is excluded but only certain categories primarily engaged and supportively employed in the discharge of the essential functions of constitutional government. In a limited way, this head of exclusion has been recognised throughout.

(emphasis ours)

Chief Justice Beg also said in his concurring judgment that only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should strictly speaking be excluded from the sphere of industry by necessary implication.

14. As our learned brother, Justice M.P. Menon, pointed out in *Bhaskaran v. Sub Divisional Officer* 1982 KLT 613, Justice Krishna Iyer was only stressing the fact that by appropriate legislation under Article 309 or other constitutional heads it was possible to exclude Government servants altogether from the purview of the Act. But till that was done only "inalienable" constitutional functions like administration of justice could be excluded from the operation of the Act. Going by the context in which Chief Justice Beg's observations come in he was also only stating that services governed by separate rules and constitutional provisions such as Articles 310 and 311 could possibly be excluded. As Justice Menon has rightly said, if we may say so with respect, in *Bhaskaran's* case 1982 KLT 613 the learned Chief Justice was also referring only to the possibility of excluding some services as a public policy by appropriate legislative measures.

15. From the observations of Justice Krishna Iyer and Chief Justice Beg it will not follow that merely because there is a provision in regard to temporary appointees

as in Rule 9(a) of the Kerala State and Subordinate Services Rules, such appointment will stand excluded from the purview of the Act. In this connection we might note here Section 25J of the Act occurring in Chapter V-A. It reads as hereunder:

25-J. Effect of laws inconsistent with this Chapter. - (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under (he Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.

In spite of Section 25J it may be possible to exclude the operation of the provisions of Chapter V-A of the Act by a positive provision in any new legislation. However, one cannot say that Rule 9 of the K.S.S.R. is such a positive provision in any way repealing either expressly or by implication the provisions in Chapter V-A of the Act as regards the Temporary Government employees who are workmen coming within the ambit of the Act. It could not also be said that there is any inconsistency between the provisions in Chapter V-A of the Act and Rule 9 of the K.S.S.R., because of the time limit fixed for the period of continuance in service of a temporary appointee as per the said rule. Such time limit would certainly apply to a person who will not come within the ambit of the term ("workman") as defined in the Act.

16. The learned Additional Advocate General took up the position that Rule 9(a) in a way is expressive of the fundamental doctrine of pleasure which is embodied in Article 310 of the Constitution. It is difficult to agree with this contention. What is this doctrine of pleasure and the place of this doctrine in our Constitution? A contract of service may be for a fixed period of time, or it may be for work without fixing any period of time. In either case it may contain a provision enabling the contract to be terminated by notice. If the agreed notice is given, the contract is terminated and no question of changes for its breach can arise; but if the contract is terminated without giving the agreed notice the contract is wrongfully terminated and the aggrieved party can claim damages for

its breach. Whether the term of the contract is fixed or it is not, the contract can be terminated by the master if the servant is guilty of misconduct, conduct which is inconsistent with his duties as a servant. That is briefly the law of master and servant in respect of termination of service. There is a modification of that law in the service under the British Crown, In a contract for service under the Crown, civil as well as military, there is, except in certain cases where it is otherwise provided by law, imported into the contract a condition that the Crown has the power to dismiss at pleasure. The tenure of service at pleasure applied to the Colonies and also applied to India. This doctrine of pleasure was introduced in the Government of India Act of 1919 in Section 96B and the Government of India Act, 1935 u/s 240. The position at the commencement of our Constitution was this: rules of service had not the effect of fettering the pleasure of the Crown to dismiss a servant, and a breach of those rules gave him no cause of action enforceable in a Court of law. This doctrine was qualified no doubt to a certain extent by Section 96B(1) of the Act of 1919 and by Section 240(1), (2) and (3) of the Government of India Act, 1935. Article 310 embodies this doctrine of pleasure. Article 310 reads as follows:

Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service or holds any post, connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

The doctrine of pleasure is, therefore, modified by the express provisions of the Constitution. Article 309 reads as follows:

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State.

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such persons as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article and any rules so made shall have effect subject to the provisions of any such Act.

Under Article 309 the appropriate Legislature may regulate the conditions of service of persons appointed to public service Under Article 310 a person who is a member of a public service described therein holds office during the pleasure of the President or the Governor as the case may be. The words "conditions of service" in Article 309 in their comprehensive sense takes in the tenure of a civil

servant. Therefore, the terms "tenure of pleasure" is also one of the conditions of service. The Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, said about the interrelation between Articles 309, 310 and 311 in the following words:

Under Article 309 the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services. Under Article 310 every persons who is a member of a public service described therein holds office during the pleasure of the President or the Governor, as the case may be. The words "conditions of service" in Article 309 in their comprehensive sense take in the tenure of civil servant. See AIR 1949 112 (Privy Council) Therefore, "the tenure at pleasure" is also one of the conditions of service. But Article 309 opens out with a restrictive clause, namely, "Subject to the provisions of this Constitution", and if there is no restrictive clause in Article 310, there cannot be any difficulty in holding that Article 309 is subject to the provisions of Article 310; with the result that the power of the Legislature to lay down the conditions of service of persons appointed to public services would be subject to "tenure at pleasure" under Article 310. In that event, any law made by the Legislature could not affect the overriding power of the President or the Governor as the case may be, in putting an end to the tenure at their pleasure. Would the opening words of the clause in Article 310, namely, "Except as expressly provided by this Constitution", make any difference in the matter of interpretation? It should be noticed that the phraseology of the said clause in Article 310 is different from that in Article 309. If there is a specific provision in some part of the Constitution giving to a Government servant a tenure different from that provided for in Article 310, that Government servant is excluded from the operation of Article 310. The said words refer, inter alia, to Articles 124, 148, 218 and 324 which provide that the Judges of the Supreme Court, the Auditor General, the Judges of the High Courts and the Chief Election Commissioner shall not be removed from their offices except in the manner laid down in those Articles. If the provisions of the Constitution specifically prescribing different tenures were excluded from Article 310, the purpose of that clause would be exhausted and thereafter the Article would be free from any other restrictive operation. In that event, Articles 309 and 310 should be read together, excluding the opening words in the latter Article, namely, "Except as expressly provided by this Constitution". Learned Counsel seeks to confine the operation of the opening words in Article 309 to the provisions of the Constitution which empower other authorities to make rules relating to the conditions of service of certain classes of public servants, namely, Articles 146(2), 148(5) and 229(2). That may be so, but there is no reason why Article 310 should be excluded therefrom. It follows that while Article 310 provides for a tenure at pleasure of the President or the Governor, Article 309 enables the Legislature or the executive, as the case may be, to make any law or rule in regard, inter alia, to conditions of service without impinging upon the overriding power recognised under Article 310.

xx xx xx xx (20) This argument is based upon the misapprehension of the scope

of Article 309 of the Constitution. A law made by the appropriate Legislature or the rules made by the President or the Governor as the case may be, under the said Article may confer a power upon a particular authority to remove a public servant from service; but the conferment of such a power does not amount to delegation of the Governor's pleasure. Whatever the said authority does is by virtue of express power conferred on it by a statute or rules made by competent authorities and not by virtue of any delegation by the Governor of his power. There cannot be conflict between the exercise of the Governor's pleasure under Article 310 and that of an authority under a statute, for the statutory power would be always subject to the overriding pleasure of the Governor.

(21) This conclusion, the argument proceeds, would throw a public servant in India to the mercy of the executive Government while their compeers in England can be protected by legislation against arbitrary actions of the State. This apprehension has no real basis, for, unlike in England a member of the public service in India is constitutionally protected at least in two directions; (i) he cannot be dismissed by an authority subordinate to that by which he was appointed; (ii) he cannot be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. A condition similar to the first condition in Article 311 found in Section 96B of the Government of India Act, 1919, was held by the Judicial Committee in AIR 1937 27 (Privy Council) to have a statutory force and the second condition, which is only a reproduction of that found in Sub-section (2) of Section 240 of the government of India Act, 1935, was held in the AIR 1948 121 (Privy Council) as mandatory qualifying the right of the employer recognized in Sub-section (i) thereof. These two statutory protections to the Government servant are now incorporated in Article 311 of the Constitution. This Article imposes two qualifications on the exercise of the pleasure of the President or the Governor and they quite clearly restrict the operation of the rule embodied in Article 310(1)-vide the observations of Das, C.J. in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, The most important of these two limitations is the provision prescribing that a civil servant shall be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. As this condition is a limitation on the "tenure at pleasure", a law can certainly be made by Parliament defining the content of "reasonable opportunity" and prescribing the procedure for giving the said opportunity. The appropriate High Court and the Supreme Court can test the validity of such a law on the basis whether the provisions prescribed provide for such an opportunity, and, if it is valid, to ascertain whether the reasonable opportunity so prescribed is really given to a particular officer. It may be that the framers of the Constitution, having incorporated in our Constitution the "tenure at pleasure" unhampered by legislative interference, though that the said limitations and qualifications would reasonably protect the interests of the civil servants against arbitrary actions.

(22) The discussion yields the following results: (i) In India every person who is a member of a public service described in Article 310 of the Constitution holds

office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein. (2) The power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore cannot be delegated by the Governor to a subordinate officer, and can be exercised by him, only in the manner prescribed by the Constitution. (3) This tenure is subject to the limitations or qualifications mentioned in Article 311 of the Constitution. (4) The Parliament or the Legislature of States cannot make a law abrogating or modifying the tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310, as qualified by Article 311(5) The Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311 thereof. (6) The Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of "reasonable opportunity" embodied in Article 311 of the Constitution; but the said law would be subject to judicial review. (7) If a statute could be made by Legislatures within the foregoing permissible ; limits, the rules made by an authority in exercise of the power conferred thereunder would likewise be efficacious within the said limits.

Babu Rani's case had been explained in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,* . There Justice Gajendra gadkar observed that Babu Ram's case did not lay down that under Article 309, a law could not be passed, or a rule could not be made, prescribing the procedure by which, and the authority by whom, the pleasure of the Governor could be exercised. Seervai in *Constitutional Law of India* says that the result of the explanation given by Justice Gajendragadkar is that just as the Governor could override the requirement of the statutory rule, so also could an officer to whom the right to exercise that pleasure has been delegated. However, in this case we are not concerned with the question whether the President or Governor could delegate their constitutional right to dismiss a public servant at pleasure. As Justice Venkitarama Iyer has pointed out there cannot be a conflict between the exercise of the Governor's pleasure under Article 310 and that of an authority under a statute, for the statutory power would always be subject to the overriding pleasure of the Governor. The Legislature could make only a statute within the permissible limits as pointed out by Justice Subba Rao in *Babu Ram's* case (para.22). Therefore, we cannot accept the contention of the learned Additional Advocate General that Rule 9(a) of the Kerala State and Subordinate Services Rules is a facet of the doctrine of pleasure embodied in Article 310.

17. We might note a Division Bench decision of the Allahabad High Court in *Nand Lal v. Union of India* 1978 (2) S.L.R. 840. There the petitioner had approached the Court under Article 226 of the Constitution against an order dated 20-8-1976 passed by Assistant Mechanical Engineer, Eastern Railway, Moghalsarai, terminating the petitioner's services in exercise of the powers under Rule 149 of the Indian Railway Establishment Code, Vol.I by giving him 14 days notice. The

petitioner claimed rights u/s 25F and 25G occurring in Chapter V-A of the Act. There the Allahabad High Court said that the retrenchment being not in accordance with the provisions of Section 25F the termination of service of the petitioner was bad. It was expressly said there that the provision of the Industrial Disputes Act will override the contrary provisions under the Railway Establishment Code.

18. In the light of the Supreme Court dicta we have to proceed on the basis that sovereign functions strictly understood alone qualify for exemption not the other activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j) of the Act. Where a complex of activities some of which qualify for exemption and others not, involved employees of the total undertaking some of whom are not workmen and some departments are not productive of goods and services if isolated even then the predominant nature of the services and the intergrated nature of the departments as explained in the Corporation of Nagpur case will be the true test. We are here only summing up the position in the words of the Supreme Court itself. In those cases a contention has been taken up by the State that Article 226 of the Constitution, under which the petitioners have approached this Court, this Court will exercise powers conferred by the said Article only in the absence of an equally efficacious remedy to redress an injury that a petitioner claims to have been inflicted upon him. The petitioners can have recourse to such Tribunals established under the Industrial Disputes Act for redressal of their grievances if any and this Court should not exercise the discretion vested in it under Article 226 of the Constitution. It is contended that the remedy by approaching the Industrial Tribunal or Labour Court is equally efficacious, if not more efficacious, than resorting to a remedy under Article 226 of the Constitution from the High Court. In regard to the provisional services Government or the statutory bodies to what extent persons having such service could claim benefits under the Industrial Disputes Act is an important question for which it is necessary that the High Court should resolve the conflict. Guidance from the High Court is really needed in the matter even for keeping the Industrial Tribunals on the right path. Therefore, we do not think that we should refuse to exercise our discretion under Article 226 in the matter.

19. Before going into the cases separately, we may note here Chapter V-A of the Act, the benefits under some provisions in the same the workman claim deal with "lay-off and retrenchment" and in this case we are concerned with the sections therein dealing with "retrenchment". Section 25-F of the Act lays down the conditions pre-requisite to retrenchment of workman. They are: (1) There should be one month's notice in writing to the concerned workman who should have been in continuous service for not less than one year. (2) The notice should specify the reasons for retrenchment. (3) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been)

paid in lieu of such notice the wages for the period. (4) If the retrenchment is as a result of the agreement no notice is necessary provided the date of termination of service is specified. (5) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one year of service or any part thereof provided they exceed six months. The notice is also given to the appropriate Government.

20. Section 25G deals with the procedure for retrenchment. This Section embodies the principle known as "last come first go". The man who has come last should go first. It binds the employer to follow this principle while selecting one or more employees out of the category of employees in effecting retrenchment. In case of any deviation from the rule reasons for such deviation should be recorded. Section 25H of the Act deals with the re-employment of retrenched workman. It gives right to a worker to have preference in the matter of re-employment. If the employer wants to re-employ any person for the post or for other posts in his establishment he is under law bound to give first preference to the persons who have been retrenched. This is to safeguard against mala fide action.

21. O.P.No. 1468 of 1982: Here we are concerned with a Lady Village Extension Officer in the N.E.S. Block. Her work is said to consist of organisation of Manila Samajams and Balavadis, supervision of feeding centres and helping people to develop saving mentality and supervision of the food supply among the kids in Balavadis. Apprehending retrenchment she has approached this Court emphasising her right to continue in service. In the light of our discussion detailed above, we are of the view that the petitioner will be a workman coming within the ambit of the term in the Act. Her services could be retrenched only in accordance with the provisions of Section 25G of the Industrial Disputes Act. No doubt if a regular appointee on the basis of the advice from the Public Service Commission comes in to take her place her service could be terminated.

22. O.P.Nos. 4529 & 4553 of 1982: These deal with temporary clerks and typists in Coir Board. Coir Board is a statutory body and clerks and typists would certainly come within the ambit of the term "workman" under the Act. Their services could be terminated only in accordance with the provisions of the Industrial Disputes Act. The Coir Board, it may be noted, has been established under the Coir Industry Act of 1953, which is an Act to provide for the establishment of a Board for the development of Coir Industry and for that purpose to levy customs duty on coir fibre, coir yarn and coir products exported from India, and matters connected therewith. In deciding that Coir Board is an industry or not as defined in the Act we have to look into the nature of the actual function assumed by the Board. The services rendered by the Coir Board is one that could have been let to a private enterprise. Any service rule framed by the Coir Board cannot override the provisions of Industrial Disputes Act. We hold that the petitioners are entitled to the benefits of Chapter V-A of the Industrial Disputes Act.

23. O.P.No. 5705 of 1981: Here we are concerned with Village Extension Officers employed under the Community Development Establishment of the Government. We agree with the petitioners that the said establishment is an economic activity undertaken by the State with a view to render service to the Village community. It is not strictly a sovereign function of the State and will come within the ambit of undertaking falling within the definition of "industry" u/s 2(J) of the Industrial Disputes Act. We hold that the petitioners herein are entitled to the benefit of protection of Chapter V-A of the Industrial Disputes Act and their services could be terminated except to give places to permanent hands regularly recruited by the Public Service Commission, only in accordance with the provisions of the Industrial Disputes Act.

24. O.P.No. 6108 of 1981: Petitioner herein is a Khalasi under the 3rd respondent in the O.P. i.e. Electrical Chageman-A, Southern Railway, Trivandrum. Petitioner's claims herein really come u/s 25H of the Industrial Disputes Act, Her services have already been terminated. No doubt she claims right u/s 25F of the Act, stating that the termination of her service amounts to retrenchment as having not been made complying with the mandatory provision under the Industrial Disputes Act, is liable to be declared void. We may note here that her services were terminated on 3.10.1981. She has approached this Court on 16th November, 1981. As Railway is an industry under the Act and in the nature of the petitioner's employment, she being a workman, we would direct the respondents to take back in service the petitioner, the termination of her service on 3.10.1981 being in violation of the Industrial Disputes Act.

25. O.P.No. 622 of 1982: The petitioner herein is a temporary appointee as a Confidential Assistant in the Munsiffs Court, Devicolam. The Judicial Department is undoubtedly exercising a sovereign function of the State and no employee of the department can claim benefit under the Act. The Original Petition is dismissed.

26. O.P.No. 1498 of 1982: Here we are concerned with a Driver of the Kerala State Civil Supplies Corporation Ltd, While the corporation may be an agency or instrumentality of the State, it cannot be said that it is discharging a sovereign function. A driver of the Corporation will certainly come within the ambit of the term "workman" in the Act. In the circumstances his services can be terminated only in accordance with the provisions of the Industrial Disputes Act.

27. O.P.No. 1588 of 1982: This writ petition deals with rights of L.D. Clerks in the Health Services. In the light of our discussion, we have no hesitation to hold that these persons are "workmen" under the Act and their services could be terminated only in accordance with the provisions of the Industrial Disputes Act. Petitioners' services could certainly be terminated if recruits advised by the Public Service Commission come to occupy the posts.

28. O.P.No. 1995 of 1982: Petitioners are Peons of the Trichur Municipal Council. In the light of our discussion these persons are workmen under the Act and their

services could be terminated only in accordance with the provisions of the Act.

29. O.P.No. 3332 of 1982: Here we are dealing with Warders in the Central Prison, Cannanore. They cannot be workmen under the Industrial Disputes Act in the light of the specific exemption of such employees from coming within the term "workman" under the Act. The definition clause itself makes it clear that a person who is an employee in the Police service or an employee of a prison, cannot be a workman. The Original Petition is dismissed.

30. O.P.No. 3334 of 1982: The petitioner is an Assistant Engineer in the Public Health Department. He is holding a supervisory post, and will not come within the ambit of the term "workman" as defined in the Act. We dismiss the Original Petition.

31. O.P.No. 3367 of 1962: This case is concerned with a Work Superintendent of the Public Health Department. Though he is termed as a Work Superintendent, it is clear from the nature of his work that he is only performing the work assigned to him from time to time by the superior officers and he is entitled to the benefit of Chapter V-A of the Industrial Disputes Act as a workman. His services could be terminated only in accordance with the provisions of the Industrial Disputes Act.

32. O.P.Nos. 3436, 3438, 3537, 3549, 3652, 3657, 3659, 3662, 3781, 3987, 4186, 5411 & 5970 of 1982: Petitioners in these petitions are linemen under the Kerala State Electricity Board. In the light of our discussion, there could be no doubt that these persons are workmen coming within the ambit of the term "workman". Their services could be terminated only in accordance with the provisions of the Industrial Disputes Act.

33. O.P.No. 3876 of 1982: Petitioner is a Second Grade Overseer under the Electricity Board. Whatever be the literal meaning of the word "overseer" the learned Counsel appearing for the Board, learned Additional Advocate General, fairly conceded that he is not holding a supervisory position. In this view he is a workman under the Industrial Disputes Act. It would appear that his services had already been terminated during the pendency of the Original Petition. His services were not terminated in accordance with the Industrial Disputes Act. The termination has to be held void and the petitioner be deemed to continue in service. His services could be terminated only in accordance with the provisions of the Act.

34. O.P.No. 4201 of 1982: The petitioner herein is a Lineman under the Kerala State Electricity Board. He is a workman coming within the definition of the term under the Industrial Disputes Act. His services had already been retrenched. As his termination was not in accordance with the provisions of the Act we hold the termination to be void. The petitioner will be deemed to continue in service and his services could be terminated only in accordance with the provisions of the Industrial Disputes Act.

35. O.P.No. 3859 of 1981: The petitioner in this petition is a Bill Collector-cum-

L.D. Clerk in a Municipality. In the light of our discussion of the matter, she is a workman. Her services could be terminated only in accordance with the provisions of the Act. But as her service has already been terminated in violation of that, we would hold her termination illegal and she be deemed to continue in service.

36. O.P.Nos. 6236 & 6679 of 1981: The petitioners are Helpers on daily wages in the "Maveli" stores under the Civil Supplies Corporation. There cannot be any controversy in the light of our discussion that they are workmen coming within the ambit of the term in the Act. Their services Could be terminated only in accordance with the provisions of the Act. The Original Petitions are disposed of in the above manner.