THE INDUSTRIAL DISPUTES ACT, 1947: DISPUTE SETTLEMENT (SECTIONS 10 TO 10-A, AND, SECTIONS 33 TO 33-A OF THE INDUSTRIAL DISPUTES ACT, 1947)

Written by ***Shivam Goel***

Advocate, High Court of Delhi

Dispute Settlement (Sections 10 to 10-A, and, Sections 33 to 33-A of the IDA)

- Section 10 and Section 10-A of the IDA are the alternative remedies, that is, an industrial dispute can either be referred to Industrial Tribunal under Section 10 of the IDA or the parties can enter into an arbitration agreement and refer it to an arbitrator under Section 10-A of the IDA. Thus, once the parties have chosen their remedy under Section 10-A of the IDA, the Government cannot refer that dispute for adjudication under Section 10 of the IDA.
- An arbitrator appointed under Section 10-A of the IDA has all the features of statutory arbitrator.
- The Appropriate Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. The only requirement for taking action under Section 10 (1) of the IDA is that there must be some material before the Appropriate Government enabling it to form, an opinion that an industrial dispute exists or is apprehended.
- Section 33 of the IDA imposes a ban on the common law contractual right of the employer to alter the conditions of service of a workman or to punish him by dismissal or otherwise during the pendency of proceedings before the industrial authorities. The underlying idea is that when a dispute has been referred to the authority (Board of Conciliation/Court of Inquiry/Industrial Tribunal) for conciliation or adjudication, as the case may be, the employer should maintain the *status quo* as regards the terms and conditions of employment of the workmen and maintain harmonious relations so as not to hamper consideration of the dispute in question by the authority concerned. Section

33 of the IDA gives a right to the employer to apply to the authority concerned for lifting the ban stated above and the authority will in appropriate cases grant permission or accord approval for removing the ban, as the case may be.

- Section 33 (1) of the IDA provides that during the pendency of any proceeding before a Conciliation Officer/Board of Conciliation/Arbitrator/Labour Court/Industrial Tribunal/National Tribunal in respect of an industrial dispute, no employer shall-
  a. In regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned, the conditions of service applicable to them immediately before the commencement of such proceeding, or,
  b. For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute;

  Except with express permission in writing of the authority (Conciliation Officer/Board of Conciliation/Arbitrator/Labour Court/Industrial Tribunal/National Tribunal) before which the proceeding is pending.
- It has been provided under Section 33-A of the IDA that where an employer contravenes the provisions of Section 33 of the IDA during the pendency of proceedings before a Conciliation Officer/Board of Conciliation/Arbitrator/Labour Court/Industrial Tribunal/National Tribunal, an employee aggrieved by such contravention may make a complaint in writing, in the prescribed manner:
  a. To such Conciliation Officer/Board of Conciliation and Conciliation Officer/Board of Conciliation shall take such complaint into account in mediating in, and promoting the settlement, of such industrial dispute, and,
  b. To such Arbitrator/Labour Court/Industrial Tribunal/National Tribunal and on receipt of such complaint the Arbitrator/Labour Court/Industrial Tribunal/National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of the IDA and shall submit his/its award to the Appropriate Government and thereafter the provisions of the IDA shall apply accordingly.

S. No.	Precedent	Particulars
1.	***Karnal Leather Karamchari Sanghatan* V/s *Liberty Footwear Co.*** AIR 1990 SC 247 (Whether non-publication of the arbitration agreement as required under Section 10-A (3) of the IDA renders the arbitral award invalid and unenforceable?)	In this matter, a committee of arbitrators gave its award directing the management to reinstate certain workmen. But the management did not reinstate the workers. The management challenged the validity of the award by way of writ petition preferred before the Hon'ble High Court. The management claimed *inter alia* that the arbitration agreement was not published in the official gazette as required under Section 10-A (3) of the IDA and the award made without such publication would be invalid. The Hon'ble High Court held that the requirement of Section 10-A (3) of the IDA is mandatory and its non-compliance would vitiate the award. The matter came to the Hon'ble Supreme Court, and the Hon'ble Supreme Court held that: 1. The IDA seeks to achieve social justice by collective bargaining that is, resolving disputes amicably and voluntarily by agreement rather than coercion. The voluntary arbitration is a part of infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus falls within the rainbow of statutory tribunals. 2. Section 10 and Section 10-A of the IDA are the alternative remedies, that is, an industrial dispute can either be referred to Industrial Tribunal under Section 10 of the IDA or the parties can enter into an arbitration agreement and refer it to an arbitrator under Section 10-A of the IDA. Thus, once the parties have chosen their remedy under Section 10-A of the IDA, the Government cannot refer that dispute for adjudication under Section 10 of the IDA. 3. Section 10-A (3) of the IDA states that a copy of the arbitration agreement shall be forwarded to the Appropriate Government which shall, within one month

		from the date of its receipt publish it in the official gazette. The use of the word "shall", indicates an obligation to publish the arbitration agreement in the official gazette. 4. Publication of arbitration agreement under Section 10-A (3) is mandatory and not directory. 5. Non-compliance of requirement contained in Section 10-A (3) is fatal to the arbitral award.
2.	***Engineering Mazdoor Sabha* V/s *Hind Cycles Ltd.*** AIR 1963 SC 874 (Status of Arbitrator appointed under Section 10-A of the IDA?)	The High Court of Kerala, in the matter of: ***ATKM Employees Association* V/s *Musaliar Industries (P) Ltd.***, (1961) I LLJ 752, and the High Court of Madras, in the matter of: ***Anglo-American District Tea Trading Co.* V/s *Its Workmen***, (1963) II LLJ 752, held that an arbitrator appointed under Section 10-A of the IDA is not a statutory arbitrator. However, High Court of Bombay, in the matter of: ***Air Corporation Employees Union* V/s *D.V. Vyas***, (1962) I LLJ 31, and the High Court of Patna, in the matter of: ***Rohtas Industries Staff Union* V/s *State of Bihar***, (1962) II LLJ 420, held that an arbitrator appointed under Section 10-A of the IDA has all the features of statutory arbitrator. In the present case, the Hon'ble Supreme Court held that, an arbitrator appointed under Section 10-A of the IDA is a statutory arbitrator, in the sense that such an arbitrator is a creation of a special statutory provision contained in the IDA, thus, the High Courts have the powers under Article 226 of the Constitution of India, 1950 to review the awards delivered by such arbitrators.
3.	***State of Bombay* V/s *K.P. Krishnan*** AIR 1960 SC 1223 (Can the High Court in any situation direct the appropriate	In this case, a dispute occurred between the management (M/s. Firestone Tyre & Rubber Co.) and its workmen. The conciliation proceedings proved to be unfruitful. On receipt of the failure report of the Conciliation Officer, the Government of Bombay considered the matter and decided that the dispute should not be referred to the Industrial Tribunal for adjudication. Accordingly, as required by Section 12 (5) of the IDA, the Government

	government (Writ of Mandamus) to make a reference of an industrial dispute for adjudication to a Labour Court?)	communicated to the workmen the said decision and the reasoning behind it. The workmen preferred a writ petition before the Hon'ble High Court for issuance of writ in the nature of *mandamus* against the Government calling upon it to refer the dispute for industrial adjudication in terms of Section 10 (1) read with Section 12 (5) of the IDA. The Hon'ble High Court held that Section 12 (5) of the IDA in substance imposed an obligation on the Government to refer the dispute for industrial adjudication provided it was satisfied that a case for reference had been made out. In the present case, it was held by the Hon'ble High Court that the reason given by the Government for refusing to make a reference was so extraneous that the workmen were entitled to a writ of *mandamus* against the Government. The matter came before the Hon'ble Supreme Court, and the Hon'ble Supreme Court upheld the decision of the Hon'ble High Court, observing that, the Appropriate Government cannot go into the question of legality of dispute as this quite clearly amounts to deciding a question of law. A writ in the nature of *mandamus* can be issued against the Appropriate Government directing it to refer the dispute for industrial adjudication. It was held that: 1. Section 12 (5) of the IDA requires the Appropriate Government to consider the report of the Conciliation Officer and decide whether a case for reference (to Board of Conciliation/Court of Inquiry/Labour Court/Industrial Tribunal) has been made out or not. Where it does not make a reference, it shall record and communicate to the parties concerned (the management and its workmen) its reasons thereof.

		2. The words employed in Section 12 (5) of the IDA do not suggest that the report of the Conciliation Officer is the only material on which the Appropriate Government must base its conclusion. It would be open to the Appropriate Government to consider other relevant facts to make a decision about the reference. 3. When the reasons given by the Appropriate Government for refusing to make a reference are extraneous (and not germane), then the High Court can issue a writ of mandamus directing the Appropriate Government to make a reference under Section 10 (1) read with Section 12 (5) of the IDA. 4. Section 10 (1) of the IDA is of basic importance in the scheme of the statute; it shows that the main object of the IDA is to provide for cheap and expeditious machinery for the resolution of all industrial disputes by referring them to Board of Conciliation/Court of Inquiry/Labour Court/Industrial Tribunal, and thus to avoid industrial conflict causing frequent lock-outs and strikes. It is with this object that reference is contemplated in Section 10 (1) of the IDA, not only in regard to existing industrial disputes but also in respect of disputes which may arise or are likely to arise in future. Section 10 (1) of the IDA confers wide and even absolute discretion on the Appropriate Government either to refer or to refuse to refer an industrial dispute to Board of Conciliation/Court of Inquiry/Labour Court/Industrial Tribunal. However, this discretion has to be exercised by the Appropriate Government *bona fide* keeping in view all the facts of a particular case.
4.	***State of Madras* V/s *C.P. Sarathy***	Section 10 of the IDA empowers the Appropriate Government to make, reference of industrial dispute to the Board of

	AIR 1953 SC 53 ('Reference' under Section 10 of the IDA)	Conciliation/Court of Inquiry/Industrial Tribunal. The jurisdiction of these adjudicatory bodies (Board of Conciliation/Court of Inquiry/Industrial Tribunal) stems from the order of reference and is sustained until an award or report is made. There is no direct access to the parties (management and its workmen) and reference is the only mode by which the party (management/workmen) can approach the judicial or quasi-judicial forum. This explains the significance of reference; reference is of paramount importance in the scheme of the IDA. The object of Section 10 of the IDA is to settle the industrial dispute as soon as practicable to establish industrial peace.
5.	***Secretary, Indian Tea Association* V/s *Ajit Kumar Barat & Ors*** 2000 SCC (L & S) 321 (Section 10 of the IDA: Principles)	In this matter, the Supreme Court summarized the law regarding the powers of the Appropriate Government under Section 10 of the IDA after considering the earlier decisions, as follows: i. The Appropriate Government would not be justified in making a reference under Section 10 of the IDA without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible for the Appropriate Government to indicate the nature of dispute in order of reference. ii. An order of the Appropriate Government making a reference under Section 10 of the IDA is an 'administrative order' and is not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of reference closely to see if there was any material before the Appropriate Government to support its conclusion, as if it was a judicial or quasi-judicial order. iii. An order made by the Appropriate Government under Section 10 of the IDA being an 'administrative order',

		no *lis* is involved, as such an order is made on the subjective satisfaction of the Appropriate Government. iv. If it appears from the reasons given that the Appropriate Government considered any irrelevant material or foreign material, the Court may in a given case consider the case for a writ of *mandamus*. v. It would, however, be open to a party to show that what was referred by the Appropriate Government was not an industrial dispute within the meaning of the IDA.
6.	***Avon Services Production Agencies (P) Ltd.* V/s *Industrial Tribunal*** (1979) I LLJ 1 SC (Merely because the Appropriate Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist.)	It was held that: i. The refusal of Appropriate Government to make the reference is not indicative of an exercise of power under Section 10 (1) of the IDA; the exercise of the power would be a positive act of making a reference. Therefore, when the Appropriate Government declines to make a reference the source of power is neither dried up nor exhausted. It only indicates that the Appropriate Government for the time being has refused to exercise the power but that does not denude the power. The power to make, reference remains intact and can be exercised if the material and relevant considerations for exercise of power are in existence in the larger interest of industrial peace and harmony. ii. The Appropriate Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. The only requirement for taking action under Section 10 (1) of the IDA is that there must be some material before the Appropriate Government enabling it to form, an opinion that an industrial dispute exists or is apprehended. How and in what manner or through what machinery the Appropriate Government is

		apprised of the dispute is hardly relevant. Merely because the Appropriate Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist. An industrial dispute may nonetheless continue to remain in existence and if at a subsequent stage the Appropriate Government is satisfied that it is desirable to make a reference, the Appropriate Government does not lack the power to do so nor is it precluded from making the reference on the sole ground that on an earlier occasion it had declined to make the reference. The expression "at any time" clearly negatives that contention.
7.	***The Management of Hotel Imperial* V/s *Hotel Workers' Union*** AIR 1959 SC 1342 (Scope of Section 33 (1) of the IDA)	**Question:** Are any wages payable to workmen who are suspended pending permission being sought under Section 33 of the IDA for their dismissal? i. It is well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. ii. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of

		temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. iii. Whether the principles enumerated in (i) and (ii) above, apply to a case where the master has decided to dismiss a servant, but cannot do so at once as he has to obtain the permission necessary under Section 33 of the IDA and therefore suspends the workman till he gets such permission? a. Ordinarily, if Section 33 of the IDA did not intervene, the master would be entitled to exercise his power of dismissing the servant in accordance with the law of master and servant and payment of wages would immediately cease as the contract would come to an end. But, Section 33 of the IDA introduced a fundamental change in law of master and servant so far as cases which fall within the precincts of the IDA are concerned, therefore, a stipulation as regards 'suspension' should be implied by industrial tribunals in the contract of employment that if the master has held a proper enquiry and come to the conclusion that the servant should be dismissed and in consequence suspends him pending the permission required under Section 33 of the IDA, the employer has the power to order such suspension, thus suspending the contract of employment temporarily, so that there is no obligation on him to pay wages and no obligation on the servant to work. b. The master can after holding a proper enquiry temporarily terminate the relationship of master

		and servant by suspending his employee pending proceedings under Section 33 of the IDA. It follows therefore that if the tribunal grants permission to dismiss the workman, the suspended contract would come to an end and there will be no further obligation to pay any wages after the date of suspension. If, on the other hand, the permission to dismiss the workman is refused, the suspension would be wrong and the workman would be entitled to all his wages from the date of suspension. **Result:** If there is an industrial dispute pending between the management and its workmen, before any authority (Conciliation Officer/ Board of Conciliation/Arbitrator/Labour Court/Industrial Tribunal/National Tribunal) then *pendente lite* the industrial dispute, firstly, the management cannot change the terms of service to the prejudice of its workmen, and secondly, the management cannot dismiss/discharge its workmen, without taking permission of the authority concerned in terms of Section 33 of the IDA, if the change in the terms of service or dismissal/discharge of the workmen is in regards to the subject matter connected with the industrial dispute *pendente lite*. However, the management can suspend the erring workmen pending permission from the authority concerned. If the authority concerned grants permission to dismiss/discharge the workmen, then the term of employment of the workmen would come to an end and there will be no further obligation on the management to pay any wages to the workmen after the date of suspension. If, on the other hand, the permission to dismiss/discharge the workmen is refused by the authority concerned, then the suspension would be wrong and the workmen would be entitled to their wages (and benefits) from the date of suspension.

8.	***Fakirbhai Fulabhai Solanki* V/s *P.O., Industrial Tribunal Gujarat & Anr.*** AIR 1986 SC 1168 (The 'suspension allowance' to the workman should also be treated as an implied condition of contract of employment.)	In this matter, the Court reconsidered the report in the matter of *The Management of Hotel Imperial* (Supra) and laid down that just as employer's right to suspend his employee can be treated as an implied condition, the 'suspension allowance' to workmen should also be treated as an implied condition of contract of employment. A suspension order, during the pendency of application seeking permission to dismiss/discharge the workman filed under Section 33 of the IDA before the authority concerned no doubt prevents the employee from rendering his service but it does not put an end to the employment or the relationship of master and servant between the management and the workman. Because it is difficult to anticipate the result of an application seeking permission to dismiss the workman filed under Section 33 of the IDA pending before the authority concerned, the workman against whom the application is made should be paid some amount by way of 'subsistence allowance' to enable him to maintain himself and his family and also to meet the expenses of litigation pending before the authority concerned. An unscrupulous management may by all possible means delay the proceedings so that the workman may be driven to accept its terms instead of defending himself.
9.	***Ram Lakhan* V/s *Presiding Officer*** (2000) 10 SCC 201	In this matter, the Hon'ble Supreme Court observed that there is no conflict of opinion between the decisions rendered by the Hon'ble Supreme Court in *The Management of Hotel Imperial* (Supra) and *Fakirbhai Fulabhai Solanki* (Supra). While right to place an employee under suspension pending disposal of the application under Section 33 (1) of the IDA is to be conceded to the management on the basis of the decision in *The Management of Hotel Imperial* (Supra), the right of the employee to receive 'subsistence allowance' during the period of suspension has to be conceded to the employee on the basis of the decision in *Fakirbhai Fulabhai Solanki* (Supra).

10.	***Delhi Cloth & General Mills Ltd.*** **V/s *Kushal Bhan*** AIR 1960 SC 806 (Permissibility of simultaneous criminal trial and disciplinary proceedings)	**Principle of Law:** *If the criminal proceedings and domestic enquiry are initiated at the same time, first preference shall be given to the criminal proceedings. The employer has to wait until the result of criminal proceedings come out. Thereafter, he may start domestic enquiry. But, theoretically in law, there is no bar in parallel proceedings before a criminal court and before a domestic enquiry officer, unless there is a rule to the contrary.* In this matter, the workman was alleged to have committed theft. When the proceedings were going on in the criminal court, the company (employer) ordered an enquiry into the matter. The workman refused to lead any evidence or answer any question before the enquiry committee pleading that the *lis* concerning the subject matter was already pending before the concerned criminal court; the enquiry was, however, completed, and he was dismissed from service. Later, he was acquitted by the criminal court. The company (employer) pleaded before the Hon'ble Supreme Court that it was not bound to wait for the outcome of the criminal trial. The Hon'ble Supreme Court observed that, though very often employers stay enquires pending the decision of the criminal courts and that is fair, but it cannot be said that principles of natural justice require that an employer must wait for the decision at least of the criminal trial. However, if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to wait for the decision of the court, so that the defence of the employee in the criminal case may not be prejudiced.
11.	***Indian Overseas Bank, Anna Salai*** **V/s *P. Ganesan***	It was held that: i. The legal position operating the field is no longer *res integra*; departmental proceedings pending criminal proceedings do not warrant an automatic stay.

	(2007) 13 SCALE 446 (Whether pendency of a criminal case by itself would be a sufficient ground for stay of the departmental proceedings was the principal question which arose for consideration in this case before the Hon'ble Supreme Court.)	ii. The employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the employer is not violative of the principles of natural justice. iii. In the matter of: ***Capt. M. Paul Anthony* V/s *Bharat Gold Mines Ltd & Anr***, (1999) 3 SCC 679, the Hon'ble Supreme Court observed that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. Thereafter the Hon'ble Supreme Court summarized its findings as under: a. Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. b. If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. c. Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet. d. The factors mentioned at (b) and (c) above cannot be considered in isolation to stay the departmental

		proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed. e. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest. iv. The staying of disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case and no hard and fast rules can be enunciated in that behalf.