

R.M.M. Law College, Saharsa

Pt. Lecturer- KESHAV KUMAR SHRIVASTAVA

L.L.B Part- 3rd

Subject- Labour Law

Paper- 6th

Date- 23/10/2020

Topic- What are the provisions in the Industrial Dispute Act 1947, regarding the reference of disputes to Arbitration?

Provisions in the Industrial Dispute Act 1947, regarding the reference of disputes to Arbitration

10A. (1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under section 10 to a Labour Court, or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(1A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

(2) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

(3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(5) Nothing in the Arbitration Act, 1940 (10 of 1940), shall apply to arbitrations under this section.

For section 10A, the following shall be inserted, namely :-

10B. Submission.-(1) Any employer and a Representative Union or, in the absence of any registered Representative Union, any other Union which is representative of employees may, by a written agreement, agree to submit any present or future industrial dispute or class of such disputes to the arbitration of any person whether such arbitrator is named in such agreement or not. Such agreement shall be called a submission.

(2) A copy of every such submission shall be sent to the Registrar who shall register it in the register to be maintained for the purpose and shall publish it in such manner as may be prescribed.

10C. Submission when revocable.-Every submission shall in the absence of any provision to the contrary contained therein be irrevocable :

Provided that a submission to refer future disputes to arbitration may at any time be revoked by any of the parties to such submission by giving the other party three months' notice in writing :

Provided further that, before the expiry of the said period of three months the parties may agree to continue the submission for such further period may be agreed upon between them.

10D. Proceedings in arbitration.-The proceedings in arbitration under this Chapter shall be in accordance with the provisions of the Arbitration Act, 1940 (Central Act X of 1940) in so far as they are applicable and the powers which are exercisable by a Civil Court under the said provisions shall be exercisable by the Industrial Tribunal.

10E. Special case may be stated to Industrial Tribunal-The arbitrator may refer any question of law arising before him in any proceeding under this Act to the Industrial Tribunal for its decision. Any award made by the arbitrator shall be in accordance with such decision.

10F. Award by arbitrator.-The arbitrator shall, after hearing the parties concerned, make an award which shall be signed by him.

10G. (1) Dispute to be referred to Industrial Tribunal if no arbitrator appointed.-Notwithstanding anything contained in this Chapter, if no provision has been made in any submission for the appointment of an arbitrator or where by reason of any circumstances no arbitrator is appointed, such dispute may be referred by the State Government for adjudication by the Industrial Tribunal.

10H. State Government may refer industrial dispute to Industrial Tribunal for adjudication.-(1) Notwithstanding anything contained in this Chapter, the State Government may, at any time, refer an industrial dispute for adjudication by the Industrial Tribunal, if on a report made by the Conciliation Officer or otherwise it is satisfied that-

(A) by reason of the continuance of the dispute-

(a) a serious outbreak of disorder or a breach of the public peace is likely to occur; or

(b) serious or prolonged hardship to a large section of the community is likely to be caused; or

(c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed; or

(B) the dispute is not likely to be settled by other means; or

(C) it is necessary in the public interest to do so.

(2) When the State Government makes a reference to the Industrial Tribunal for adjudication of any industrial dispute, any submission or any award of an arbitrator with regard to that industrial dispute shall stand as cancelled.

10-I. Notice of award to parties.-(1) The arbitrator or the Industrial Tribunal as an arbitrator, as the case may be, shall forward copies of the award made by him or it to the parties, the Commissioner of Labour, the Registrar and the State Government.

(2) On receipt of such award, the Registrar shall enter it in the register kept for the purpose.

10J. Completion of proceeding.-The arbitration proceeding shall be deemed to have completed when the award is published under section 17." - Rajasthan Act No. 34 of 1958.

After section 10J, the following new section shall be inserted, namely :-

10K. State Government may lay down terms and conditions of employment and prohibit strikes, etc.-(1) Notwithstanding anything contained in the Act, if in the opinion of the State Government, it is necessary or expedient so to do, for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or maintaining industrial peace, it may by a general or special order, make provision-

(a) for requiring employers, workmen or both to observe for such period as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order; and

(b) for prohibiting, subject to the provision of the order, strikes, lock-outs generally or a strike or lock-out in connection with any industrial dispute.

(2) In case any industrial dispute is raised in respect of any provisions in the order of the State Government made under sub-section (1) within a period of three months of the order, it shall be referred by the State Government for adjudication to an Industrial Tribunal and the order shall lapse when the award of the Tribunal becomes enforceable.

The End