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Topic- What is an Award? When does an award under Industrial Dispute Act becomes enforceable? Who are the persons on which settlement and award are binding?

What is an Award?

AN "AWARD" means "an interim or final determination by an Industrial Tribunal of any industrial dispute or any question relating thereto." This definition was substituted by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956), with effect from March 10, 1957. Under the amended definition, besides industrial tribunals, labour courts and national industrial tribunals have also been added as adjudicating authorities. An arbitration award made under section IOA is also included in the definition. Thus, an order shall be deemed to be an award in terms of section 2 (b) of the Act, if: (i) it is an interim or final determination of an industrial dispute, or (ii) it is an interim or final determination of any question relating to such dispute, and (iii) the said interim or final determination is made by a labour court, an industrial tribunal or a national tribunal, or (iv) it is an arbitration award under section IOA. The first part of the definition of 'award' specifies a determination. final or interim. The second part pertains to a determination of any question relating to the dispute. However, the basic postulate common to both the parts is the existence of an industrial dispute. actual or apprehended. The determination contemplated is of the dispute, or a question relating thereto, on merits. The mere fact that the order of a labour court is published under section 17(1) of the Industrial Disputes Act does not confer on that the status of an award.² The Calcutta High Court has held that the Parliament has chosen not to restrict the definition of 'award' to a determination by a labour court, industrial tribunal or national industrial tribunal constituted under • Advocate, Supreme Court of India. J. Section 2(b), Industrial Disputes Act, 1947. 2. Cox & Killgs (Agents) Ltd. v, Their Workmen, 1977 LLe 897 (sq. 124 LABOUR ADJUDICATION IN INDIA sections 7, 7A or 78 of the Industrial Disputes Act, 1947. While referring to an arbitration award, it has specifically referred to an arbitration award under section IOA of the Industrial Disputes Act, 1947. When the Supreme Court hears an appeal against an award and modifies the same, the court is exercising the powers of the industrial tribunal itself and the modified award is an award of the tribunal within the meaning of section 2(b) of the Industrial Disputes Act, 1947.³ Also an

order passed under section 33(5) of the Act by conciliation officer under section 33(2)(b) of non-prosecution is not an award since such order would only mean that there was no application under section 33(2)(b) of the Act." Thus, an award should satisfy the following requirements : (a) The parties to be bound by or to perform the award must be certain. (b) If the payment of a sum of money by one party to another is directed, the amount to be paid must be specified; or some rule or direction given by which the sum to be paid may be calculated without any doubt. (c) If the performance of any conditions or terms is directed by the award, such conditions or terms must be clearly defined; and specific directions should be given as to their proper performance. (d) The time for performance of the award, or of any conditions or terms contained therein, must be expressly fixed, or such directions given as will enable the time to be easily determined.

Enforcement of an Award-

Sub-section (1) provides that on the expiry of thirty days from the date of its publication under section 17, an award, including an arbitration award, shall become enforceable. Some exceptions to this general rule have, however, been provided. The exceptions are to the effect that if, in the opinion of the appropriate government or the central government, in the cases specified, it is inexpedient on public grounds affecting the national economy or social justice to give effect to the whole or any part of an award, the government concerned may declare that the award shall not become enforceable on the expiry of the said period of thirty days. After such a declaration has been made, sub-section (2) provides that the appropriate government or the central government may, within ninety days from the publication of the award, make an order rejecting or modifying the award. In one case it has been held that breach of an award is a continuing offence and the embargo placed under section 468 Cr PC of limitation is not applicable to the case of present nature. Even otherwise, in the cases of social beneficial legislation and of offence arising under the same, the court can and should take note of provisions of section 473 Cr PC which empowers the court to extend the period of limitation in certain circumstances. This provision under section 473 Cr PC is based on principles of natural justice.

Enforcement under Section 33C- By the amending Act (43 of 1953), the legislature took a further step by adding Chapter V-A to the Act, dealing with lay-out and retrenchment. In this context section 33C reads as under : (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue : Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer ; Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period. (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed. then the question may.

subject to any rules that may be made under this Act. be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months. Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do. he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit. (3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall after taking such evidence as may be necessary submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case. (4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1). (5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money then, subject to such rules as may be made in this behalf. a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen. Initially at the time of enactment of the Industrial Disputes Act. 1947 the machinery for the enforcement of awards was very defective. The only remedy available was by way of prosecution and punishment under section 29. There was no statutory procedure for the recovery of money awarded to workmen. The workmen could resort to the common law right to sue the employer which was held by Calcutta High Court,²⁷ but, the workmen being numerous and usually illiterate and poor and the amount due to each being normally small, the procedure presented practical difficulties. Section 33C(1) provides that where any money is due to a workman from employer in the circumstances stated therein, and if the appropriate ENFORCEMENT OF AWARDS \3\ government is satisfied on an application made to it that the money is so due, it shall issue a certificate for the amount to the collector. The question to be presently considered is the extent of the jurisdiction of the appropriate government under section 33C(1). A certificate under section 33C(1) can be issued only in a case where the money due has already been ascertained. The labour commissioner cannot, on his own, proceed to ascertain the amount and issue the recovery certificate.

An Award is Binding upon Successors and Assignees-

After raising the disputes and on failure to resolve the same through conciliation, if the appropriate government is approached it may make reference of the disputes to the appropriate forum under section 10 of ENFORCEMENT OF AWARDS 129 the Act. The forum to which the dispute might have been referred is required to conduct the proceedings before it and pass award as provided under section 17 of the Act. Once it is published it becomes final subject to the provisions of section 17A of the Act, and it cannot be called in question in any court in any manner whatsoever. Unless by declaration made under section 17A of the Act the appropriate government states otherwise it becomes enforceable on the expiry of the period of 30 days from the date of publication of the award. Such award is binding on all the parties to the industrial dispute. It may be binding, to all other parties who might have been summoned to appear in the proceedings as party to the dispute. It may be binding the successor of employer and the employee who might have been employed subsequent to the date of reference. Thus it is evident from the scheme of the Industrial Disputes Act that the award is binding, not only on the parties to the award or all the parties summoned to appear in the proceedings as party to the dispute but also on the successors or assignees in respect of the establishment to which the dispute relates.

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