

INDUSTRIAL DISPUTE ACT, 1947

Section 8 - Filling of vacancies

If, for any reason a vacancy (other than a temporary absence) occurs in the office of the presiding officer of a Labour Court, Tribunal or National Tribunal or in the office of the chairman or any other member of a Board or Court, then, in the case of a National Tribunal, the Central Government and

In any other case, the appropriate Government, shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and the proceeding may be continued before the Labour Court, Tribunal, National Tribunal, Board or Court, as the case may be, from the stage at which the vacancy is filled.



Arbitration and Adjudication

Adjudication involves intervention in the dispute by the third party appointed by the government for the purpose of deciding the nature of final settlement. On getting a report of the failure of conciliation, the government has to decide whether it would be appropriate to refer the dispute to adjudication.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

The circumstances under which an industrial dispute may be voluntarily referred to arbitration have been stipulated under **section 10A** of Industrial Dispute Act, 1947.



Voluntary Reference to Arbitration

Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at an 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 as may be specified in the arbitration agreement.

An arbitration agreement shall be in such form and shall be signed by the parties thereto as prescribed.

A copy of the arbitration agreement shall be forwarded to the appropriate government and the conciliation officer and the appropriate government shall, **within 1 month** from the date of the receipt of such copy, publish the same in the official gazette.

Meaning of Award

Award means an interim or final determination of any industrial dispute or of any question relating thereto by any Labour court, Industrial Tribunal, or National Tribunal. The term Award also includes arbitration award.

The award is required to be published by the Central Government or State Government **within 30 days** from the date it is made.

The award becomes effective only **after 30 days** of its publication.

Generally the validity period of an award is **1 year**.

Meaning of settlement

- Settlement means a settlement arrived at in the course of conciliation proceedings.
- It includes a written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceedings.
- The settlement arrived in the course of conciliation and arbitration award and Labour court award or the Industrial or National Tribunal Award **binds all parties** to industrial dispute, including present and future workmen and all parties who are summoned to appear in the proceedings.
- If settlement is arrived at otherwise in the course of conciliation proceedings, it binds only those who are actually parties to the agreement.
- Generally, the settlement is valid for **6 months**.



The Industrial Disputes Act, 1947

- PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

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TOPICS COVERED:-

▪ **PROCEDURE, POWERS AND DUTIES OF AUTHORITIES**

- Procedure and power of conciliation officers, Boards, Courts and Tribunals (SEC 11)
- Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen (SEC 11A)
- Duties of conciliation officers (SEC 12)
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- Duties of Courts (SEC 14)
- Duties of Labour Courts, Tribunals and National Tribunals (SEC 15)
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Procedure and power of conciliation officers, Boards, Courts and Tribunals (SEC 11)

1. Subject to any rules that may be made in this behalf, **an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure** as the arbitrator or other authority concerned **may think fit**
2. A conciliation officer or a member of a Board, or Court or the presiding officer of a Labour Court, Tribunal or National Tribunal may, **for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.**
3. Every Board, Court, [Labour Court, Tribunal and National Tribunal] shall have **the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908** when trying a suit, in respect of the following matters, namely-
 - (a) **Enforcing the attendance of any person and examining him on oath**
 - (b) **Compelling the production of documents and material objects**
 - (c) **Issuing commissions for the examination of witnesses**
 - (d) **In respect of such other matters as may be prescribed.**

4. **A Conciliation Officer** may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, and for the aforesaid purposes, the conciliation officer shall have the **same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908**

5. **A Court, Labour Court, Tribunal or National Tribunal may**, if it so thinks fit, **appoint one or more persons having special knowledge** of the matter under consideration as assessor or assessors **to advise** it in the proceeding before it.

6. **All conciliation officers, members of a Board or Court and the presiding officers** of a Labour Court, Tribunal or National Tribunal **shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code 1860.**

7. Subject to any rules made under this Act, **the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal** and the Labour Court, Tribunal or National Tribunal, as the case may be, shall **have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid**, and to give all necessary directions for the purposes aforesaid and such costs may, on application made to the appropriate Government by the person entitled, be recovered by that Government.

8. Every **Labour Court, Tribunal or National Tribunal shall be deemed to be a Civil Court for the purposes of Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973.**

Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen (SEC 11A)

- Where an Industrial **dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court**, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, **is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman** including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and **shall not take any fresh evidence** in relation to the matter.

Duties of conciliation officers:- (SEC 12)

1. **Where any industrial dispute exists** or is apprehended, the conciliation officer may, **or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.**
2. The **Conciliation Officer shall**, for the purpose of bringing about a settlement of the dispute, without delay, **investigate** the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks **fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.**
3. **If a settlement of the dispute** or of any of the matters in dispute **is arrived** at in the course of the conciliation proceedings **the conciliation officer shall send a report thereof to the appropriate Government official**[or an officer authorized in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute

4. **If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.**

5. **If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference.** Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

6. A report under this section shall **be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period** as may be fixed by the appropriate Government: [Provided that, **[subject to the approval of the conciliation officer]** the time for the submission of the report **may be extended** by such period as may be agreed upon in writing by all the parties to the dispute].

Duties of Board:- (SEC 13)

1. **Where a dispute** has been **referred to a Board** under this Act, it shall be the **duty** of the Board to endeavor **to bring about a settlement** of the same and for this purpose the Board shall, in such manner **as it thinks fit** and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
2. **If a settlement of the dispute** or of any of the matters in dispute **is arrived** at in the course of the conciliation proceedings, the **Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement** signed by the parties to the dispute.
3. **If no such settlement is arrived** at, the Board shall, as soon as practicable after the close of the investigation, **send to the appropriate Government** a full report setting forth the proceedings and **steps taken by the Board** for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its finding thereon, **the reasons** on account of which, in its opinion, a **settlement could not be arrived** at and its recommendations for the determination of the dispute.

4. **If, on the receipt of a report** under sub-section (3) in respect of a dispute relating to public utility service, the appropriate **Government does not make a reference to a court** [Labour Court, Tribunal or National Tribunal] under Section 10, it shall record and communicate to the parties concerned its reasons therefor.

5. The **Board shall submit its report** under this section **within two months of the date on which the dispute was referred to it** or within such shorter period as may be fixed by the appropriate Government:

- Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate:
- Provided further that **the time for the submission of the report may be extended** by such period as may be **agreed on in writing by all the parties to the dispute.**

Duties of Courts (SEC 14)

- **A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry**

Duties of Labour Courts, Tribunals and National Tribunals (SEC 15)

- **Where an industrial dispute has been referred to a court** [Labour Court, Tribunal or National Tribunal] for adjudication, it **shall hold its proceedings expeditiously** {prompt execution} **and shall**, [within the period specified in the order referring such industrial dispute or the further period extended under the second proviso to subsection (2-A) of Section 10], **submit its report to the appropriate Government**

Form of Report or Award (SEC 16)

- 1. The report of a Board or Court shall be in writing and shall be signed by all the members of the Board or Court, as the case may be: Provided that nothing in this section shall be deemed to prevent any member of the Board or Court from recording any minute of dissent from a report or from any recommendation made therein.**
- 2. The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer.**