Grievance Settlement Authorities: Emerging Trends

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INTRODUCTION

*We are always must reluctant to put any interpretation upon labour legislation is likely to prejudice the rights or welfare of Labour. We are fully conscious of the fact that our legislature has put labour legislation on the statute book primarily for the purpose of redressing the balance between employers and employees and that we would not, unless we are compelled to do so by the clear language used by the legislature put any construction upon any provision of labour legislation which will in any way prejudicially affect their rights.* - Chagla C.J.

The Industrial Disputes Act, 1947\(^2\) reflects this very concern of the State and thus justifying a strong need for the intervention of the State in modern industrial disputes. State intervention in industrial relations is essentially a modern development. With the emergence of the concept of welfare state, new ideas of social philosophy, national economy and social justice sprang up with result that industrial relation no longer remains the concern of labour and management alone.\(^3\) The concern of state in matters relating to labour is a product of its obligations to protect the interest of industrial community, while at the same time fostering economic growth in almost all countries.\(^4\) The state has assumed powers to regulate labour relations in some degree or the other. In some, it has taken the form of laying down bare rules or observance by employers and workers; in others, the rules cover a wider area of these rules. So far as our country is concerned, State intervention in labour matters can be traced back to the enactment of the Employers and Workmen’s Disputes Act 1860 which provided for the speedy disposal of the dispute relating to the wages of workmen engaged in railways, canals and other public works, by Magistrates.

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1. NALSAR University of Law, Hyderabad.
2. Industrial Disputes Act, 1947 (Act 14 of 1947)
The Third Five Year Plan formulated a Code of Discipline for industries which was voluntary accepted by the management and the labour. Through it the industrial disputes could be mutually settled and litigation could be avoided as far as possible. The establishment of Works Committees, the encouragement of workers organizations and the settlement of the problem of bonus by constituting a Bonus Commission were the other features of this plan document. The first few traces of the evolution of alternative dispute mechanisms to solve labour disputes can be traced from this document. Needless to say, one of these mechanisms is the proposed establishment of ‘Grievance Settlement Authorities’ to solve disputes between individual workers and the management.

Before we proceed to address the point on Grievance Settlement further, we must understand that there are two types of Industrial Disputes-interest disputes and rights disputes. Interest disputes relate to determination of new wage level and other condition of employment while rights disputes on the other hand relate to interpretation and application of existing standards and usually involve and individual worker or group of workers. Under the category of rights disputes, claim is made that the workmen have not been treated in accordance with the rules, individual contracts of employment, laws and regulations and as per collective agreements. Such disputes are also described as grievance disputes. Such grievances may be regarding retrenchment, dismissal, payment of wages, working time, overtime, demotion, promotion, transfer, seniority, job classification, work rules and fulfillment of obligation relating to safety and health laid down in an agreement. The definition of Industrial Dispute as given in the Act has a wide coverage. All disputes relating to employment or non-employment, or the terms of employment or with the condition of labour are covered under the definition. Settlement means a settlement arrived at in the course of conciliation proceeding and included a written agreement between employer and workmen arrived at otherwise than in course conciliation proceeding where such agreement has been signed by the parties there to in such manner as may be prescribed and a copy thereof has been sent to the officer authorized in this behalf.

6 Section 2 (k), Industrial Disputes Act, 1947,

"Industrial Dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.
by the appropriate government and the conciliation officer\(^7\). The definition envisages two categories of settlement.

(1) Settlement arrived at in the course of conciliation and

(2) Settlement arrived at privately or otherwise than in the course of conciliation.

The settlements arrived at in the course of conciliation stand on a higher plane than the settlements arrived at otherwise than in the course of conciliation. The legal effect of both these settlements is not identical. The settlement arrived at otherwise than in the course conciliation binds only the parties to settlement and none else. In any case it does not stand on higher plane than the settlements arrived at in the conciliation and that makes the two distinct and different from each other.

**WHAT IS A GRIEVANCE?**

A grievance can be defined as any sort of dissatisfaction, which needs to be redressed in order to bring about the smooth functioning of the individual in the organization.\(^8\) Broadly, a grievance can be defined as any discontent of dissatisfaction with any aspect of the organization. It can be real or imaginary, legitimate or ridiculous, rated or unvoiced, written or oral, it must be however, find expression in some form of the other.\(^9\)

Discontent or dissatisfaction is not a grievance. They initially find expression in the form of a complaint. When a complaint remains unattended to and the employee concerned feels a sense of lack of justice and fair play, the dissatisfaction grows and assumes the status of grievance.\(^10\) Usually grievance relate to problems of interpretation of perceived non-fulfillment of one’s expectation from the organization. Aggrieved employees usually manifest defiant behavior. This idea of a grievance is

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\(^7\) Section 2(p), Industrial Disputes Act, 1947.


\(^10\) Ibid.
also in tune with the definition set out in the ILO Examination of Grievances recommendations\textsuperscript{11}, stating;

“3. The grounds for grievance may be any measure or situation which concerns the relations between the employer and worker or which affects or may affect the conditions of employment of one or several workers in the undertaking when that measure or situation appears contrary to provisions of an applicable collective agreement or of an individual of employment, to works rules, to laws or regulations or to the custom or usage of the occupation, branch of economic activity or country, regard being had to the principles of good faith.”

In 1998, the Indian Government ratified Convention 122\textsuperscript{12} of the International Labour Organisation. Article 1 of the Convention\textsuperscript{13} of the Convention it can be deduced that the Right of the workers to have redressal mechanisms to their grievances has been recognized and thus this obligation must be performed by the Indian Government.\textsuperscript{14}

Having recognized the existence of a right to redressal of grievances, it then becomes apt for us to look at the actions taken by the Government in order to secure this right of the workers in an industry. We shall now proceed to do the same.

\textsuperscript{11} ILO Recommendation No. 130 of 1967, CONCERNING THE EXAMINATION OF GRIEVANCES WITHIN THE UNDERTAKING WITH A VIEW TO THEIR SETTLEMENT, Para 3.


\textsuperscript{13} Article 1, Convention 122, Employment and Social Policy, International Labour Organisation, 1968 states,

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under employment, each Member shall declare and pursue, as a major goal an active policy designed to promote full, productive and freely chosen employment.

2. The said policy shall aim at ensuring that

(a) There is work for all who are available for and seeking work.

(b) Such work is as productive as possible

(c) There is freedom of choice of the employment and the fullest possible opportunity for each worker to qualify for, and to use skill and the endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

3. The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.”

\textsuperscript{14} See also REPORT OF THE 2\textsuperscript{ND} NATIONAL LABOUR COMMISSION, para 6.8.
GRIEVANCE SETTLEMENT: HISTORICAL AND CURRENT PERSPECTIVES

The Industrial Disputes Act was introduced with a view to make provisions for the investigation and settlement of industrial disputes and for certain other purposes here in after appearing. Krishna Iyer J. opined that the idea of this Act is not confined only to ‘Industrial Disputes’ but also matters analogous to it. The notion of a welfare state that meant an end to the exploitation of workers and peace and harmony in the industrial growth of the state is of primary concern. However, the main object of the Act as expounded in case law at its early stages was to facilitate the idea of ‘collective bargaining’. Collective bargaining is the process whereby workers organize collectively and bargain with employers regarding the workplace. In a broad sense, it is the coming together of workers to negotiate their employment and other related matters.

Also to be noted is that Section 2 (k) of the Industrial Disputes Act, 1947 does not make any reference to individual employees but only ‘workmen’. This leads us to ask the question of whether Industrial disputes could still involve individual grievances under the Industrial Disputes Act, 1947. In Ruston and Hornsby v. TB Kadam, the Court held that even still disputes concerning individuals could be referred if they were dismissed from their employment or their services terminated. However, it is settled that no mode of grievance redressal and settlement existed under the Industrial Disputes Act, 1947. It was only in 1965 that Section 2-A was introduced to the Act that stated that when an employer discharges, dismisses or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer shall be deemed to be an industrial dispute notwithstanding that no

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15 Preamble, Industrial Disputes Act, 1947.
17 Banaras Ice Factory v. Its Workmen, AIR 1957 SC 167; Workmen of Dimakachi Tea Estate v. Dimakachi Tea Estate, AIR 1958 SC 353; In Bengal Chemical and Pharmaceutical Works Ltd. v. Their Workmen, AIR 1959 SC 633, the Court held that the Industrial Disputes Act is intended to be a self-contained code and it seeks to attain social justice on the basis of collective bargaining, conciliation and arbitration.
19 Section 2 (k), Industrial Disputes Act, 1947.
other workman nor any union of workmen is a party to the dispute.\textsuperscript{21} This Section implies that an individual’s grievance not related to a dismissal or discharge will not constitute an industrial dispute. For example, a worker’s grievance that his seniority was overlooked when a promotion decision was made will not constitute an industrial dispute, but may be redressed through a grievance redressal procedure existing in the establishment\textsuperscript{22}. Paul Lansing and Sarosh Kuruvilla opine that including selective individual disputes as industrial disputes protects the individual worker from being victimized and losing his source of livelihood in the process, especially where he was not a member of the union.\textsuperscript{23}

Perhaps the first instance of a legal mechanism of grievance settlement can be seen with the Industrial Employment (Standing Orders) Act of 1946\textsuperscript{24} that provided for the settlement of day-to-day grievances that any employee may have in the industry. With this Act, the right and privilege of the employees of knowing their conditions of work and effectively and individually demanding for them had become the accepted law of the land.\textsuperscript{25} However, according to SB Sinha J., the Act did not receive enough attention and a lax in its enforcement rendered it ineffective.\textsuperscript{26}

So the point arises that the Industrial Disputes Act has no mechanism for grievance redressal and settlement even though the International Labour Organisation Conventions mandate that such provisions be made in order to ensure efficiency in the industry and better working conditions. However still, some industries have set up their own grievance settlement authorities without any legal backing to address such disputes.

The next phase of legal development came in 1982 when an amendment was proposed to the Industrial Disputes Act, 1947 to include a mechanism for grievance settlement. Accordingly, Section 9-C was added to create a procedure of reference of

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\textsuperscript{21} Section 2-A, Industrial Disputes Act, 1947 (Inserted by Sec. 3, Act 35 of 1965)

\textsuperscript{22} Paul Lansing and Sarosh Kuruvilla, \textit{Industrial Dispute Resolution in India in Theory and Practice}, 9 LOY. LOS ANGELES INTL AND COMP. LAW JOUR. 345 (1986-87).

\textsuperscript{23} Ibid. See also PL Malik, \textit{The INDUSTRIAL LAW}, 1st ed. 1966, p. 449.

\textsuperscript{24} Industrial Employment (Standing Orders) Act, 1946.


certain industrial disputes to grievance authorities.\textsuperscript{27} Sadly however, this provision has not yet been notified and thus not in force despite being passed for over 25 years. The main features of this procedure are;

- It is compulsory for industrial establishment having more than 50 workmen to have a Grievance settlement authority.
- The dispute must be referred in a manner as may be prescribed.
- These bodies are made up of representatives of workers and employers.
- No reference can be made under the Act to Boards of Conciliation, Labour Courts or Industrial Tribunals, unless the dispute has first been the subject of a decision of a Grievance Settlement Authority.\textsuperscript{28}

To reiterate, this procedure embodied in the form of Section 9-C in the Industrial Disputes Act, 1947 has not yet been brought into force. Thus, till date there is no legal mechanism that can compel a management in an industry to set up ‘Grievance Settlement Authorities’ for the redressal of individual disputes and grievances. However, so companies has set up their own procedures to ensure smooth functioning and efficiency amongst the workforce\textsuperscript{29}. Also, as regards Government run industries,

\textsuperscript{27} Section 9-C, Industrial Disputes Act, 1947 (Inserted by Section 7, Act 46 of 1982)

\textsuperscript{28} Setting up of Grievance Settlement Authorities and reference of certain individual disputes to such authorities. -

appropriate procedures are provided by statutes to address grievances by individual employees.\textsuperscript{30}

**EMERGING TRENDS IN GRIEVANCE SETTLEMENT**

In 2002, the Second National Labour Commission\textsuperscript{31} submitted its report to the Indian Government. As regards grievance settlement, the report is crucial in the sense that after a gap of 20 years, the issue again came to the forefront when the Commission strongly suggested the setting up of a Grievance settlement authority and also prescribed an elaborate procedure for the same.

According to the report of the Commission\textsuperscript{32}, every establishment to which the general law of employment relations applies i.e. those with 20 or more workers, shall establish a Grievance Redressal Committee consisting of equal number of workers’ and employers’ representatives, which shall not be larger than ten members or smaller than two members depending on the employment size of the establishment, as may be prescribed. One member of the committee may be designated as Chairman and another as Vice Chairman and a system may be established to see that one of the two is from the management, and the other from among employees’ representatives. The Grievance Redressal Committee shall be the body to which all grievances of a worker in respect of his employment, including his non employment will be referred for decision within a given timeframe. Where the worker is not satisfied with the decision of the committee, he shall be free to seek arbitration of the dispute by an arbitrator, to be selected from a panel of arbitrators to be maintained in the manner prescribed, or seek adjudication of the dispute by the labour court. The decision of the labour court or arbitrator shall be final.

The Commission also recommended that all matters pertaining to individual workers, be it termination of employment or transfer or any other matter be determined by recourse to the grievance redressal committee and then only to other dispute settlement mechanisms like arbitration, conciliation and judicial recourses. This may

\textsuperscript{30} For instance, See *Central Silk Board, GRIEVANCE REDRESSAL MECHANISM*, available at http://indiansilk.kar.nic.in/rti/CO/Grievance_redressal_Mechanism(item-xvii).pdf (last visited 31\textsuperscript{st} January, 2008).


\textsuperscript{32} Ibid. at Para 6.80.
also lead one to conclude that such mechanism seeks to remove the workload of labour courts and other mechanisms and in turn provides for a speedy settlement of disputes to the aggrieved worker.

Now let us assume a situation that a trade union represents a particular claim to the employers and achieves a settlement in the issue. However, after such a settlement, there are certain individuals having a grievance against the order. The question then arises as to whether there is any remedy for these individuals under the existing legal mechanism. This question was answered by the Court in *AR Brahme v. Gujarat Urja Vikas Nigam Ltd.*\(^{33}\) where it was contended that the established principle of law in respect of collective bargaining dictates that the settlement arrived at between the parties is binding upon all the workers irrespective of their individual grievance. The fundamental principle in the regard is that the unions would take care of the majority workers and it will work for their betterment.\(^{34}\) The Court however, did not accept this contention and stated that the aggrieved individuals have a right under established principles of labour law to have their grievances addressed. Thus a certain precedence was given to individual grievances by the Court.

In *Chairman, State Bank of India v. All Orissa State Bank Officers Association*\(^{35}\), the Supreme Court held that there is no common law right of a trade union to represent its members, whether for purposes of collective bargaining or individual grievances of members. On general principles of equity, justice and fair play it was held that minority groups and individuals should also be afforded an opportunity of ventilating their grievances in a given situation and merely because the majority union is representing a claim the rights of other minority and individuals cannot be left out.\(^{36}\)

The above cases that have been decided off late point out to the fact that more and more the role of the individual is being recognized by the Courts in labour disputes. Thus, even though Section 9-C of the Industrial Disputes Act, 1947 has not yet been enforced, the Courts do have a stand on this issue and are considering individual grievances.

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\(^{36}\) Ibid at para 12.
CONCLUSION

We have seen in the earlier chapters that increasingly the courts are recognizing the role of the individual in labour disputes. This is a shift from the traditional form of collective bargaining and seeks to take further the notions of social justice and social equity enshrined in the Constitution of India and labour statutes.\(^{37}\) However, it is submitted that for these ideals to be given full force, Section 9-C of the Industrial Disputes Act, 1947 must be brought into force thus not only giving judicial sanction but also statutory sanction to the rights of the individuals to have a forum to address their grievances.
