CHAPTER - 4 -

METHODS FOR SETTLEMENT OF INDUSTRIAL DISPUTES

4.1. SETTLEMENT OF INDUSTRIAL DISPUTES WITHOUT INFLUENCE OF THE STATE

4.2. SETTLEMENT OF INDUSTRIAL DISPUTES UNDER THE INFLUENCE OF THE STATE

METHODS FOR SETTLEMENT OF INDUSTRIAL DISPUTES:

Industrial peace is of vital importance for increasing industrial production and for securing economic prosperity. Industrial disputes disturb the tranquility and benefit nobody. Therefore an elaborate machinery is needed to bring about its amicable settlement. There are two ways in which the basic parties to an industrial dispute i.e. the employer and the employees can settle their disputes.

4. 1) Settlement of Disputes without Influence of the State :

i) Collective bargaining
and

ii) Voluntary arbitration ;

are the two ways in this category for settling Industrial disputes.

i) Collective Bargaing :

Collective bargaining is discovered to be the most effective way of ensuring peace and avoiding conflict in industry or establishment. The discovery was made gradually and after a good deal suffering on the part of workers. Employers in many countries have generally preferred it to other methods of settling industrial disputes. In simple terms ' the process of collective bargaining is a method by which management and labour may explore each others problems and view points and develop a framework of employment relations

8608

within which both may carry on their daily association in a spirit of co-operative goodwill and for their mutual benefit"[1] The collective bargaining is therefore, used to describe the procedure whereby employers must reach agreement about wage rate and basic conditions of labour with trade unions instead of with individual workers.

Collective bargaining implies the following steps :-

i) Presentation in a collective manner to the employer their demands and grievances by the employees,

ii) Discussions and negotiations on the basis of mutual give and take for settling the grievances and fulfilling the demands,

iii) In the event of failure of negotiations, a likely resort to strike or lockout to force the recalcitrant party to come to terms,

iv) Signing of a formal or an informal under standing when negotiations result in mutual satisfaction.

Collective bargaining would result in the mutual benefits to both the parties. Collective bargaining gives good results when both parties are equally strong.

ii) Voluntary Arbitration :

The second way in which the parties can settle disputes without any state's interference is voluntary arbitration. When

---

1 Industrial Relations Department of the National Association of the Manufacturers - "Collective Bargaining: A Management Guide"

the disputent partieis feel that mutual negotiations will not succeed and realise the futility and wastefulness of strikes and lockouts, may decide to submit the dispute to a neutral person or a group of persons for arbitration. Arbitration is said to be voluntary when both parties to the dispute, of their own free will, agree to have their differences settled by an outsider,without any compulsion provided by law or otherwise. At the time of submitting a dispute to arbitration, the parties may agree in advance to abide by the award of the arbitrator or reserve their right to accept or reject the award when it comes.

Arbitration is a means of securing an award on a conflicting issue by reference to a third party. The main object of arbitration is to unite the two conflicting groups in industry in order to avoid interruption in production,mutual distrust and such other evils. The neutral person(Arbitrator) hears the parties and gives his award which may be or may not be binding on them. The main object of arbitration is adjudication and hence there is no place for compromise in awards though the parties are at liberty to do so. An arbitrator enforces his own view point on the conflicting parties and the opinions of the disputants are not given any predominance.

Some form of arbitration for dealing with the industrial disputes exists practically in all countries. In India the Industrial Disputes Act,1938 and Bombay Industrial Act, 1946 recognised voluntary arbitration as a method along

with others for the settlement of industrial disputes. An amendment of Industrial Disputes Act, 1947, provides for joint references of disputes to arbitration. Again the Industrial Truce Resolution, 1962 emphasied voluntary arbitration and specified certain items which could be conveniently brought under its purview . These include complaints pertaining to dismissal, discharge,victimization and retrenchment of individual workmen.

4. 2) Settlement of Disputes under the Influence of the State:-

Interruptions in production because of strikes and lockouts cause untold inconvenience and loss of economic welfare to the people in general,especially when the supply of essential goods and services is stopped. The changing nature of strikes and lockouts involving entire industries has further strengthened the need for intervention by the state in the settlement of industrial disputes. The underdeveloped countries which have launched upon vast programmes of economic development and have adopted planning,find that they cannot afford frequent interruptions in production. Therefore there is a growing tendency on the part of the state to intervene and to seek to promote peaceful ways of settling industrial disputes in both the developed and underdeveloped countries.

The most common ways in which the state intervention takes place are the following :-

i) Compulsory Establishment of Bipartite Committees:-

It is known that apart from such issues of conflict as wages and hours of work, bonus, pensions, gratuity etc., there are many other industrial grievances which, if allowed to accumulate, grow into big industrial disputes. Therefore state has passed enactments requiring the establishment of bipartite committees consisting of the representatives of workers and the employer at the plant or industry level. The bipartite committees are given the power to settle the differences between the workers and employers as soon as they appear and thereby they prevent them from growing into big conflagrations.

On the basis of the recommendations of the whitey committee, Joint Industrial Councils, District Councils and Works Committees were set up in Great Britain, Similarly in India, The Industrial Disputes Act, 1947, provides for the compulsory formation of Works Committees in industrial establishments employing 100 or more persons. The Works Committees consist of representatives of the workers and employers and are charged with the responsibility " to promote measures for securing and preserving amity and good relations between the employer and workmen and to that end, to comment upon matters of their common interest and endeavour to compose any material difference of opinion in respect of such matters". The relevant rules framed by the Central Government under this Act lay down the details concerning the size of Works

Committee, the selection of workers' representatives, terms of office, facilities for meeting, etc. State government have framed similar rules requiring the formation of Works Committees in different industries.

ii) Establishment of Compulsory Collective Bargaining :

The state may also force the workers and employers to enter into formal collective bargaining through their representatives. The idea behind such a policy is to force the parties to seek to settle their differences through mutual negotiations and discussions before they decide to resort to strikes or lockouts. Where the parties themselves have set up a machinery for collective bargaining and negotiation, the imposition of collective bargaining by the state become unnecessary. But if either or both the parties resist the establishment of collective bargaining and the state feels that collective bargaining helps the peaceful and democratic conduct of industrial relations, it may impose collective bargaining compulsory. It was in this frame of mind that the Federal Government of U.S.A. under president Roosevelt enacted the National Labour Relations Act, 1935, popularly known as the Wagner Act. In India there is no such enactments.

iii) Conciliation and Arbitration :

The third method used by the state for promoting peaceful settlement of industrial disputes is the provision of

conciliation and mediation services. There is no essential difference between conciliation and mediation and the two terms are used interchangeably, though some people tend to differentiate between the two, on the basis of the active role played by the third person. To some, conciliator is more active and more intervening than the mediator who is said to perform a " go-messanger" service.

(A) Voluntary Conciliation and Mediation :

Mutual aegotiations may not be successful in resolving industrial disputes. In that case efforts are made with the help of an outside third party to reach conplete understanding between the parties to a dispute. This is known as conciliation. Conciliation is the midlest form of the third party intervention. It is not a substitute for collective bargaining but an extention of it. Therefore , Industrial conciliation has been rightly described as assisted bargaining".[2] Conciliation is a method of helping the parties to reach an agreement by themselves with the help of an impartial outsider.

Under the method of voluntary conciliation and mediation, the state sets up a conciliation machinery consisting of personnel trained in the art of conciliating disputes. Whenever the parties feel that the conciliator may help them in resolving their dispute or in breaking a

---

2 Brissenden, P.F.: Settlement of Labour Disputes in Australia, New-Zealand and the U.S.A., (Honululu : Industrial Relations Centre, University of Hawail, 1963.)

deadlock, they may call upon the services of the conciliation machinery. The State provides the services without imposing any obligations on the disputants to use it. Sometimes, a conciliation service is empowered to be a little more active. The conciliator may inform the parties that his services are available and also request them to keep him informed of the developments in their negotiations. The aim of the conciliator is to break the deadlock, if any, explain the stand and view-points of one party to the others, convey messages and generally keep the negotiations going. Suggestions may come from the conciliator or the mediator, but the parties are free to accept or reject them.

(B) Compulsory Conciliation and Mediation :

In many countries the State does not rest content with the mere creation of a conciliation service and making it available to the parties. The state goes a step further, it imposes an obligation on the parties to submit their dispute to the conciliation service and makes it a duly of the latter to seek to conciliate the dispute Meanwhile the State requires the parties to refrain from causing any work stoppage for the purpose of resolving the dispute so long as the conciliation proceeding is going on. Generally, there is a time limit for the conciliators and mediators to conclude their efforts at conciliation. If, at the end of the conciliation proceeding, the parties fail to settle their dispute, they are free to go on a strike or a lockout, but the State may further pursuade

the parties and use other methods for bringing about a peaceful settlement of disputes.

In India both voluntary and compulsory types of conciliation are in existance.

iv) Compulsory Investigation :

Another method of intervention by the State in the settlement of industrial disputes is compulsory investigation of the implications of a particular dispute. Many of the governments have assumed power under laws relating to industrial relations, to set up a machinery to investigate into any dispute. The purpose of appointment of a Court of Inquiry is essentially to find out the relevant facts and issues involved and to give them wide publicity. So that the pressure of public opinion may force the recalcitrant party to give up its obstinate attitude. If the issues are brought to the knowledge of the public, the parties concerned may develop a resonable and accommodative frame of mind. They primary sanction behind the effectiveness of the reports of such inquires comes from the pressure of enlightened public opinion.

The second purpose behind the appointment of a Court or Board of Inquiry, is to provide a cooling off period to the parties concerned so that they could reconsider their respective stands, realise the implications of their steps and if possible, settle their disputes peacefully.

In India, under the Section 6 of the Industrial Disputes Act, 1947, both the central and State Governments

have the power to constitute a Court of Inquiry for "enquiring into any matter, appearing to be connected with or relevant to an industrial dispute". The Court of Inquiry has the same power as are vested in Civil Court under the Code of Civil Procedure in respect of -

(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

and

(d) in respect of matters prescribed under relevant rules.

v) Compulsory Arbitration :

In spite of the pressures and inducements by the State, the parties still may prefer to resort to strikes or lockouts to settle their disputes. In the opinion of the Government such strikes and lockouts may appear to be injurious to national interests and may cause irreparable damages. Under such conditions, the Government may decide to refer the dispute to arbitration and force the parties to abide by the award of the arbitrator and of the same time prohibite the parties from causing work stoppages. This means imposing compulsory arbitration or what is also known as adjudication. The main idea behind the adjudication or compulsory arbitration is to

maintain industrial peace, by requiring the parties to refrain from causing work stoppages and providing a way for settling the dispute.

The Industrial Disputes Act, 1947, provides for three types of adjudication authorities for the adjudication of industrial disputes namely - Labour Court, Tribunal and National Tribunal.

The Labour Court and Tribunal can be established both by the central and state Governments, but the National Tribunal is set up only by the Central Government, to adjudicate such disputes, as involve any question of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by them.

The Labour Court is intended to adjudicate them as relate to the propriety or legality of an order passed by the employer under the standing orders, discharge or dismissal of workmen, legality or otherwise of a strike or lockout. The Tribunal and National Tribunal generally deal with such subject matters as wages, bonus, profit sharing, rationalisation, allowances, hours of work, provident fund, gratuity etc. Strikes and lockouts are prohibited during the pendency of the proceedings before any of the adjudication authorities and two months after the conclusion of such proceedings and during any period in which an award is in operation in respect of any matter covered by the award. However the use of compulsory

adjudication has raised controversies in India and opinions are widely divided, as to its utility and efficacy in maintaining industrial peace and securing to the workers their just demands.

..