CHAPTER - I

CREATION, GROWTH AND COMPOSITION OF LABOUR ADJUDICATORY BODIES IN JAMMU AND KASHMIR STATE
The reasons for the establishment and growth of labour adjudicatory bodies for settling employer-employee disputes are by and large the same as actuated the creation of varied and multitudinous administrative tribunals in recent times. Administrative tribunals are a most remarkable phenomenon of the 20th century. Two factors mainly account for this development. First, stupendous
government. Second, changeover from the concept of laissez
faire state to social welfare state. A social welfare state
has necessarily to engage itself in variegated welfare
programmes. For carrying out this task it has to enact
welfare and regulatory legislation on a wide scale. Under
the new legislation numerous claims and controversies of
people of small means need to be decided quickly, inexpensively
and informally. Ordinary judicial courts were unsuitable
to decide new justiciable issues because of various reasons.
Their mode of functioning has been slow, expensive and formal.
Between the initiation of a claim and its final disposal
many years need to be spent before a court. Elaborate and
costly court procedure was manifestly contradictory of
avowed object of deciding tiny claims and entitlements under
newly enacted welfare laws speedily and cheaply. Undoubtedly,
the need was for more amenable and flexible bodies for
implementing welfare schemes. One noted authority on
tribunals has eloquently described this position.

"... What is needed above all else is a cheap and
speedy settlement of disputes. For these cases
we do not want a Rolls-Royce system of justice...
If the average claim to benefit is less than £ 10
we do not want a judge on a pensionable salary of
over £ 12,000 a year... to decide the claim. Nor
do we want to wait for years to elapse between
the making of the claim and the arrival at a
final decision..." 6

Further, the courts have a long inherited practice
of interpreting statutes in literal fashion. This approach
was antithetical to the flexibility which was required to interpret social legislation. The predicament of judicial courts was further compounded by the doctrine of stare decisis. The judges ought to follow the precedents of their predecessors in similar cases, even though the earlier decisions require reconsideration. Besides, legislators have innate apprehension, whether well founded or not, that social policies and ends envisaged in its diverse laws might be thwarted by the ordinary courts in their exuberance to protect rights of the individual. In the changed context, individual interest has perforce to be subordinated to the public weal.

Another lacuna in the courts to deal with administrative litigation was general character of their jurisdiction and consequent want of special expertise and experience to dispose of cases requiring special knowledge. A variety of new claims and issues are desirably to be disposed of by bodies having special knowledge and skills in different fields. Above all, administrative litigation was of infinity unmanageable magnitude. If all this litigatory work had been assigned to the judicial courts, they would have indubitably crumbled under its weight. Administrative adjudicatory bodies, however, present a refreshing contrasty picture in relation to judicial courts. They are quite informal in their functioning.
Parties, even though not represented by legal counsel, can put forth their viewpoints unhesitatingly and without fear. There is no court room tense, formal and frightening atmosphere. These bodies have also the advantage of expert knowledge in the concerned fields. Even where the adjudicating authorities are not expert, in the course of time they build up valuable store of expertise by continuously deciding cases or a particular nature. What is more important, the procedure adopted by adjudicatory bodies is far more flexible, speedy, simple and accessible. Law Commission of India has also tersely described the reasons for the establishment of tribunals in modern times:

"... It may be that in view of certain inherent advantages like speed, cheapness, procedural simplicity and availability of special knowledge in extra-judicial tribunals, these may be useful as a supplementary system (supplementary to the system of traditional hierarchy of judicial courts)...."

Besides these causes which are common both to the administrative tribunals and labour tribunals, some other factors peculiar to labour management field underlie the creation and growth of labour tribunals and adjudicating bodies in modern democratic industrial societies.

There was a time when worker was easily susceptible to being hired and fired by his employer. Trade Union Organisations were treated as criminal conspiracies by
judicial courts instead of being legitimate institutions to serve the cause of labour. Legislators also did not lag behind in mediating the labour class. They readily accorded legislative sanction to the penal contracts and other devices designed to persecute workers and trade unions. But in modern industrial societies such treatment of labour has become a thing of the past.

With the emergence of the concept of social welfare state, collective bargaining became an accepted device to be resorted to by workers in their organized capacity for ameliorating their conditions of employment. Legislature also gradually started passing labour welfare laws to better the lot of worker and to improve terms and conditions of his service. This followed the dawn of enlightened thinking and appreciation of social need for according fair treatment to the labour in sharing industrial fruits of their services to industry and society. New deal for the labour was warranted by the imperatives of rapidly changing social, economic and industrial conditions in modern state.

A distinguishing feature of labour laws has been that they are invariably imbued with progressive social philosophy. Their underlying spirit unmistakably points to dealing out social justice to the working class. The concept of social justice is founded on the basic ideal of socio-economic equality and its aim is to assist the removal
of socio-economic disparities. Indeed, the concept of social justice has now become such an integral part of industrial law that no system of settling labour management disputes can ignore it while deciding industrial disputes. This naturally required that adjudication of employer-employee issues be not made according to strict law of master and servant; because in any case of industrial adjudication the claims of the employer based on the freedom of contract have to be adjusted with the claims of industrial employees for social justice. Moreover, under the swiftly mounting labour welfare and regulatory legislation, a multitude of justiciable rights of the labour cropped up which needed to be decided quickly and cheaply.

Undoubtedly, judicial courts are not suitable forums to adjudicate upon industrial matters owing to diverse factors. They have been accustomed to dispensing justice according to adversary method. In the employer-employees field courts have long heritage of settling disputes in conformity with the law of master and servant and contract of employment. To incorporate any humanitarian consideration or claims of social justice, as distinct from terms of contract of employment, was incompatible with their conventional frame-work of functioning. Being bound by ordinary law, they proceed on the assumption that they can only enforce existing contracts between the parties and
cannot redraw a contract entered into by the parties. But considerations of fair play and claims of social justice may at times demand not only enforcement of existing contract between the parties but also rewriting them for the parties by the labour adjudicatory forums. Courts are also given to deciding disputes by adopting legalistic and doctrinaire approach besides being tardy in turning out their decisions.

Judicial courts suffer from other inhibitions as well which render them unsuitable for adjudicating on labour disputes. Working class generally suspects the impartiality and integrity of courts in dealing with labour matters. This aversion for the courts is the reflection of times when courts lent unstinted support for enforcing anti-labour public policies which did not recognize labour's right to act in concert. Curiously, this belief of the working class still persists, though conscious pro-labour policies of modern government and greatly transformed legal attitudes and values towards worker are a total antipode of the old antipathetic treatment of the labour. In addition, workers and union leaders harbour the feeling that judges mostly come from propertied classes to which employers belong. As a result they may not deliver justice to the workers due to their social background. It is also feared that courts are not properly equipped to deal with labour disputes which emanate from specific legal and economic relationship and presents
sensitive problems of human relations. Parties involved in
the disputes are on unequal social and economic footing.
Generalist judges are not particularly familiar with labour
matters and complexities besetting employer-worker and
employer-union relationship as well as the needs of the
industry, worker, employer and national economy. Consequently,
they are not deemed fit to handle labour issues with requisite
special legal, economic and social expertise. Besides
tense atmosphere of the courts does not permit frank and
informal discussion necessary for hammering out mutual
agreements which are acceptable to the parties, and more
congenial for bringing about durable industrial peace. Above
all, labour management relations arena is highly sensitive
and inflammatory. Status quo obtaining at a particular period
is of highly evanescent and elusive nature. Indefinite
deferring or delay in the determination of rights of workmen
(which will inevitably happen if industrial matters are to be
decided by judiciary) may result in industrial unrest and
interruption of work which are disastrous to the interest
of both parties as well as the community.

Finally, the process of collective bargaining
(mutual negotiations) as also conciliation and voluntary
arbitration, is intrinsically incapable of determining all
the disputes which conceivably can arise in the industrial
relations sphere. Because collective bargaining (mutual
negotiations) and other voluntary and neutral settlement procedures like conciliation and voluntary arbitration are afflicted by certain inherent shortcomings and this also partly contributed to the development of mandatory and prompt adjudicatory procedures in the labour field. It has happened even in countries, for instance, America which greatly fondle and relish the peaceable settlement of labour issues in extra-judicial proceedings.27 Thus, the dispute between a union and its member or between two rival unions traverses the area of collective bargaining. Nor are the neutral agencies easily available to adjust such disputes. The same very difficulty will be encountered in settling disputes through mutual negotiations and conciliation in industries which do not have collective contracts or do not provide for settlement procedures.28 What is more important, in many a case, as it were, the process of negotiation cannot be stretched beyond a particular point in case of disagreement between the parties and conciliatory or voluntary procedures fail to resolve a deadlock. This deadlock point may be anywhere between the initiation of bargaining process and resort to economic sanctions.29 Furthermore, an individual worker, not being member of a union, or workers coming from an unorganized sector would be in a more serious predicament when in dispute with his employer. Bargaining process lays bare its hollowness for him as he is in a weak bargaining position.
in contrast to his economically mighty employer. Further, unlike the decisions of courts and adjudicating bodies, which are attended with a degree of legal sanctity and inviolability, decisions arrived at as a result of mutual negotiations are not self-enforcing. Therefore, difficulty of their enforcement still remains if they are flouted subsequently or if there is difference on the interpretation of terms of any such agreement. It may at times compel the parties to resort to economic sanctions. Provision for settling such differences before a labour tribunal or industrial court could avert recourse to economic sanctions. Moreover, in countries like India, an additional reason for having labour adjudicatory bodies to resolve employer-employee issues is that the climate for the operation of collective bargaining institution is not wholly propitious because a significant portion of labour is still unorganized and organized labour has been grievously affected by bitter inter-union rivalries and illiteracy.

**Growth of Labour Adjudicatory Bodies in India**

In India creation and growth of labour adjudicatory bodies had been slow and haphazard till Independence, as was the case with the enactment of labour welfare laws. It was so inspite of the recommendations of various commissions and conferences regarding betterment and regulation of working conditions of labour. The
reasons for this are not far to seek. The concepts of laissez faire and freedom of contract were ruling roost during 19th century and in early part of 20th century. Foreign rule also partly contributed to the neglect of the working force.

In 1860, the State for the first time by enacting the Employees and Workmen's Act, 1860, entered the arena of industrial relations for the determination of labour disputes by compulsory adjudicative method in India. This Act provided for the summary disposal of disputes relating to wages by magistrates. In 1881, the Factory Act was passed. This Act went through the process of several amendments till it was finally replaced by the present Factories Act, 1948. This Act, provided for the discharge of certain functions in quasi-judicial manner (as for example granting or refusing permission to the use of a site for factory or licencing of a factory, etc.). Provision was also made for hearing appeals by the state government and Central Government in certain cases.\(^32\)

The Workmen's Compensation Act, 1923, is yet another piece of early labour legislation that provided for the utilization of adjudicatory procedure for settling disputed claims to compensation of workmen.\(^33\) The Workmen's Compensation Act was followed by the Payment of Wages Act, 1936
in respect of using adjudicatory method for settling disputes. Under the Payment of Wages Act, claims of delayed wages or illegal deductions of wages were required to be decided through adjudication. The Bombay Industrial Disputes Act, 1938, is the precursor of the wielding of labour adjudication process in the industrial relations sphere on a large scale. Under the provisions of this statute, the Government of Bombay set up an industrial court for the resolution of industrial disputes. This measure was incorporated in Rule 81-A of the Defence of India Rules during the Second World War to ensure uninterrupted industrial peace during the war period and consequent unstinted flow of production to further war effort. Rule 81-A was applied on all India level. This Rule was to lapse on 1st October, 1946, but since the government found it handy in checking industrial unrest, it was retained intact by the Emergency Power (Continuance) Ordinance, 1946. Ultimately the essential principles of Rule 81-A were embodied in the Industrial Disputes Act, 1947, thereby, according permanency to the provision for settling industrial disputes by compulsory adjudication. The Industrial Disputes Act provided for establishment of industrial tribunals for adjudicating upon industrial disputes. Subsequently, Industrial Disputes Act, 1950 was enacted for setting up Labour Appellate Tribunal to hear appeals from the awards of industrial
tribunals. However, Labour Appellate Tribunal was abolished in 1956 on account of its dilatory and expensive method of working which was considered to be inconsistent with the object of speedy settlement of disputes. In 1956, an amendment to the Industrial Disputes Act provided for constitution of labour courts.

Since Independence, with the rapid pace of industrialization in the country, the number of labour statutes providing for determination of labour issues and grievances through adjudicatory process has been constantly swelling. Some of these labour enactments are: Industrial Employment (Standing Orders) Act, 1946; Minimum Wages Act, 1948; Employees State Insurance Act, 1948; Maternity Benefit Act, 1961; Payment of Gratuity Act, 1972; Equal Remuneration Act, 1976.

Growth of Labour Adjudicatory Bodies in Jammu & Kashmir State

Growth of labour adjudicatory bodies as well as labour laws in Jammu & Kashmir state is relatively slow compared to the rest of the country. Two factors, it would seem, mainly account for this: first, industrial backwardness of the state, though of late, the state has sped up the pace of industrialisation; second, special procedure prescribed in Article 370 of the Constitution of India for the operation of Central laws in the state. Central labour laws are not
Operable in the state of their own force on account of Article 370. Therefore, a Central labour law in order to be applicable to the state must undergo the procedure contained in Article 370. Needless to mention, the state was rather slow in applying Central labour laws to the state.

Jammu & Kashmir State Labour Regulation 1909 was the first statutory measure which inducted adjudicatory process in the labour management field in the state for the first time. This regulation provided for a separate adjudicatory machinery for determining disputes of labour employed in certain public undertakings. Under the Regulation, the Maharaja was empowered to authorize a Magistrate or other person exercising the powers of Magistrate to decide disputes of labour speedily and cheaply.45

The Workmen’s Compensation Act was enacted in the State in 1943. It was the first labour statute in the state which applied the adjudicatory process for the settlement of claims of workers or their legal dependents relating to compensation in the modern sense. Commissioner is the adjudicatory authority under the Act. In 1970 Central Workmen’s Compensation Act, 1924 was adopted in the state which replaced State’s Workmen’s Compensation Act.46 Now the Commissioner discharges his adjudicatory functions under the Central Act. State’s Industrial Disputes Act is the other labour enactment that introduced adjudicatory process in the early stages in the state.
Enacted in 1950, this Act provided for the establishment of industrial tribunals to adjudicate upon industrial disputes. At present, Central Industrial Disputes Act, 1947 is operating in the State. It was extended to the state in 1970. 47

Under this Act, a labour court and an industrial tribunal decide the industrial disputes in the state referred to them by the government. 48 Even though the law of industrial disputes was enacted in the state in 1950 requiring setting up of separate adjudicatory machinery for the adjudication of industrial disputes, separate labour court-cum-industrial tribunal came to be established in the state only as late as 1972. The Industrial Disputes Act, 1950, has been followed by the Payment of Wages Act, 1956 in adopting adjudicatory process in the industrial relations field. Interestingly, the Payment of Wages Act was enacted in the state in 1956 after the elapse of twenty years since its enactment at the Centre. The Authority appointed under the Payment of Wages Act adjudicates upon cases of illegal deductions of wages or non-payment of wages. 49 Presently, the Central Payment of Wages Act operates in the state. 50 Authority decides wage disputes under the Central Act now. Jammu & Kashmir Industrial Employment (Standing Orders) Act, 1960, also requires discharge of certain functions by following the adjudicatory procedure. These functions consist in certification of standing orders by the Certifying Officer.
which lay down conditions of employment in an industrial establishment. Industrial Employment (Standing Orders) Act was enacted in the state around sixteen years after its enactment at the Centre. In 1970, the Central Industrial Employment (Standing Orders) Act, 1946 was made applicable to the state, which is in operation at present. Certifying Officer functions under the Central Act. In 1960 another labour statute, namely, the Shops and Establishments Act was enacted. It was later repealed by the Jammu & Kashmir Shops and Establishments Act, 1966. Under the provisions of this Act, Labour Commissioner decides the dispute between the Inspector and an employer regarding assigning of one category or the other to an establishment at the time of registration. Labour Commissioner takes cognizance of the matter on the reference being made by the Inspector. Labour Commissioner decides this matter in accordance with quasi-judicial procedure. Under the Act, Deputy Labour Commissioner hears appeals from the orders of Inspector prohibiting the use of building, plants, ways, etc. on the ground of posing imminent danger to human life or safety. Besides, section 30 of the Act empowers the government by a notification to apply the provisions of the Payment of Wages Act to the establishments and employees covered by the Shops and Establishment Act. It is therefore, clear that on the application of the Payment of Wages Act, the Authority under that Act may decide wage claims of the
employees governed under the shops and establishment Act. However, to date no such notification has been issued. Further, Section 56 of the Shops and Establishment Act applies the existing provisions of Workmen’s Compensation Act and the rules made under it to every employee of a shop or commercial establishment. Therefore, by virtue of Section 56 the Commissioner is entitled to entertain compensation claims from the employees of shops and commercial establishments.

Thus from the above, it becomes plain that the pace of utilization of adjudicatory procedures for settlement of labour management issues was tardy and sporadic in the State till the advent of 1970s. It was not surprising that important labour statutes such as the Minimum Wages Act, the Employee’s State Insurance Act, the Payment of Gratuity Act, etc. which contain adjudicatory procedures for the determination of labour claims under them were not existing in the state till 1970. In 1970, a major development occurred. This related to the extension of the Central Labour Laws to the state. Central Labour Laws (Extension to J&K) Act, 1970 was passed. By this Act a number of Central Labour statutes were applied to the state. Apart from the Industrial Disputes Act, the Payment of Wages Act and the Workmen’s Compensation Act, which have been referred to above, other laws which provide for settlement of grievances of labour through

Under the Minimum Wages Act, the Authority is invested with adjudicatory functions comprising claims arising from payment of less than minimum rates of wages to the employees. Although, this statute was adopted in the state in 1970, its provisions have not been implemented so far. Consequently, the Authority under this Act, does not perform any adjudicatory functions. At the moment, however, a schedule is being prepared to specify the industries to which the Act is to be applied. The Employee's State Insurance Act, 1948 contains provision for setting up two adjudicatory forums - Medical Appeal Tribunal which is to hear appeals from the determinations of the Medical Board respecting disablement questions and Employee's Insurance Court which is intended to hear appeals from the decisions of Medical Appeal Tribunal besides deciding questions about matters specified in Section 75 (1) and (2) of the Act. Like the Minimum Wages Act, the implementation of the Employee's State Insurance Act is also hanging fire since 1970. As a result, no adjudicatory body functions as yet in the state under this Act. Working Journalists (Conditions of Service) and Miscellaneous
provisions Act, 1955, which has been applied to the state by the Central Labour Laws (Extension to the J&K) Act 1970, assigns adjudicatory functions relating to fixation or revision of wage rates for working journalists to the Wage Board to be constituted under it. The said Wage Board is empowered to exercise the powers of an Industrial Tribunal constituted under the Industrial Disputes Act, 1947 while discharging its functions. Under the Maternity Benefit Act, 1961, prescribed authority (Labour Commissioner is prescribed authority) acts in adjudicating manner while hearing appeals from the order of employer which deprives a woman of maternity benefit or medical bonus in violation of the provisions of the Act. Labour Commissioner also hears appeals from the order of the Inspector which obliges an employer or manager to pay maternity benefit or any other amount due against him under the Act to the aggrieved woman, or nominee or legal heir. Although, the Motor Transport Workers Act, 1961, envisages the constitution of adjudicatory machinery, it has not been done so far. This machinery is to consist of an appellate authority for entertaining appeals from the orders of Inspector and Chief Inspector under the Act. But Section 24 of the Act applies the Payment of Wages Act, 1936, to motor transport workers, thereby, enabling them to approach the Authority under the Payment of Wages Act for the determination of wage disputes involving illegal deductions of or delay in
payment of wages. The Payment of Gratuity Act, 1972 is the other Central Labour Statute operating in the state that contemplates determination of gratuity disputes through adjudicating process. Two adjudicatory authorities, namely, Controlling Authority (Assistant Labour Commissioner) and Appellate Authority (Deputy Labour Commissioner) functions under this statute in the state. Controlling Authority determines the disputed amount of gratuity payable to an employee under the Act and disputes about admissibility of any claim of an employee for payment of gratuity as well as the disputes as to a person's right to receive gratuity. Deputy Labour Commissioner hears appeals from the decisions of Controlling Authority. It should be noted that the Payment of Gratuity Act is one of the very few labour statutes under which in practice adjudicating process operates in the state. Finally, the Equal Remuneration Act, 1976, which is a Central law and applicable to the state of J&K, provides yet another instance of operation of adjudicatory process in the state's labour field. Under this Act, both Deputy Labour Commissioner and Assistant Labour Commissioner have been vested with adjudicatory functions. These functions consist in hearing complaints about contraventions of the provisions of the Act and deciding claims of non-payment of equal wages to men and women for work of a similar nature. Authority to be specified by the government in this behalf.
is to hear appeals from decisions of Assistant and Deputy Labour Commissioners. However, no such authority has been specified by State Government to date.

Besides these labour adjudicatory bodies operating in the state of Jammu & Kashmir there are a number of authorities under various labour statutes which exercise quasi-judicial functions with regard to registration of establishment and issue and revocation, etc., of licences.

Under the Boiler’s Act, 1934, (a State enactment), Chief Inspector grants, refuses, renews, revokes, etc. (on the report of the inspector) a registration certificate for the use of a boiler. Appeals from the decisions of Inspector lie to the Chief Inspector and from the original and appellate orders of the Chief Inspector to the appellate authority appointed by the government under the Act. Under the Factories Act, 1943 both Chief Inspector of Factories and government exercise quasi-judicial functions while granting or refusing permission to the use of a site for construction or extension of a factory or registration or licensing of a factory. The order of the Chief Inspector is appealable to the State Government and that of the State Government to the Central Government. The Existing Factories Act, 1943 is a Central law. It was extended to the state by Central Labour Laws (Extension of J&K) Act, 1970. It replaced the
state Factories Act, 1956. First factories legislation was enacted in the state in 1942. Under the Trade Union Act, 1926, Registrar (Labour Commissioner) acts in quasi-judicial manner in respect of granting, refusing, cancelling and withdrawing a certificate of registration. Decisions of Registrar regarding these matters are appealable to the District and Sessions Judge. The existing Central Trade Union Act, 1926 repealed the State Trade Union Act, 1950. Under Contract Labour (Regulation and Abolition) Act, 1970, Registering Officer (Assistant Labour Commissioner) follows quasi-judicial procedure while registering certain establishments (as for example, an establishment employing contract labour) and revoking registration of the same. Appeal against the order of Registering Officer lies to the Labour Commissioner. Assistant Labour Commissioner, being Licencing Officer under the Act, grants/revokes licences to contractors for engaging labour on contract basis. Appeal from the order of Licencing Officer lies to the Labour Commissioner. Lastly, the Motor Transport (Workers) Act, 1961, empowers the prescribed authority (Labour Commissioner) to issue, renew, etc., a certificate of registering a motor transport undertaking. As stated earlier, the Act refers to making of rules for specifying the authority to hear appeals from the decisions of Labour Commissioner. But it has not been done so far.
Composition and Membership

Composition

The administration of labour laws in J&K state has been entrusted to the Labour Department, J&K Government. The Labour Department has been bifurcated into two branches. One headed by the Labour Commissioner and the other by the Labour Secretary at the administrative level with overall control lying with the Labour Minister. Labour Secretary has hierarchical band of subordinate officers such as Deputy Labour Secretary, Under Secretary, etc., under him to conduct the affairs of the Department. Similarly, Labour Commissioner has a number of subordinate officers like Deputy Labour Commissioner, Assistant Labour Commissioner, Labour Officers, Inspectors for carrying out the assigned functions. Labour Commissioner functions at the state level whereas Deputy Labour Commissioner at the province level (both the provinces of J & K have one Deputy Labour Commissioner each to discharge the various duties assigned to them under different labour enactments). Assistant Labour Commissioner, Labour Officer and Inspector function at the district level.

Both the Labour Commissioner and Labour Secretary belong to the cadre of Indian Administrative Service. They may directly come from Indian Administrative Service or join the cadre through departmental promotion. Their service
subject to transfer to other government departments. Deputy Labour Commissioner is Departmental promotee from the rank of Assistant Labour Commissioner. Assistant Labour Commissioner is recruited through competitive test held by the State Public Service Commission in which Labour Secretary and an expert in labour affairs participate. Their services are transferable within the department to different districts of the state. Labour officers and Inspectors belong to the lower cadre of the state labour service.

Of more relevance and importance to the present study are Labour Commissioner, Deputy Labour Commissioner and the Assistant Labour Commissioner, as they are the principal adjudicatory authorities under most of the labour statutes in J&K state. Labour Commissioner is primarily an appellate authority. Deputy Labour Commissioner is both original and appellate adjudicatory authority. Assistant Labour Commissioner is exclusively original adjudicatory authority, and perhaps, the most important adjudicatory functionary in the state's labour field.

Membership

As regards the membership of labour adjudicatory bodies under three labour enactments - Industrial Disputes Act, Workmen's Compensation Act and Payment of Wages Act - which are the subject of present investigation, labour adjudicating
bodies under the Industrial Disputes Act (Labour Court and Industrial Tribunal) are manned by persons with judicial experience, while those under the Workmen's Compensation Act and the Payment of Wages Act are operated by the officers of the Labour Department having no judicial experience or legal qualifications. Thus in Jammu & Kashmir, according to the prevalent practice, an acting District Judge or Additional District Judge is appointed as the presiding Officer of the Labour Court and Industrial Tribunal. The same person presides over the proceedings of Labour Court and Industrial Tribunal. Since the Presiding Officer of the Labour Court and Industrial Tribunal is from the State judicial service, he is subject to transfer back in the parent department.

Labour Court and Industrial Tribunal function under the control and supervision of the High Court. In J & K, the statutory provisions requiring the appointment of two assessors for advising the Industrial Tribunals in a proceeding have never been utilized. At present, there is only one Labour Court-cum-Industrial Tribunal in the State. Its normal place of working is in Srinagar. It holds monthly camp for one week or so (depending upon the case-load) at Jammu to adjudicate upon industrial disputes arising in Jammu province. It ought to be mentioned that the Labour Court-cum-Industrial Tribunal, as it is functioning at present in the state, was constituted only in 1972 though State's Industrial Disputes Act
providing for the establishment of Industrial Tribunal initially and then Labour Courts in a later stage (1956) was enacted as far back as 1950. Before 1972, industrial disputes were referred to a District Judge in whose jurisdiction a dispute arose. Manifestly, the state government committed a grave lapse of inordinate delay in the establishment of separate Labour Court and Industrial Tribunal. A probable cause for this appears to be that the number of industrial disputes arising in the state during 1950's and 1960's was small.

On the other hand, both Deputy Labour Commissioner and the Assistant Labour Commissioner have been designated as authority under the Payment of Wages Act as well as Commissioner under the Workmen's Compensation Act. In actual practice, Assistant Labour Commissioner mostly discharges adjudicatory functions under both the above noted enactments. Deputy Labour Commissioner, as it is, act as authority and Commissioner under the Payment of Wages Act and Workmen's Compensation Act respectively at the province level. However, it is not clear as to why these two officers of the Labour Department (one subordinate to the other) have been invested with the concurrent jurisdiction. At times, it can become source of confusion and clash in regard to jurisdictions of these two officers and, consequently, lead to delay in the disposal
of a claim in question. This is not a far-fetched idea but a reality.81

J&K Labour Service (Gazetted Rules) do not prescribe any legal qualifications for making the appointment of Assistant Labour Commissioner or Deputy Labour Commissioner. Requisite qualifications as specified for appointing these officers are that candidate must be a graduate and have a Master's degree in Social and Labour Welfare. According to the prevailing practice in the state, these qualifications are not being complied with. While some of the Assistant Labour Commissioners possess the requisite qualifications laid down for their recruitment, others do not possess even minimum qualifications for the appointment.82

Assistant and Deputy Labour Commissioners have been appointed as adjudicatory authorities under the Payment of Wages Act and the Workmen's Compensation Act only after 1972. Previously, Deputy Commissioner of the concerned district was acting as authority under the Payment of Wages Act as well as Commissioner under the Workmen's Compensation Act. This was inspite of the fact that the Workmen's Compensation Act was enacted in the state as early as 1942 and the Payment of Wages Act in 1956. This callousness towards constitution of separate machinery of settling disputes and claims under these two statutes is inexcusable, as these enactments envisaged speedy determination of the labour claims.
Deputy Commissioner being heavily burdened with multifarious responsibilities and duties, could have been hardly a suitable forum for the determination of labour cases.

A word needs to be said concerning the emoluments of labour adjudicatory authorities while discussing composition of these bodies. The emoluments of the Presiding Officers of the Labour Court and Industrial Tribunal are by and large lucrative and to their satisfaction. A newly appointed Presiding Officer of the Labour Court and Industrial Tribunal draws more than rupees 2,000/- depending upon his length of service as District Judge or Additional District Judge. But in striking contrast to this, the lot of adjudicatory authorities under the Payment of Wages Act and the Workmen's Compensation Act is extremely miserable in this regard. Assistant Labour Commissioner has been placed in the grade of ₹.450 - 950 and his starting salary is about ₹.700/- p.m. including all allowances. These emoluments are hardly commensurate with the status and nature of duties entrusted to an adjudicatory authority. This is particularly so in case of an adjudicatory body, like Commissioner for workmen's compensation before whom a claim for compensation involves thousands of rupees. A poorly paid officer may easily fall prey to temptation in such circumstances.
Foot Notes

4. W. A. Robson, op. cit., p. 408.
6. Harry Street, Justice in the Welfare State, 1975 Ed., p. 3, Although above observation has been made in regard to tribunals in England, it has equal relevance for indicating justification for adopting tribunal system in India, as also in other countries, which have adversarial system of dispensation of justice by judicial courts.
12. Report of the Committee, 1957, The Committee aptly described the reasons for the creation of tribunals"...The Committee on Administrative Tribunals and Enquiries has stated the reasons for the establishment of tribunals as follows. Reflection on the general social and economic changes of recent decades convinces us that tribunals as a system for adjudication have come to stay. The tendency for issues arising from legislative schemes to be referred to special tribunals is likely to grow rather than to diminish...tribunals have certain characteristics which often give them advantages over the courts. These are cheapness, accessibility free from technically, expedition and expert knowledge of their particular subject..." pp. 8, 9.
14. National Commission on Labour. Interim Report of the Study Group on Labour Legislation, 1968: pp. 6, 17 & 18. The study group observed thus: (... There was no law for the protection and registration of Trade Unions in 1926. The need for such law was felt in 1921, when in a suit against the Madras textile Labour Union, the High Court of Madras followed common law in England held that to form trade unions amounted to bring parties to an illegal conspiracy..." at p. 6.


18. Indian Oxygen Ltd. vs. Their Workmen, 1969, 1 LLJ, 235(SC).


25. Based on Interviews of the Labour and Union Leaders included in the sample of the present study.


27. Ibid, p. 305.


31. Factory Commission, 1890; Royal Commission Report (1931); Rege Committee (appointed in 1943); Labour Ministers Conferences in 1940, 1941, 1942; Tripartite Bodies; Indian Labour Conference; Standing Labour Committee and Industrial Committees etc., also made deliberations on labour problems: India became member of International Labour Organization in 1919. However, the recommendations of these Commissions and Conferences were not entirely unfruitful as there were certain positive results as well.
32. Factories Act, 1948, ss. 6 & 107.
33. Section 19 of the Workmen's Compensation Act, 1923.
34. Section 15 of the Payment of Wages Act, 1936.
35. Section 7 of the Original Industrial Disputes Act, 1947.
38. Sections 5, 6.
40. ss - 74, 75, 76 & 77.
41. S. 17, 3 & 4.
42. S. 7, (4), 7(8).
43. S. 7, subsections 1 - 7
45. Sections 1 & 2 of the said Regulation.
47. Ibid.
49. See Sec. 15 of Payment of Wages Act, 1936.
51. Industrial Employment (Standing Orders) Act, 1946, Sec. 5.
52. Sec. 6(4) of the Act.
53. Sec. 33-A.
54. Minimum Wages Act, 1948, Sec. 20.
55. Indian Express, Delhi, Ed. October, 8, 1976.
56. The Employees' State Insurance Act, 1948, Sec. 54-A.
57. Ibid, Sec. 74.
58. Sec. 9 of the said Act.
59. Ibid. Sec. 11.
60. Maternity Benefit Act, 1961, Sec. 12(2) (b) and Sec. 17(2); see also Rule 8 (1) of J&K Maternity Benefit Rule, 1974.
61. Motor Transport Workers Act, 1961, Sec. 40(f); J&K Motor Transport Workers Rules, 1972 did not designate or specify the appellate authority for hearing appeal from Inspector or Chief Inspector's Orders.

62. Ibid, Sec. 25.

63. Payment of Gratuity Act, 1972, Sec. 7 (4).

64. Ibid, Subsec. 7.


67. It is well established that grant, refusal and revocation of a licence is a quasi-judicial function. It is more so in view of Article, 19(1)g of the Constitution of India which confers a fundamental right on the citizens to carry on a trade, business etc. See. H.M. Seervai, Constitutional Law of India, II Ed; 891; S.P. Sathe, Administrative Law, Ed. 3rdpp. 46-49.


69. Factories Act, 1949, Sec.6(1)(2); J&K Factories Rules, 1972, Rules, 3,4,5,6 & 7.

70. Ibid, Sec. 6(3), 107.

71. Trade Union Act, 1926, §§ 8,9, & 10.

72. Ibid, Sec. 11.


74. Ibid, 8. 15.

75. Ibid, §§ 13,14.

76. Ibid, 8. 15.

77. Motor Transport Workers Act, 1961, Sec. 3(2).

78. Two notable exceptions are supplied by the Industrial Disputes Act, under which there is separate adjudicatory machinery comprising Labour Court and Industrial Tribunal and by the Employees Insurance Act which also provides for the Constitution of Separate adjudicatory machinery.

79. For the appointment of a person as being the presiding officer of the Labour Court or Industrial Tribunal, he must possess legal qualifications and judicial experience or experience of working as member or Chairman of erstwhile Labour Appellate Tribunal or having served as Presiding Officer of a Labour Court Constituted under the provincial Act for 5 years. The last qualification is applicable in case of Labour Court only. Sections, 7,7(A), of the Industrial Disputes Act, 1947. On the other hand, Workmen's Compensation Act, 1924 or the Rules framed under it are silent concerning the qualifications required for the appointment of Commissioner. But the Payment
of Wages Act, in comparison, appears to require legal qualifications and experience for the appointment of Authority. Sec. 15(1) of the Act which lays down qualifications for the appointment of Authority reads, "The State Government may by notification... appoint a Presiding Officer of any Labour Court or Industrial Tribunal constituted under Industrial Disputes Act, 1947... or any Commissioner for Workmen's Compensation or other officer with experience as a judge of a Civil Court or as a Stipendiary Magistrate to be the authority to hear and decide... claims arising out of deductions from the wages or delay in the payment of wages...".

80. Present Presiding Officer of the Labour Court-cum-Tribunal, Shri, Nehvi, replaced Shri Shri Sirajuddin who went back as Additional District and Sessions Judge, Srinagar.

81. Thus a case, namely, Mohd. Din - vs. Vijay Ram, under the Payment Wages Act is under the process of adjudication before the Authority at Reasi (Tehsil of Udhampur Distt.). Earlier, this case was transferred by the Labour Commissioner before the Deputy Labour Commissioner (Jammu) province. Before the Deputy Labour Commissioner, his jurisdiction to take cognisance of the case was questioned. After elapse of 6 months before Deputy Labour Commissioner, the case was retransferred to Asstt. Labour Commissioner, Reasi.

82. It should be noted that one Assistant Labour Commissioner (serving) is only a matriculate. This is a blatant violation of the relevant rules relating to the appointment of Assistant Labour Commissioner. It is manifestly indicative of the favouritism and political influence which are being brought to bear on making of these appointments. In another case, an Assistant Labour Commissioner (serving) also did not possess the qualifications of Master's degree in Labour and Social Welfares, though he has legal qualifications (law graduate).

83. Two Presiding Officers (one present and one previous) who were interviewed expressed full satisfaction with their emoluments.

84. Asstt. Labour Commissioner of District Doda was allegedly caught red handed while negotiating with a party to a Compensation Claim before him for illegal gratification. However, he has been absolved of this charge by the Trial Court.