5.1 Labour Policy in India

Labour Policy in India has been evolved in response to the specific needs of the situation in relation to industry and the working class and has to suit the requirements of a planned economy. A body of principles and practices have grown up as a product of joint consultation in which representative of government, the working class and the employers have been participating at various levels. The legislative and other measures adopted by Government in this field represent the consensus of opinion of the parties vitally concerned and thus acquire the strength and character of a national policy, operating on a voluntary basis. Joint committees have been set up to assist in the formulation of policies as well as their implementation. (1) The Constitution of India, its Preamble and Directive Principles have provided for evolving a labour policy for the country. The Labour Commission (2) has attempted to sum

1. Third Five Year Plan Text - p. 250.
up the labour policy of our country as follows:

1. Recognition of the State, the custodian of the interests of the community, as the catalyst of 'change' and welfare programmes.

2. Recognition of the right of workers to peaceful direct action if justice is denied to them.

3. Encouragement to mutual settlement, collective bargaining and voluntary arbitration.

4. Intervention by the State in favour of the weaker party to ensure fair treatment to all concerned.

5. Primacy to maintenance of industrial peace.

6. Evolving partnership between the employer and employees in a constructive endeavour to promote the satisfaction of the economic needs of the community in the best possible manner.

7. Ensuring fair wage standards and provision of social security.

8. Co-operation for augmenting production and increasing productivity.


10. Enhancing the status of worker in industry.


From the successive Plan Documents, it could be seen that there is subtle change in emphasis as far as mode of settlement
of dispute is concerned. Legalistic approach is gradually yielding place to voluntary bilateral arrangements. In view of the fact that Pondicherry is now a part of Indian Union and it is bound to fall in line with other parts of the country which would slowly diminish the French model of settlement of labour disputes vis-a-vis maintenance of harmonious industrial relation, an humble attempt is made to find out the drawbacks and demerits in the changing industrial relation at Pondicherry to suggest remedial measures.

5.2 Application of French Laws as Local Laws in Pondicherry

It is said that, if there was an aspect in which the French settlements differed very much from the rest of the Indian sub-continent, it was in the field of law. The penetration of French law was deeper and more pervasive. In fact, it was easier to introduce the French law, which were already in codified form than to introduce English laws, which were required to be moulded first into enactments. The French extended their own laws with certain modifications wherever necessary to the French Overseas Territories, whereas the Britishers had to prepare laws (Enactments) specially for India. The legislative activity in British India was considerably

2. Dr Annoussamy David - Extension of Indian Laws to Pondicherry (C.L.A. - vol. III p. 2).
slowed down after 1930 due to the intensification of the struggle for independence. However, the promulgation of French Acts applicable to Pondicherry continued. Some French Acts were promulgated even after the order dated 11 October 1954 calling the elected representatives to meet at Kijeour to decide on the future fate of Pondicherry. The nature of those Acts shows that their extension was the continuation of a routine process and not an attempt to thrust any special legal measure at the last moment. The result was that the legal fabric of Pondicherry was very similar to that of France, except in the field of personal law, where the Hindu and Mohammedan systems were also recognized. But in practice, there were many inroads even into those systems. Therefore, though a large number of Indian enactments have been extended to Pondicherry, it cannot be said that the law in Pondicherry is in every respect similar to that in the rest of India. There are still large exceptions attributable to several causes. Apart from the usual savings found in the General Clauses Act and reproduced in the Laws of Extension, there are some provisions which specifically saved the pre-existing law. Such saving is found sometimes in the Act itself, as it is in force in India, for instance, in Indian Limitation Act, 1963. Since it was passed after the de-jure merger, it came into force in Pondicherry on 1 January 1964 as

in the rest of the country. But that Act contains a saving clause under Section 29(2) which says:

"Where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed by the schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law".

The question was raised before the High Court of Madras as to whether the Law of Limitation embodied in Code Civil and in some other French Laws could be considered as a local law within the meaning of Limitation Act, 1963.\(^{(1)}\) The de-jure merger of the erstwhile French Indian territory took place on 16 August 1962. As per the provisions proclaimed under the Pondicherry (Administration) Act, 1962,\(^{(2)}\) "All laws in force immediately before the appointed day in the former French Establishments or any part thereof shall continue to be in force in Pondicherry until amended or repealed by a competent legislature or other competent authority". Before the


2.Section 4 of the Pondicherry (Administration) Act, 1962.
Limitation Act, 1963 came into force, the local law prevailing at Pondicherry was the Code Civil and according to which action filed by merchants for goods sold by them particularly to non-merchants shall be extinguished by the lapse of two years. The provisions of local law viz., Code Civil was applied. Thus period of limitation may continue to be governed by French Code Civil unless expressly repealed.

Another interesting aspect that arose due to merger is in respect of some international labour conventions. As per French Law, these conventions would become applicable in metropolitan France after an Act of Parliament ratifying it. It would become applicable to overseas territories by an order of the French Government, subject to its promulgation by another order of the Governor of the territory. By six décrets dated 28 January 1954 the French Government declared applicable to overseas territories six international labour conventions. Those décrets were promulgated by an Arrêté of the Governor of Pondicherry dated 15 March 1954. Those conventions are as follows:

<table>
<thead>
<tr>
<th>Convention No.</th>
<th>Object</th>
<th>Year of convention</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Maternity Protection</td>
<td>1919</td>
</tr>
<tr>
<td>5</td>
<td>Minimum Age (Industry)</td>
<td>1919</td>
</tr>
<tr>
<td>14</td>
<td>Weekly Rest (Industry)</td>
<td>1921</td>
</tr>
</tbody>
</table>

1. Article 2272 of French Code Civil.
2. Dr Annoussamy David - Extension of Indian Laws to Pondicherry (CLA-Vol.III) p. 17.
<table>
<thead>
<tr>
<th>Convention No.</th>
<th>Object</th>
<th>Year of the Convention</th>
</tr>
</thead>
<tbody>
<tr>
<td>26</td>
<td>Minimum Wage</td>
<td>1928</td>
</tr>
<tr>
<td>33</td>
<td>Minimum Age (Non-industrial Employment)</td>
<td>1932</td>
</tr>
<tr>
<td>87</td>
<td>Freedom of Association and Protection of right to organize</td>
<td>1948</td>
</tr>
</tbody>
</table>

It is to be noted that neither the conventions No. 3, 33 nor 87 nor the conventions revising them have been ratified by the Government of India. There are some provisions, however, in the extended laws which cover part of the subject matter of those conventions. For instance, the Trade Unions Act have some provisions corresponding to the convention No. 87. The other three conventions have been ratified by the Government of India, who is a founder-member of the International Labour Organization and the provisions of the conventions are incorporated to a large extent in the domestic laws like The Employment of Children Act, 1938, The Factories Act, 1948, and The Minimum Wages Act, 1948.

There may not be any problem in regard to conventions for which no corresponding law has been extended, as the conventions would continue to apply but in respect of the conventions, some provisions of which are found in the extended laws, the question would arise whether the remaining provisions of the conventions
are to be treated as repealed or not.

The repeal operates area-wise as per the law of extension. But the word 'area' may be given a broad as well as a narrow construction. Since the law embodied in an international convention has got more value from the normative point of view than a domestic law, since the colonial powers undertook to apply those conventions to their colonies to the extent rendered possible by local conditions, since the conventions have been found applicable at Pondicherry by France, one may argue that the word 'area' be given the narrowest construction possible in order to save almost all the provisions of the conventions, which are not to be found in the extended laws.

Similar problem would sometimes arise in respect of the French Labour Code. The code was a comprehensive piece of legislation dealing with all kinds of rights of workmen and giving the broadest definition to the word 'workman'. As per the code, a workman is any person including a domestic servant employed by another person. Even in England, combination of domestic servants were registered upon the assumption that they were workmen; e.g., London and Provincial Domestic Servants Union (1) was registered in 1892. Exception was made only for civil and military servants who had their own forums to agitate their

grievances. The Indian enactments in the field of Labour Laws do not cover all matters and all categories. The question arises as to what about the rights and categories of workmen left outside the ambit of the Indian laws extended. No express intention has been manifested in the extended laws to put an end to the entirety of French Labour Code. As such, by applying the cardinal principles of rules of interpretation that any new law would save such existing provisions as found to be more favourable to the workmen, it can be said that the provisions of the Labour Code which have not been repealed by corresponding Indian laws for the category of workmen concerned would be still applicable to that category. For example domestic servants may continue to be treated as workmen. In French law, whenever the employer and employees relationship is established, the person employed by another to do any kind of work would be considered as a workman. In India, the position has become very complex. The Industrial Disputes Act defines the 'workman' as, any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward and excludes certain category of persons. The Factories Act, 1948 uses the word 'worker' meaning thereby a person employed directly or by or through any agency (including a contractor) with or without the
knowledge of the principal employer whether for remuneration or not in any manufacturing process'. The Employees State Insurance Act has chosen to use the word, 'employee' and defines as 'any person employed for wages in or in connection with the work of a factory or establishment'. Thus a workman has to establish himself in the first instance that he is a workman before he can raise an industrial dispute. The courts, while interpreting the definition of workman have taken note of the object of the enactment and not the interest of any category of workman. Speaking for the court, Justice Krishna Iyer stated that the law relating to the domestic and private employment in the following words:

1. The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated or single little assistant or attendant. The later category is more or less like personal avocation for livelihood taking some paid or part-time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with every little carpenter in a village or blacksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavement of cities and towns, repels the idea of 'industry' and industrial dispute. For this reason, which applies along the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the

butcher, the baker and the candle-stick maker, with an assistant or without, does not fall with the definition of industry.

Thus domestic servants, persons employed in a solicitors firm or such other profession and others engaged in small profession are kept outside the purview of the word 'workman' vis-a-vis 'industry'. Further the Supreme Court has held that the question whether the work of an employee is of domestic nature or industrial nature will depend upon the facts of each case.

Apart from the above, difficulty also would arise as to what is the machinery through which the rights of those employees, who are not specifically excluded in the Indian laws would be enforced. It may not be healthy to bring these disputes within the jurisdiction of the civil courts. The workman under the French law had a direct access to the machinery for redressing his grievances. However the Industrial Disputes Act, 1947 the settlement machineries will have jurisdiction to entertain the disputes only when the Government makes a reference. Further the machineries under the Industrial Disputes Act would be available only to 'workman/worker/employee' as defined in the extended Acts. In this perspective, it would be necessary to devise such simple machinery which would be similar to the one existing under the

French law, so that all categories of workmen can avail cheaper and expeditious remedy.

5.3 French Influence on the Method of Settlement of Labour Disputes

An important feature, which could be seen at Pondicherry is the influence of the French system in settlement of labour disputes, especially when the labour courts were presided over by the judicial officers who were trained in the French system and who were also presiding officers of the Labour Courts (Tribunal d' Travail). This system continued till the end of 1987 when Shri S. Ramalingam, who was the last judicial officer trained under the French system, retired from service. During the French period and also immediately after the merger for about a decade, the cases were disposed of quickly.\(^1\) The judgements were given normally within two or three months from the date of reference by the Government. However, in the recent past, the advocates from the neighbouring districts of Tamil Nadu started migrating to Pondicherry and settled the moment they found that the French Advocates (Avocats) are not well-versed in the Indian laws. The pattern followed elsewhere in the country is slowly creeping in and delay in disposal of cases is becoming the order of the day.

1. Appendix 7.
The changes in method and mechanism in settlement of labour disputes, which necessitated due to the extension of Indian laws could be felt easily. It is therefore proposed to discuss two important settlements arrived at by referring to arbitration, out of which one was headed by a retired judicial officer trained under the French system and the other by an Administrator, who applied Indian system. The settlement in the hands of judicial officers trained in the French system was based on principles of equity and justice than being tested by legal instruments. The chairman of the Arbitration Committee in respect of Anglo-French Textile Mills adopted a normative approach, which is typical of French system, not only to render justice to the parties to dispute but also to find long term solution to the problem. Issues were framed in such a way that all the incidental matters like socio-economic situations of the industry, conditions prevailing in the neighbouring State, service conditions of the workmen in other industries, were taken note of. On the other hand, Arbitration Committee appointed for resolving the dispute in respect of Swadeshi Cotton Mills, which was headed by an Administrator, took a narrow view of the problem and attempted to find a solution only through the instrumentality of Law. The committee confined only to the specific issues raised by both the parties. The approach was more of Anglo-saxon and the thrust of the proceedings was only to judge the dispute based on the evidence produced by the parties. Apart from the fact that the Administrator heading the
committee lacked judicial acumen, also could not have a foresight as to the future industrial relation, as visualized by a judge trained under the French system. An appraisal of these two cases would speak about the distinct features and the methods under French system in respect of settlement of labour disputes.

5.3.1 THE DISPUTE IN ANGLO-FRENCH TEXTILE MILLS

The workmen of the Winding Department of the Anglo-French Textile Mills Limited, Pondicherry, resorted to strike on the night of 30 August 1977 on some dispute with the management as regards to the workload.\(^1\) The strike soon spread to all the Department of the Mills. There was also a dispute between the management and the workmen since many months before the strike over the question of revision of workload and wages. In order to find ways and means to end the strike, discussions were held and finally with the good offices of the then Chief Minister of Pondicherry, a settlement under Section 12(3) of Industrial Disputes Act, 1947 was arrived at before the Labour Officer, Pondicherry, on 12 September 1977. The terms of the settlement were:

1) The management of M/s Anglo French Textile Mills Limited, Pondicherry, agrees to pay a sum of Rs 25 (Rupees twenty five only) per head to all permanent and casual substitute workers on 10 October 1977, 10 November 1977, 10 December 1977 and 10 January 1978.

\(^1\) Reported in La Gazette de L'Etat de Pondichéry dated 5 July 1979.
ii) The amount paid to the workers in accordance with clause (i) above shall be adjusted against wages to be paid to the workers after and on the basis of the decision of the Tripartite Committee to be constituted in accordance with item No.(iii).

iii) The revision/fixation of wages and workload in all the Departments shall be discussed and settled by a Tripartite Committee consisting of three representatives of the Management, three representatives of the Trade Union and one chairman to be nominated by the Government. The entire expenses in regard to the salary and other incidental expenses of chairman/staff/office would be borne by the Management. The issues regarding the workload and wages pertaining to all the Departments shall be settled and decided by the committee before 31 January 1978 subject to the extension of the said period by the Government of Pondicherry. The status-quo regarding workload and work assignments and wages shall be maintained pending decision of the committee.

iv) The Trade Unions have unanimously agreed to the nomination of the Trade Union representatives by the
Government and the Management and the Unions agree to abide by the decision of the Tripartite Committee and the chairman thereof.

v) The decision with regard to the revision of wages and workloads of the Tripartite Committee will be effective from 12 September 1977.

vi) In view of the terms of settlement mentioned above, the workmen agree to resume work from the first shift on 12 September 1977.

The Tripartite Committee was headed by Shri N. Krishnadattin, Retired District and Sessions Judge, who was a judicial officer under the French regime and also continued as a judicial officer after the merger. The chairman was all along very considerate and even though the representatives of both workmen and management had different views on each and every issue, the chairman could settle almost all the issues in the manner acceptable to both the parties except only one issue in regard to the arrears to be paid to workmen. The members representing the workmen felt that those arrears should be given from 12 September 1977 on the basis of the final finding of the committee as regards to the basic wages. But the members representing the management strongly felt that if arrears amounting to more than 20 months increment in wages have to be
granted, the company will not be in a position to bear this heavy burden under its present financial situation. Inspite of the fact that the members representing workers and management were sharply divided on the issue of arrears, they left the matter to be decided by the chairman and they undertook to abide by the decision of the chairman, whatever it may be, as if it were a decision of the committee itself. This procedure speaks about the usual methodology adopted in the French pattern, which never insisted on a purely legalistic way of settlement of disputes.

The chairman felt that with a view to avoid heavy financial strain on the Mills concerned, whose financial situation seem to be already in a bad shape, it is necessary that increment in the basic wages should be granted to the workmen in two stages; the first stage will be from 12 September 1977 to the date of implementation of the committee as regards to the wages and workload i.e., 8 June 1979. The increase in the basic wages for all the categories of workmen for the above period will be Rs 25 per month equal to the amount paid to them under clause (1) of the settlement dated 12 September 1977. The second stage will be from the date of implementation of the decision of the Tripartite Committee i.e., 8 June 1979 and the basic wages to be paid to the workmen will be those fixed in the schedule of the report of the
committee. This equitable decision by the chairman even though the settlement to higher wages was accepted by the committee was to remove the financial difficulty, which may be faced by the industry and taking into a broader view that the industry must be kept working.

In regard to the issues framed by the committee on 5 June 1978 after going through the various statements of the parties, it could be seen that not only they are exhaustive and impartial but also embrace all incidental issues, so that the award can bring a long term settlement. As stated earlier(1) under the French system, issues are raised not only with the objectives of bringing a settlement between the parties but also to protect the future interest of the society as well. The issues raised were:

1) Whether the claim of the workmen that their wages should be increased, when compared to the wages paid in similar mills in Tamil Nadu and taking into consideration the cost of living in Pondicherry is justified.

2) Whether rationalization of workload is necessary as claimed by the management and if so, in what manner it is to be done.

1. Chapter 4 supra.
i) Whether wage increase can be justified only if there is a corresponding increase in workload as claimed by the management.

iv) Whether cost of living index of Madras or of any other places has to be taken into consideration for the calculation of Dearness Allowance.

v) Whether there is any justification for any increase of wage for the present workload? If so, to what extent?

vi) Whether the Anglo French Textile Mills Limited Staff Union is not a party to the settlement dated 12 September 1977 and if not, whether the Tripartite Committee has got any jurisdiction to adjudicate upon the revision of workload and wages pertaining to the clerical staff of the mills.

vii) Whether the financial situation of the Anglo-French Textile Mills Limited is such that the said mills is not in a position to pay wages to its workmen without incurring great loss.

ix) What is the solution to the problem of dividing the parties in the matter?

When the issues were taken up by the committee, incidental matters like dismissal of workmen, payment of arrears were raised by the workers representatives and were strongly opposed
by the management. Though the committee was put into inaction for sometime, chairman suggested direct talks between the management and the labour and the suggestions resulted in settlement on many issues. Even that settlement of Krishnadattin was promptly repudiated by some of the workers on the ground that it was not signed by all the union leaders of the Anglo-French Textile Mills Limited. With all these legally valid objections, the chairman could persuade the parties to accept the settlement, which is just and equitable. The settlement was not repudiated by any of the trade unions, even though they were not signatories to the settlement. The settlement brought industrial peace and harmony and has been recognized as a basic document even today. The judgement gains more importance due to what is happening at present in most of the cases, wherein the chairman would be totally disinterested as to the outcome of the settlement which would be favourable to one party depending upon the evidence adduced. However, under the French system problems are investigated thoroughly with a view to render justice to the parties and thereby to achieve social good.

5.3.2 THE DISPUTE IN SWADESHI COTTON MILLS

Another dispute more or less at the same time and for the same cause arose in Swadeshi Cotton Mills, Pondicherry.\(^1\) A Tripartite Committee headed by Shri G. Kamalaratnam,

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\(^1\)Reported in La Gazette de L'Etat de Pondichéry dated 14 May 1980.
Retired Labour Commissioner, was appointed based on settlement arrived at before the Commissioner of Labour on 3 November 1977 to discuss and settle all matters relating to fixation/revision of workloads and wages in all the Departments of the mill. It was agreed then that the committee will consist of three representatives each of the management and trade unions with one chairman to be nominated by the Government and the committee should give its decision within a period of six months from the date of its appointment. The parties also agreed to abide by the decision of the Tripartite Committee and the chairman thereof and the decisions of the committee shall be binding from such date as may be decided by the committee considering the demands of both the parties. In view of this settlement, the workers agreed to resume work from the third shift of 3 November 1977.

The committee started functioning and had some sittings. Meanwhile, the Swadeshi Cotton Mill was taken over by the Government of India under Industries (Development and Regulations) Act, 1951 and therefore, the management of the company was vested in the National Textile Corporation as the authorized person. The work of the committee was therefore kept under suspension. Subsequently, the National Textile Corporation came forward with a proposal to revive this
committee. There were some difficulties for some members to continue in the committee. Hence, the whole committee was reconstituted as per the settlement reached on 2 April 1979 between the management and workers of Swadeshi Cotton Mills, with two members each representing the management and trade unions with one chairman to be nominated by the Government. The Government nominated Shir P.R. Ramanathan as the chairman of the committee.

Apart from the starting trouble faced by the committee, the work of the committee came to a standstill as the whole textile industry in the entire Tamil Nadu and Pondicherry was faced with a general issue concerning several demands put forth by all the trade unions for rise in wages, dearness allowance etc., and on this account, a general strike of all textile workers in the whole of Tamil Nadu and Pondicherry commenced from 25 May 1979 which lasted for nearly two months. Naturally, the trade unions could neither attend any meetings of the committee nor submit the statements till the textile strike was withdrawn.

The dispute that has been referred to the committee for discussion and settlement covered all matters relating to fixation/revision of workload and wages in all the departments of Swadeshi Cotton Mills, Pondicherry. The general contention of the management was that there is scope for increase in the
workload for several categories of workers and any wage increase would be justified only if there is a corresponding increase in the workloads. On the contrary, the general contention of the trade union was that the workloads are already very high in the mill and there is no possibility to increase the workload any further in any of the departments unless there is modernization or new machinery erected and hence, the trade unions demanded that the wages of the workers alone, which are now very low should be enhanced. The issues before the committee were therefore only those two diverge contentions of the parties about workloads and wages and matters incidental to them. The committee therefore, felt as to whether the whole issue be taken up as one in a comprehensive manner and dealt with accordingly or whether it should be split up into different specific issues and processed in a more legalistic manner. It was earlier resolved by the committee that its procedure should be as simple as possible without being very rigid or legalistic. The committee also had decided at the same time that it should provide all opportunities to the parties to present their viewpoints on the dispute fully and freely. Though, committee decided not to be legalistic, but the elaborate procedure adopted by the committee viz., examination of witnesses, hearing the arguments of the parties examining the documents and so on
became more legalistic in nature. This is partly due to the fact that the members of the committee including the chairman did not have any practical experience of French judicial system. The committee even went to the extent of giving another opportunity to each of the parties to wind up their final arguments in rebuttal after hearing the arguments of both the parties. Further, it appears that the committee looked at things more from the legalistic point of view, when it was held that the contention of the management that the committee cannot entertain the claim of the workers for revision of wages without corresponding revision of workload is not legally correct and entertained the claims of the trade unions for the upward revision of wages even without corresponding increase in workloads wherever necessary.

The committee gave its report after examining the issues raised by both the parties. However, the management though implemented the award was not happy, as it had to face extra financial burden without any consequential increase in production.

Further a striking difference could be found in the manner and tact with which the two committees settled the above two labour disputes. The committee appointed for the purpose of settling the dispute in respect of Anglo-French Textile Mills
was headed by a retired judicial officer trained under the French system and his handling of the case was much influenced by the system in which he was trained. On the other hand, the committee appointed in respect of dispute in Swadeshi Cotton Mills was headed by an executive, who analysed the issues in a legal and narrower perspective. In the first case, a detail plan was worked out after hearing the parties on different issues, parties were taken into confidence, procedure formalities were reduced to the minimum and the problem was viewed in a broader perspective taking into consideration not only the socio-economic interest of the parties to the dispute but also the society as well. The award given by Shri Krishnadattin brought a long term settlement, and industrial harmony and peace and the award given by Shri Ramanathan though exhaustive and dealt with all the issues raised by the parties did not create a happy situation as the management was averse to the verdict of the committee.

The study of these two cases would reveal that labour problems being more technical in nature require distinct approach and the equitable approach for settlement of labour
disputes, as adopted under the French system may be more useful to maintain industrial harmony than to adopt a pure legalistic approach.

5.4 Awards by the Labour Courts

On the advent of Industrial Disputes Act, 1947 Labour Courts and Labour Tribunals have assumed greater role in settlement of labour disputes. The study of two judgements of Labour Court, which was presided over by a District Judge, who administered French Labour Laws as a Presiding Officer of the Labour Tribunal (Tribunal d' Travail) would reveal as to what significant contribution can be made by the Presiding Officer of the Labour Court not only in maintenance of industrial harmony but also to provide for security of labour. Since this is a unique experience, which could be found only at Pondicherry, it is proposed to discuss two judgements pronounced by the Labour Court, wherein the facts of the case differed distinctly.

5.4.1 THE CASE OF M.K. LAZARUS

The award of the Labour Court was...
pronounced on 9 January 1980 which was between Shri M.K. Lazarus and Anglo-French Textile Mills Limited, Pondicherry.\(^1\) The subject matter of the dispute was whether the non-employment of Shri M.K. Lazarus is justified and if not, to what relief he is entitled to. The case of the petitioner was that he was thrown out of employment on false and concocted charges on account of the enmity between him and security supervisor of the respondent. The management's case was that the petitioner was dismissed on account of serious misconduct after an elaborate enquiry and after providing ample opportunity to the petitioner to explain away the charges.

The question which therefore arose for determination is whether the charges framed by management against the petitioner are proved.

There were two charges of theft which allegedly occurred on 16 February 1979. The first one was a theft of 1.44 m of blue drill cloth belonging to the mill and recovered from the cupboard in the rest shed of the drivers in the mill. The second one is in respect of 7.80 m of khadi-satin cloth which

\(^1\)Reported in La Gazette de L'Etat de Pondichéry dated 29 April 1980, p. 311.
was recovered from the car, when that car was taken out.

To prove the charges, the management examined five witnesses, marked seven documents, produced two material objects. The petitioner examined himself and two other witnesses. The Enquiry Officer after perusing the evidence gave a finding that the petitioner was guilty of the charges. Accordingly, the management dismissed the workman by order dated 17 March 1979.

As far as the first occurrence was concerned, the main evidence of the management was that of Security Supervisor. In the second instance, the main witness was the driver of the car.

VERDICT

"Though the case of the management was sought to be proved by three persons from the Security Department and one driver, the version as it has been spoken appears difficult for me to believe. In the first place, the car was already stopped once at the gate at 8.45 p.m., when it was driven by the petitioner. Nothing was found therein and as per the version of the management, the petitioner instead has spontaneously disclosed that he is hiding a piece of cloth in the rest shed and handed it over to the Security Supervisor. The petitioner was warned by the Security Supervisor that it was an offence to take the
mill cloth and that in future, he should not commit such an offence. Such being the case, this petitioner would not have immediately gone and stolen bigger piece of cloth and hidden it in the van. Secondly, the patro1man on duty in his dispositions stated that from the time of his handing over the first piece of cloth, the petitioner was being watched continuously by him and he has not stated at what point of time and how and when the petitioner has taken away the second piece of cloth and put it in the engine bonnet. Thirdly, when the piece of cloth was found by the Security Officers in the engine bonnet, the car was driven by a third man. The latter had therefore to account for it and therefore his evidence against the petitioner is entirely unreliable because he would be prone to shift his responsibility on another person. Fourthly, since as per his request, the petitioner had to step down near Raja Theatre, which is near his house and about 1½ km from the mill, one does not understand why the petitioner would stop the car near the railway crossing, which is quite near the mill in order to recover his booty. Any man of precaution and especially a man who has been already caught on the same day about two hours before as alleged by the management would not dare to open the engine bonnet where he had hidden another piece of cloth in the vicinity of the mill itself. For the above reasons, the entire version of the mill
appears to be the result of a machination. The necessary conclusion is that the charges levelled against the petitioner are not proved.

The normal relief to be afforded to the petitioner would be one of reinstatement. But the duty of the driver for his proper performance implies the confidence of the management. From what has happened, it is found that the petitioner has lost the confidence of the management and was being trapped. It is in the interest of neither of the parties that the contract of employment should continue. The proper remedy in this case is to award to the workman one month's wages for each year's of service. It is admitted that the Petitioner has completed 10 years of service. Therefore that the petitioner would be entitled to 10 months of full salary in lieu of reinstatement."

This is the typical way of settlement of disputes adopted by the French trained judges, with or without the help of the provisions contained in Section 11-A of the Industrial Disputes Act. The reasoned judgements are pronounced, even if necessary 'by bending the law and not breaking it'. The fundamental question being asked while settling the disputes as to whether settlement would bring amity and good relations between the parties, which are very essential for maintaining industrial peace. Even though, the credibility of witnesses
were doubted and proved beyond all reasonable doubts that the proceedings were malafide and court decided that the normal relief to the worker is to reinstate him, Labour court used its discretion in the interest of industrial harmony and peace on the one hand and tried to protect the interest of the poor labour by directing to pay full compensation for the service rendered by him. The court should have also taken note of the fact that the worker is a technical staff (Driver) and it is not difficult to secure an employment elsewhere.

5.4.2 THE CASE OF P. PADMANABHAN

It is submitted that it may be worthy to note another interesting case, which would speak about the healthy tradition set by the judicial officers trained under the French system. The subject matter of the dispute was whether the non-employment of Shri P. Padmanabhan was justified and if not, what is the relief to which he was entitled to.\(^{(1)}\)

The facts of the case were that the petitioner was working under the respondent from 1967 to 1972 as a casual workman and from 1972 to 1977 as a permanent workman. The respondent's concern engaged in the fabrication of cycle parts, employs about 100 workmen. The case of the petitioner is that he was thrown out of employment, as his activities as Assistant Secretary of the Trade Union were resented by the

\(^{(1)}\) P. Padmanabhan v. Works Manager, M/s Pondy Cycle Parts Manufacturers, Pondicherry (La Gazette de L'Etat, de Pondichéry, dated 10 June 1980.)
The case of the management, on the contrary is that the petitioner was dismissed for proved misconduct.

The charge against the workman was that on 14 September 1977 after the beginning of the first shift at about 07.10 hours, the petitioner who was an operator had used vulgar language, resorted to vulgar gesture against and threatened to kick the outgoing supervisor Shri Daniel, who was trying to give instructions about the state of machine. In order to prove this charge, an enquiry was conducted by the management. It was a laborious process. It was also rather curious one as it could be seen from the sequence of examinations. The enquiry officer examined the supervisor Shri Daniel, the supervisor Shri Raja and cross examined the petitioner, petitioner's witnesses etc., and then petitioner was allowed to cross examine management staff and witnesses. The court felt that though the enquiry was not conducted in accordance with the usual procedure, it is seen that the petitioner was given all opportunity. Court therefore did not find the enquiry as defective in substance and felt that the point whether the petitioner is guilty or not of the misconduct is to be decided from the evidence so recorded. From the enquiry, a strong motive for animosity between the petitioner and the supervisor Shri Daniel was also fairly established.

The court found that from the evidence adduced during the
enquiry, the statement of the victim viz., Padmanabhan is more believable than the supervisor, Daniel. Further, the animosity between the petitioner and the supervisor is also fairly established. The allegations made against the petitioner also appears to be extra-ordinary as they are against the normal course of events happening in any industry. Further, contrary to Law, the enquiry officer at the early stage of the enquiry cross examined thoroughly the petitioner, but could not get any answer susceptible to prove the guilt of the petitioner. Under this circumstance, it cannot be said that from the materials on record the charge has been proved satisfactorily.

The award pronounced accordingly is also interesting. The operative part of the award reads as follows:

'Since the charge is not found to be proved, the normal relief to be afforded to the petitioner would be the reinstatement. But from the reading of the enquiry proceedings, it appears that the relationship between the management and petitioner has become extremely strained. Therefore, the induction of the petitioner again in the mill would not be conducive to industrial peace. I therefore find that in this case, the relief should be in the form of monetary compensation. The petitioner has worked from 1967 to 1972 as a casual workman with some interruptions and from the year 1972 to 1977 continuously. The compensation shall be at
the rate of 15 days wages per year for five years of casual employment and one month wage per year for the five years of permanent employment. This compensation is in lieu of reinstatement and will be in addition to other terminal benefits like gratuity as allowed in law or by settlement.'

In this decision, the Labour Court has stressed the need to have a conducive industrial peace and accordingly chosen the alternative relief even though it came to the conclusion that the termination of the employment is not in order. The more interesting part of it is the quantum of award of compensation. Assuming that termination of employment in this case is not due to the fault of the employee strictly and in order to redress his misery compensation has to be awarded, which has been favourably considered by the court, the quantum ordinarily should have been in accordance with the provisions et seq. Section 25 F read with Section 25 B of the Industrial Disputes Act. The workman was working as a casual labourer for five years with interruptions for certain periods. Of course, for the rest of the five years, he was in permanent employment. The quantum of compensation should have been as per Section 25 F i.e., equivalent to 15 days average pay for every completed year of continuous service, or any part thereof in excess of six months. The concept of continuous service has been defined in

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Section 25 B of Industrial Disputes Act, which says, 'a workman shall said to be in continuous service for a period, if he is for that period, in uninterrupted service, including service, which may be interrupted on account of sickness or authorized leave or an accident or a strike, which is not illegal, or a lockout or a cessation of work, which is not due to any fault on the part of workman. Further, the words used in Section 25 B have restricted meaning, as they are limited for the purpose of Chapter-V-A only which means the interruption or uninterruption in continuous service, should have been for one of the reasons specified in the aforesaid chapter. The worker who was employed as a casual worker had some interruptions, which were obviously not falling within the purview of Section 25 B. In such an instance, counting the period of casual employment for the purpose of awarding compensation appears to be extra-ordinary, since other terminal benefits are also granted, the termination can be termed as one of discharge simplicitor. Moreover, granting one month's wage for every completed year of service also would be in accordance with the provisions of Section 25 B.

It is very clear from the judgement that the court has used its discretionary power with a view to strike a balance between security of employment of the workman on the one hand and industrial peace and harmony on the other hand. Though, the petitioner was an ordinary workman, the labour court did not
want to force upon the employer to reinstate him, which should have been ordinary remedy mainly with a view to maintain industrial peace and harmony.

The above principle could be found in almost all the judgements delivered by the Labour Court at Pondicherry presided over by the judges trained under the French system. The discretionary power vested in the Tribunal under Section 11 A of the Industrial Disputes Act were also discussed and certain guidelines have been given by various High Courts and Supreme Court(1) in the recent past. However, many courts in India are still unable to strike a balance between the two accepted objectives viz., industrial harmony and security of labour.

To conclude from the reasoned judgements in the hands of judges, who were trained under the French system the technique employed by them to find out the truth and to render justice has secured unique place for the system. Nothing was imposed on the parties, even though evidence revealed certain wilful and wrongful acts by one of the parties to the dispute. The judges were more concerned with rendering justice to the parties than merely to apply and interpret the laws. The judges used their

discretionary powers to investigate the facts, if necessary and they seldom base their judgement entirely on the evidence produced by the parties. Judges under the French regime were investigating the matter personally to find out the truth and the parties used to get convinced that the justice is done. There are very a few cases, wherein appeals were preferred against the award of the Labour Court at Pondicherry, which would speak about the manner in which judges trained under the French law could settle industrial disputes.

5.5 The Problems Faced at Present at Pondicherry

On one hand the influence of French system has started vanishing slowly with the application of Indian laws and the appointment of presiding officers of the Labour Courts from among the general cadre of judicial officers and on the other hand with the growth of trade union movement along the line existing elsewhere in the country, has brought innumerable problems to the industries at Pondicherry. At the time of merger, there was only one worker's union in Pondicherry and the total number was increased to 92 unions spread over in 23 industries as on 31 December 1985. (1) There are as many as 43 trade unions in the existing three textile mills at Pondicherry viz., Anglo-French Textile Mills Limited,

1. Appendix 8.
Sri Bharathi Mills, and Swadeshi Cotton Mills, apart from six Trade Unions in Cannanore Spinning and Weaving Mills, Mahe, and two Trade Unions in Soundaraja Spinning Mills, Karaikal. This enormous growth of Trade Unions at times led to inter-union and intra-union rivalries among the unions and hindered the smooth settlement of industrial disputes. With the setting up of number of medium and small scale industries, workers strength also has been increased during the seventies and eighties. But the percentage ratio of workers to population is decreased due to increase in the rate of population growth on one hand and migration of labour on the other hand as indicated in Diagram No.1.

**DIAGRAM NO.1**

![Diagram showing population and workers from 1961 to 1981](image)

- W - Workers
- Scale 1 cm = 1 lakh

(Source - Labour Statistics and Census of India 1981 Union Territory of Pondicherry).
Another problem faced by the industries at present is the increase in absenteeism rate among the directly employed regular workers in Pondicherry. In fact, the absenteeism was highest in Pondicherry in the year 1960 and 1970 and the position has not improved much thereafter. The relaxed conditions, growth of trade unionism, migration of labour etc., are some of the causes primarily responsible for such a high rate of absenteeism among the industrial workers at Pondicherry. All the four pockets of Pondicherry are scattered. Yanam is in the midst of Andhra Pradesh State, Mahe is another pocket, which is situated in the middle of Kerala State, and the territories of Pondicherry and Karaikal are enclosed by Tamil Nadu State. Nearly 30 per cent of the migrated labour have their permanent settlement in their respective places and frequent visits to the native place have resulted in high rate of absenteeism. It is also pertinent to note that among the workers, more than 50 per cent of the labour force are from the neighbouring State viz., Tamil Nadu, Andhra Pradesh, and Kerala. Poverty, illiteracy, dependancy, are some of the other causes for absenteeism.

The accident rate also is on the increase after the merger. During 1970, the accident rate in Pondicherry became the highest in the country and even in 1987 it stood third in
this respect. The confusion which prevailed during the transitory period often resulted in conflict. Lack of proper training to handle the machines which were imported during the French regime, old machineries which were not replaced or not properly maintained, lack of supervision and control etc., contributed to the fact of high accident rate. The diagram No.2 would indicate the above position more clearly.

**Diagram No.2**

Highest percentage of Accidents

<table>
<thead>
<tr>
<th>Year</th>
<th>Pondicherry</th>
<th>National Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>18.3%</td>
<td>13.4%</td>
</tr>
<tr>
<td>1970</td>
<td>22.1%</td>
<td>13.5%</td>
</tr>
<tr>
<td>1971</td>
<td>23.7%</td>
<td>13.5%</td>
</tr>
<tr>
<td>1981</td>
<td>23%</td>
<td>14.2%</td>
</tr>
</tbody>
</table>

+ Scale 1 cm = 2%
(Source - Labour Statistics)

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5.6 Steps Taken to Improve the Conditions of Workmen

In order to improve the conditions of labour and to achieve better production, number of steps have been taken by the Government of Pondicherry in the recent past. A regular machinery with Secretary to Government, Labour Department, at the top has been established as indicated in Chart No.1 below to organize and to monitor various welfare scheme and other allied matters pertaining to industry.

*Information collected from the Labour Department, Government of Pondicherry.*
Establishment of Labour Welfare Centre, Child Welfare Centre, the Craftsman Training Scheme, the Apprenticeship Training Scheme, are some of the important schemes, which have been effectively implemented and monitored by the Labour Department. An Industrial Hygiene and Occupational Health Unit, has also been set up during 1970-80 in the Chief Inspectorate of Factories to examine medically and biologically the workers, who are exposed to occupational hazards and advise suitable remedies. There are two Industrial training Institutes, one at Karaikal and another at Pondicherry. The Industrial Training Institute at Karaikal is imparting training in 11 trades, namely, Turner, Fitter, Wireman, Electrician, Machinist, Welder, Building Construction, Motor-mechanic, Tractor-mechanic, Radio and Television, and Stenography. The Government Industrial Training Institution at Pondicherry was started in 1978 and is now imparting training in the trades of Fitter, Electrician, and Stenography. The last two trades are exclusively for women. 50% of the total trainees are awarded stipend. All the trainees belonging to Scheduled Castes or Scheduled Tribes are also awarded stipend.

The Apprenticeship Training Scheme has been taken up since 1 January 1968. Training is imparted in as many as 19 trades. Since 1978, a special scheme also has been taken up for the
purpose of training the candidates belonging to Pondicherry in Central Establishments in the Southern Region. For specialized training, the trainees are deputed to undergo training in various Public Sector Units, such as, Neyveli Lignite Corporation, Bharath Heavy Electicals Limited, Indian Oil Corporation, Madras, etc.

From April 1978 a Basic training Centre has also been set up in Pondicherry to impart training in the non-institutional Textile Trades. It may be noted that major portion of the work force in this Union Territory are concentrated in the Textile Mills. The trainees are selected by the local Textile Mills and sent to the Training Centre for Basic Training. The rate of absorption of trained apprentices in Textile Trade is almost hundred per cent.

There are now six Labour and Child Welfare Centres, one each at Mudaliarpet, Gandhi Nagar, Ariankuppam, and Ariyur in Pondicherry region and two in Karaikal region for the benefit of the women folk and children of the industrial workers.

The medical benefits under the Employees State Insurance Scheme have been brought into force in Pondicherry, Karaikal, and Mahe regions. There are no industrial establishments to be reckoned in Yanam region. More than 15 000 workers and their families are benefitted by the scheme.
There are now separate Conciliation and Enforcement Machineries for Pondicherry and outlying regions viz., Karaikal and Mahe.

Though several steps have been taken to improve the efficiency of labour vis-a-vis the service conditions, it is felt that unless the system which has certain inherent drawbacks is improved, the industrial relation will not be peaceful and progressive. Industrial Relations System as existed in Pondicherry during French regime had many unique provisions and many of them can be adopted with minor changes, if necessary in our system to strengthen industrial harmony and peace. It is therefore proposed to discuss in the next chapter the relevance of Pondicherry experience to India by making a comparison of the Industrial Relation System existed at Pondicherry during the French regime with the system presently existing inter-alia highlighting certain drawbacks in the present system.