earlier that it is reasonable to assume that standardisation of retrenchment compensation and doing away with a perplexing variety of factors for granting retrenchment compensation may well have been the purposes of s. 25F, though the basic consideration must have been the granting of unemployment relief. However, on our view of the construction of s. 25F, no compensation need be paid by the appellants in the two appeals. It is unnecessary therefore to decide whether, in other cases of a different character, s. 25F imposes a reasonable restriction or not.

In the result, we must allow the two appeals and set aside the decisions of the High Court of Bombay in the two cases. We hold that the appellants in the two appeals are not liable to pay any compensation under s. 25F of the Act to their erstwhile workmen who were not retrenched within the meaning of that expression in that section. In the circumstances of these two cases, the parties must bear their own costs throughout.

Appeals allowed.

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(S. R. DAS C. J., BHAGWATI, VENKATARAMA AYYAR B. P. SINHA *and* S. K. DAS JJ)

Industrial Dispute—Appeal pending before Labour Appellate Tribunal—Closure of factory—Termination of services of workmen without permission of the Tribunal—Legality—"Discharge", meaning of—Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), ss. 22, 23.

Clause (b) of s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, provides that during the pendency of any appeal under the Act no employer shall discharge any workmen concerned in such appeal, save with the express permission in writing of the Appellate Tribunal, and s. 23 enables any employee to make a complaint in writing to such Appellate Tribunal if the employer contravenes the provisions of s. 22 during the pendency of proceedings before the said Tribunal.

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During the pendency of an appeal filed before the Labour Appellate Tribunal the appellant company finding it difficult to run the factory decided to close it down and gave notice to all the workmen that their services would be terminated upon the expiry of thirty days from July 16, 1952. On August 31, 1952, a complaint was made on behalf of the workmen to the Tribunal under s. 23 of the Act that the appellant had discharged them without the permission in writing of the Tribunal and had thereby contravened the provisions of s. 22 of the Act. It was found that the closure of the appellant's business was *bona fide.*

Held, that s. 22 of the Act is applicable only to an existing or running industry and that the termination of the services of all workmen, on a real and *bona fide* closure of business, is not 'discharge' within the meaning of s. 22(b) of the Act.

J. K. Hosiery Factory v. Labour Appellate Tribunal of India (A.I.R. 1956 All. 498), approved on the point of construction of s. 22 of the Act.

Pipraich Sugar Mills Ltd. v. *The Pipraich Sugar Mills Mazdoor Union* (1956) S.C.R. 872 followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 135 of 1955.

Appeal by special leave from the judgment and order dated October 30, 1952, of the Labour Appellate Tribunal of India, Allahabad, in Misc. Case No. C-146 of 1952.

R. R. Biswas, for the appellant.

Sukumar Ghose (amicus curiae), for the respondents.

1956. November 28. The Judgment of the Court was delivered by

S. K. DAS J.—This is an appeal by special leave from the judgment and order of the Labour Appellate Tribunal of India at Allahabad dated October 30, 1952. The relevant facts are these. The Banaras Ice Factory Limited, the appellant before us, was incorporated on September 13, 1949, as a private limited company and was carrying on the business of manufacturing ice in the city of Banaras, though its registered office was in Calcutta. The factory worked as a seasonal factory and had in its employment about 25 workmen at all material times. These workmen were employed from the month of March to the month of September every

year. The appellant company got into financial difficulties on account of trade depression, rise in the price of materials and increase in the wages and emoluments of workmen. It tried to secure a loan of Rs. 10,000/- from a Bank but met with no success. Thereupon, it decided to close down the factory and on January 15, 1952, a notice was given to its workmen saying that the factory would be closed down with effect from January 17, 1952, and the services of the workmen would not be necessary for two months from that date. The workmen received their wages up to January 16, 1952. On March 18, 1952, they were again taken into service but this temporary closing of the factory gave rise to an industrial dispute and the workmen complained that they were wrongfully laid off with effect from January 17, 1952. The dispute was referred to the Regional Conciliation Officer, Allahabad, for adjudication. In the meantime, that is, on June 6, 1952, the workmen gave a strike notice and as there was no coal in the factory, the appellant also gave a notice of closure on June 12, 1952. A settlement was, however, arrived at between the parties on June 15, 1952, at the house of the Collector of Banaras. The terms of that settlement, *inter alia,* were: (1) the management would withdraw its notice of closure dated June 12, 1952; (2) the workmen would withdraw their strike notice dated June 6, 1952; (3) there being no coal, the workers would remain on leave for a period of thirty days with effect from June 16, 1952, and would report for duty on July 16, 1952, at 8 A.M. and (4) after the workers had resumed their duty on July 16, 1952, the appellant would not terminate the services of any workmen or lay them off in future without obtaining the prior permission of the Regional Conciliation Officer, Allahabad.

On June 28, 1952, the Regional Conciliation Officer, Allahabad, gave his award in the matter of the industrial dispute between the appellant and its workmen with regard to the alleged wrongful laying off of the workmen from January 17, 1952, to March 18, 1952,

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referred to above. By his award the Regional Conciliation Officer gave full wages to the workmen for the period in question. On July 16, 1952, none of the workmen reported for duty in accordance with the terms of the agreement referred to above, and on that date the appellant gave a notice to its workmen to the effect that the appellant found it difficult to run the factory and had decided to close it down ; the workmen were informed that their services would not be required and would be terminated upon the expiry of thirty days from July 16, 1952. The workmen, it is stated, accepted the notice and took their pay for one month (from July 16 to August 15, 1952) without any protest. Against the award of the Regional Conciliation Officer dated June 28, 1952, the appellant filed an appeal to the Labour Appellate Tribunal on July 25, 1952.

On August 31, 1952, a complaint was made on behalf of the workmen to the Labour Appellate Tribunal under s. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950, hereinafter referred to as the Act. The gravamen of the complaint was that the appellant had contravened the provisions of s. 22 of the Act, because the appellant had discharged all the workmen with effect from August 15, 1952, without the permission in writing of the Labour Appellate Tribunal during the pendency before it of the appeal filed on July 25, 1952, against the award of the Regional Conciliation Officer. The Labour Appellate Tribunal dealt with this complaint by its order dated October 30, 1952. Before the Labour Appellate Tribunal it was urged on behalf of the appellant that there was no contravention of s. 22, because on July 16, 1952, when the notice of discharge was given by the appellant, no appeal was pending before it, the appellant's appeal having been filed several days later, namely, on July 25, 1952. This contention was not accepted by the Labour Appellate Tribunal on the ground that though the notice of discharge was given on July 16, 1952, the termination of service was to come into operation after one month, that is, from August 15, 1952, on which date the appeal before the Labour Appellate Tribunal was certainly pending. As learned counsel for the

appellant has not again pressed this point before us, it is not necessary to say anything more about it.

A second point urged before the Labour Appellate Tribunal was that the appellant had the right to close down the factory, when the appellant found that it was not in a position any longer to run the factory. The agreement of June 15, 1952, did not stand in the appellant's way, as the workmen themselves did not report for duty on July 16, 1952. The closure being a *bona fide* closure, it was not necessary to obtain the permission of the Labour Appellate Tribunal and there was therefore no contravention of s. 22 of the Act. The Labour Appellate Tribunal apparently accepted the principle that the appellant had the right to close its business but took the view that permission should have been obtained before the closure. It referred to the agreement of June 15, 1952, and held that though the appellant had the right to close its business, permission was still necessary and in the absence of such permission, the appellant was guilty of contravening cl. (b) of s. 22 of the Act, and directed that the appellant should pay its workmen full wages as compensation for the period of involuntary unemployment up to the date of its award, that is, during the period from August 16, 1952, to October 30, 1952.

Relying on the decision in *J. K. Hosiery Factory* v. *Labour Appellate Tribunal of India* (1), learned counsel for the appellant has urged three points before us. His first point is that the termination of the services of all workmen on a real and *bona fide* closure of business is not 'discharge' within the meaning of cl. (b) of s. 22 of the Act. His second point is that if the word 'discharge' in cl. (b) aforesaid includes termination of services of all workmen on *bona fide* closure of business, then the clause is an unreasonable restriction on the fundamental right guaranteed in cl. (g) of Art. 19(1) of the Constitution. His third point is that, in any view, the Labour Appellate Tribunal, was not entitled to grant compensation to the workmen, because s. 23 of the Act did not in terms entitle the Labour

(1) A. I. R. 1956 All. 498.

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Appellate Tribunal to pass an order of compensation. We may state here that if the appellant succeeds on the first point, it becomes unnecessary to decide the other two points.

For a consideration of the first point, we must first read ss. 22 and 23 of the Act.

Section 22: "During the period of thirty days allowed for the filing of an appeal under section 10 or during the pendency of any appeal under this Act, no employer shall—

(a) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing of such appeal, or

(b) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such appeal, save with the express permission in writing of the Appellate Tribunal."

Section 23: "Where an employer contravenes the provisions of section 22 during the pendency of proceedings before the Appellate Tribunal, any employee, aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, to such Appellate Tribunal and on receipt of such complaint, the Appellate Tribunal shall decide the complaint as if it were an appeal pending before it, in accordance with the provisions of this Act and shall pronounce its decision thereon and the provisions of this Act shall apply accordingly."

The short question before us is whether the word 'discharge' occurring in cl. (b) of s. 22 includes termination of the services of all workmen on a real and *bona fide* closure of his business by the employer. It is true that the word 'discharge' is not qualified by any limitation in cl. (b). We must, however, take the enactment as a whole and consider s. 22 with reference to the provisions of the Industrial Disputes Act, 1947, (XIV of 1947) which is in *pari materia* with the Act under our consideration. We have had occasion to consider recently in two cases the general scheme and

scope of the Industrial Disputes Act, 1947. In *Burn & Co., Calcutta* v. *Their Employees* (1) this Court observed that the object of all labour legislation was firstly, to ensure fair terms to the workmen and secondly, to prevent disputes between employers and employees so that production might not be adversely affected and the larger interests of the public might not suffer. In *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor Union* (2) it was observed—"The objects mentioned above can have their fulfilment only in an existing and not a dead industry." We accepted the view expressed in *Indian Metal and Metallurgical Corporation* v. *Industrial Tribunal* (3) and *K. M. Padmanabha Ayyar* v. *The State of Madras* (4) that the provisions of the Industrial Disputes Act, 1947, applied to an existing industry and not a dead industry. The same view was reiterated in *Hariprasad Shivshankar Shukla* v. *A. D. Divikar* (5) where we held that 'retrenchment' in cl. (oo) of s. 2 and s. 25F did not include termination of the services of workmen on *bona fide* closure of business.

Turning now to s. 22 of the Act, it is clear enough that cl. (a) applies to a running or existing industry only; when the industry itself ceases to exist, it is otiose to talk of alteration of the conditions of service of the workmen to their prejudice, because their service itself has come to an end. The alteration referred to in cl. (a) must therefore be an alteration in the conditions of service to the prejudice of the workmen concerned, in an existing or running industry. Similarly, the second part of cl. (b) relating to punishment can have application to a running or existing industry only. When the industry itself ceases to exist, there can be no question of punishment of a workman by dismissal or otherwise. We are then left with the word 'discharge'. Unqualified though the word is, it must, we think, be interpreted in harmony with the general scheme and scope of the Industrial Disputes Act, 1947. Our attention has been drawn to

(1) [1956] S. C. R. 781.
(2) [1956] S. C. R. 872.
(3) A. I. R. 1953 Mad. 98.
(4) [1954] 1 L. L. J. 469.
(5) (1957] S. C. R. 121.

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the definition of 'workman' in cl. (s) of s. 2, which says—"... for the purposes of any proceeding under this Act in relation to an industrial dispute, (the definition) includes any person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute." In the said definition clause also, the word 'discharge' means discharge of a person in a running or continuing business—not discharge of all workmen when the industry itself ceases to exist on a *bona fide* closure of business.

The true scope and effect of ss. 22 and 23 of the Act were explained in *The Authomobile Products of India Ltd.* v. *Rukmaji Bala*(1). It was pointed out there that the object of s. 22 was "to protect the workmen concerned in disputes which formed the subject-matter of pending proceedings against victimisation" and the further object was "to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of these proceedings take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relations between the employer and the workmen." Those objects are capable of fulfilment in a running or continuing industry only, and not a dead industry. There is hardly any occasion for praying for permission to lift the ban imposed by s. 22, when the employer has the right to close his business and *bona fide* does so, with the result that the industry itself ceases to exist. If there is no real closure but a mere pretence of a closure or it is *mala fide,* there is no closure in the eye of law and the workmen can raise an industrial dispute and may even complain under s. 23 of the Act.

For these reasons, we must uphold the first point taken before us on behalf of the appellant. The Appellate Tribunal was in error in holding that the

(1) [1955] 1 S. C. R. 1241.

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appellant had contravened cl. (b) of s. 22 of the Act. The Appellate Tribunal did not find that the closure of the appellant's business was not *bona fide*; on the contrary, in awarding compensation, it proceeded on the footing that the appellant was justified in closing its business on account of the reasons stated by it. As to the agreement of June 15, 1952, the workmen themselves did not abide by it and the appellant's right cannot be defeated on that ground.

In view of our decision on the first point, it becomes unnecessary to decide the other two points. On the point of construction of s. 22 of the Act, we approve of the dicision of the Allahabad High Court in *J. K. Hosiery Factory* v. *Labour Appellate Tribunal of India* (supra) but we refrain from expressing any opinion on the other points decided therein and we must not be understood to have expressed our assent, contrary to the opinion expressed by us in the case of *The Automobile Products of India Ltd.* (supra) to the view that under s. 23 of the Act, it is not open to an Industrial Tribunal to award compensation in an appropriate case.

In the result, the appeal is allowed and the decision of the Labour Appellate Tribunal dated the 30th October 1952 is set aside. As the workmen did not appear before us, there will be no order for costs. We are indebted to Mr. Sukumar Ghosh for presenting before us the case of the workmen as *amicus curiae*.

Appeal allowed.