HIGH COURT OF MADHYA PRADESH: JABALPUR
(Full Bench)

Writ Appeal No. 489 of 2017

Principal, Maharshi Vidya Mandir Lehdra Naka, Sagar ..... **APPELLANT**

- V/s -

Labour Court, Sagar & Another ..... **RESPONDENTS**

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge
Hon'ble Shri Justice Subodh Abhyankar, Judge

Present:

Shri Rajneesh Gupta, Advocate for the appellant.
Shri Amit Seth, Advocate appears as *Amicus Curiae*.

Whether Approved for Reporting : **Yes**

Law Laid Down:

- The scheme of the M.P. Industrial Disputes Rules, 1957 particularly of Rule 10-A and Sub-rule (1) and (2) of Rule 10-B of the said Rules makes it abundantly clear that the notice of the first hearing is not required to be given when the party has already appeared before the Labour Court on the basis of the notice issued by the Court.

- Sub-rule (3) of Rule 10-B of the said Rules is not mandatory but pertains to matter of procedure and therefore, it has to be read in the context of which such Rule appears and not in isolation. The purpose of the notice in terms of Sub-rule (3) of Rule 10-B is that the parties must be aware of the proceedings pending before it. The Labour Court is not expected to follow a party after a notice was served upon it.

- Since the object of the Industrial Disputes Act, 1947 and the Rules made thereunder is expeditious disposal of the dispute, the deferment of hearing after the parties had notice of the dispute by a notice from the Labour Court, is not conducive to the industrial disputes resolution.

- The interpretation of the Rules has to be keeping in view the object of the Act, therefore, the interpretation which defeats the purpose of the Act, cannot be accepted.

- Division Bench Judgment of this Court rendered in **Bhagwan Das vs. Radhey Shyam Gupta** in **Misc. Petition No.473/1975** and Single Bench judgment in **W.P. No.3667/2001 (Maharashi Mahesh Yogi Vaidik Vishwavidyalaya vs. Smt. Meena Gupta)** do not lay down the correct law and thus, **overruled**.

Significant Paragraph Nos.: 3, 4, 7, 12 to 23

Order Reserved on : 08.03.2018

O R D E R

(Passed on this 15th day of March, 2018)

Per : Hemant Gupta, Chief Justice:

A Division Bench of this Court vide order dated 19th February, 2018 has referred the following question for the opinion of the Larger Bench expressing *prima facie* disagreement with the view of the earlier Division Bench of this Court in the case of **Bhagwan Das vs. Radhey Shyam Gupta and others** on 8th March, 1976 in **Misc. Petition No.473/1975**.

2. In **Bhawan Das**'s case (**supra**), the Division Bench of this Court while examining Sub-Rule (3) of Rule 10-B of the M.P. Industrial Disputes Rules, 1957 (for short "the Rules") framed in terms of Section 38 of the Industrial Disputes Act, 1947 (for short "the Act") held that in terms of Sub-rule (3) of Rule 10-B read with Rule 13 of the Rules, it is clear that the notice informing the parties of the first date of hearing of the dispute has to be given. Since the Labour Court fixed the date of first hearing of the dispute on 21st March, 1975 for 24th March, 1975, and that no information was given by the

Labour Court to the employer of date of hearing in spite of the fact that the employer's counsel was not present on an earlier date, therefore the *ex parte* Award is not legal. The relevant extract from the judgment reads as under:-

> "**6**. Sub-rule (3) of rule 10-B (hereinafter called the rules) requires the fixing of a date of hearing ordinarily within 6 weeks of the date on which the dispute was referred to it for adjudication. The proviso therein enables the Labour Court to fix a later date for reasons to be recorded in writing. Thus, this provision clearly requires the fixing of date for the first hearing of the dispute. Rule 13, which provides for the place and time for hearing, also requires information thereof to be given to the parties. From these provisions it is clear that a notice informing the parties of the first date of hearing of the dispute has to be given. From the undisputed facts of the present case, it is clear that this was not done by the Labour Court. It was only on 21-3-75 that the Labour Court, for the first time, fixed the date of first hearing of the dispute and that date was 24-3-75, i.e. only 3 days thereafter. Admittedly no information was given by the Labour Court to the employer of the date of hearing in spite of the fact that the employers' counsel was not present on 21-3-75, his presence being not necessary that day, the case being fixed on 24-3-75 only for filing of the employees' rejoinder. Thus, the Labour Court could not proceed with the hearing of the case on 24-3-75 unless the employer was willing to participate in the same without any objection. In fact appearance on behalf of the employer was not necessary on 24-3-75, of which date no information had been given to him by the Labour Court. The position of the employer could not become worse merely because a junior counsel appeared on his behalf on getting information of the date from some other source, to seek adjournment. The non compliance of the provision already indicated renders the proceedings of the Labour Court on 24-3-75 and thereafter to be invalid. For this reason alone, this petition must succeed."

3. A perusal of the said order shows that the appropriate Government made a reference on 25th February, 1974 to the Labour Court for adjudication. The Labour Court issued a notice to the employer to file its statement of claim. The Labour Court required the employee to file his rejoinder but the employee

did not file the rejoinder. On 21st March, 1975, which was the date fixed for employees' rejoinder, the employer's counsel was not present and the case was fixed for recording of evidence of both parties on 24th March, 1975. No notice was given to the employer of the said date, which was said to be the first date of hearing, therefore, the Court held that the proceeding initiated against the employer was not legally sustainable.

4. In terms of Sub-section (c) of Section (10)(1) of the Act, if an appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the second or third schedule to a Tribunal for adjudication. In terms of provision of Sub-section (c) of Section 10(1) of the Act, the appropriate Government had made reference of dispute to the Labour Court on 20th November, 1997. The copy of such order was communicated to the workmen as well as to the appellant. On receipt of communication from the appropriate Government, the Presiding Officer of the Labour Court issued a notice to the first party to file statement of claim on or before 27th February, 1998. Copy of the said notice was served upon the appellant under Registered A/d post. Thereafter, the Labour Court announced *ex parte* award on 23rd February, 1999. The appellant filed an application for setting aside of an *ex parte* Award on 10th September, 1999. As per the assertions made in the application, the appellant had the notice to appear before the Labour Court on 4th March, 1998 when the matter was adjourned to 16th April, 1998, but, since the Presiding Officer was on leave, the case was adjourned to 30th April, 1998.

The reason for non-appearance on 30th April or later on 20th May, 1998 is that no notice was served by the Labour Court. It is also pointed out that the Principal of the appellant was transferred and another Principal joined on 23rd March, 1998, who was not aware of any pending claim nor has received any document. In these circumstances, the appellant sought setting aside of an *ex parte* Award by way of writ petition before this Court bearing W.P. No.6487/2001 (*Principal, Maharshi Vidya Mandir vs. Labour Court and another*).

5. The learned Single Bench vide order dated 12th January, 2017 dismissed the said writ petition filed by the appellant *inter alia* on the ground that the appellant had appeared before the Labour Court on 4th March, 1998 and had chosen to remain *ex parte* on 16th April, 1998. Thus, the appellant had notice of the proceedings, therefore, no other notice was required to be served.

6. Before the learned Single Bench, apart from the judgment in **Bhagwan Das** (**supra**) reliance was also placed upon another Single Bench judgment of this Court decided on 29th October, 2001 in **W.P. No.3667/2001** (**Maharashi Mahesh Yogi Vaidik Vishwavidyalaya vs. Smt. Meena Gupta**) in which reliance was placed upon the Division Bench judgment of this Court in **Bhagwan Das** (**supra**). The learned Single Bench distinguished the judgment relied upon by the appellant.

7. The learned counsel for the appellant argued on the strength of **Bhagwan Das**'s case (**supra**) as also the other judgments to contend that the Labour Court is bound to serve notice of the first hearing of the dispute, which is after completion of the pleadings when the Labour Court applies its mind to

the dispute. Since earlier notice was only for filing of the statement of claim with no default clause mentioned in the notice, therefore, the *ex parte* proceedings initiated against the appellant are not tenable. It is argued that Sub-rule (3) of Rule 10-B has to be read along with Rule 13 of the Rules and in the light of such provision, the time and place of the sitting of the Labour Court has to be informed to the parties. It is contended that summon has to be issued in Form D in terms of Rule 17 of the Rules, which is a summon to produce evidence relating to subject matter. It is also contended by the learned counsel for the appellant that only the procedure laid down in Rule 5 of Order XVIII, First Schedule of the Code of Civil Procedure, 1908 is to be followed by the Labour Court if it considers necessary so to do in view of the nature of the particular dispute pending before it. The relevant clauses from the Rules, read as under:-

> **"10-A. Parties to submit statements. -**
>
> (1) *** *** ***
>
> (2) The party representing workmen involved in a dispute in a non-public utility service, shall forward a statement of its demands to the Conciliation Officer concerned before such date as may be specified by him for commencing conciliation proceedings. The statement shall be accompanied by as many spare copies thereof as there are opposite parties.
>
> (3) The statement of demands submitted by the party representing the workmen under sub-rule (1) or sub-rule (2) shall be transmitted to the State Government by the Conciliation Officer concerned with his report under sub-section (4) of Section 12.
>
> (4) Where an employer, or a party representing workmen, applies to the State Government for reference of an industrial dispute to a Labour Court, or Tribunal, such application shall be accompanied by a statement of the demands or points in disputes, with as many spare copies thereof as there are opposite parties.

(5) The statement referred to in sub-rules (1), (2) and (4) and every copy thereof required under the said sub-rules to accompany the said statement shall be duly signed, on behalf of the party, by the person making it.

10-B. Proceedings before the Labour Court or Tribunal. - (1) Where the State Government refers any case for adjudication to a Labour Court or Tribunal, it shall send to the Labour Court or Tribunal concerned and to the opposite party concerned in the industrial dispute, a copy of every such order or reference together with a copy of the statement received by it under sub-rule (3) or sub-rule (4) of Rule 10-A.

(2) Within two weeks of the receipt of the statement referred to in sub-rule (1) the opposite party shall file its rejoinder with the Labour Court, or Tribunal as the case may be, and simultaneously forward a copy thereof to the other party:

Provided that such rejoinder shall relate only to such of the issues as are included in the order of reference:

Provided further that where the Labour Court or Tribunal, as the case may be, considers it necessary, it may extend the time-limit for the filing of rejoinder by any party.

(3) The Labour Court, or Tribunal as the case may be, shall ordinarily fix the date for the first hearing of the dispute within six weeks of the date on which it was referred for adjudication:

Provided that the Labour Court, or Tribunal, as the case may be, may, for reasons to be recorded in writing, fix a later date for the first hearing of the dispute.

(4) The hearing shall ordinarily be continued from day to day and arguments shall follow immediately after the closing of evidence.

(5) The Labour Court, or Tribunal, as the case may be, shall not ordinarily grant any adjournment for a period exceeding a week at a time, not more than three adjournments in all at the instance of any one of the parties to the dispute:

Provided that the Labour Court, or Tribunal as the case may be, may for reasons to be recorded in writing, grant an adjournment exceeding a week or more than three adjournments at the instance of any one of the parties to the dispute.

(6) The Labour Court or Tribunal, as the case may be, shall, as the examination of each witness proceeds, make a memorandum of the

substance of what he deposes and such memorandum shall be written and signed by the Presiding Officer :

Provided that the Labour Court or Tribunal, as the case may be, may follow the procedure laid down in Rule 5 of Order XVIII of the First Schedule to the Code of Civil Procedure, 1908, if it considers necessary so to do, in view of the nature of the particular industrial disputes pending before, it.

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13. Place and time of hearing. - Subject to the provisions contained in Rules 10-A and 10-B the sitting of a Board, Court, Labour Court, or Tribunal or of an Arbitrator shall be held at such time and places as the Chairman or the Presiding Officer or the Arbitrator, as the case may be, may fix and the Chairman, Presiding Officer or Arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit.

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17. Summons. - A summons issued by a Board, Court, Labour Court or Tribunal shall be in Form D and may require any person to produce before it any books, papers or other documents and things in the possession of or under the control of such person in any way relating to the matter under investigation or adjudication by the Board, Court, Labour Court or Tribunal which the Board, Court, Labour Court or Tribunal thinks necessary for the purposes of such investigation or adjudication.

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21. Procedure at the first sitting. - At the first sitting of a Board, Court, Labour Court or Tribunal, the Chairman or the Presiding Officer, as the case may be, shall call upon the parties in such order as he may think fit to state their case."

8. Shri Amit Seth, learned *Amicus Curiae* referred to the Supreme Court judgment reported as **1980 (Supp) SCC 420** (**Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others**) to contend that Rule 22 of the Industrial Disputes (Central) Rules, 1957 empowers the Tribunal to proceed *ex parte* and to render *ex parte* Award and that an aggrieved person has a right to seek setting aside of *ex parte* Award. It is further contended that the purport of the Industrial Disputes Act, 1947 is expeditious decision of the

dispute to maintain industrial peace. The reliance is placed upon a Division Bench judgment of this Court rendered on 6th March, 2018 in **W.A. No.221/2018 (Smt. Shashi Kala Jeattalvar vs. The Divisional Railway Manager**).

9. It is also argued by the learned *Amicus Curiae* that Sub-rule (3) of Rule 10-B of the Rules cannot be read in isolation but has to be read in view of the scheme of the Rules and keeping in view the purpose which such Rule seeks to achieve. It is contended that party seeking adjudication of dispute in terms of Section 10 of the Act is required to forward a statement of its demand to the Conciliation Officer in terms of Sub-rule (2) of Rule 10-A of the Rules. Such statement of demand is required to be transmitted to the State Government in terms of Sub-rule (3) of Rule 10-A of the Rules. If the State Government refers any case for adjudication to the Labour Court, it sends the communication to the Labour Court along with a copy of such order together with the copy of statement received by it under Sub-rule (3) i.e. by the employee or Sub-Rule (4) by the employer of Rule 10-A of the Rules. It is thereafter, the opposite party is required to file its rejoinder within two weeks and to forward the copy thereof. Such process is not contemplated with the intervention of the Labour Court. But, if the rejoinder is not filed within two weeks, the Labour Court has the jurisdiction to extend time limit for filing of the rejoinder. It is, thereafter, the Sub-rule (3) of Rule 10-B of the Rules comes into picture for fixing a date for first hearing of the dispute. If a rejoinder is not filed by the party in terms of Sub-rule (2) of Rule 10-B of the Rules, it can seek extension of time limit for filing of the rejoinder. Once a party has sought

time to file rejoinder, the fixing of date for the first hearing which is sought to be treated as synonymous with the word evidence is not warranted. The party has to be informed of the pendency of the dispute and once the party to the dispute is made aware of the pendency, such party is not required to be served with the notice of every date fixed by the Labour Court. If the Labour Court has to issue notice of date fixed for proceedings as the date of hearing, the proceedings before the Labour Court will be not concluded at an early date, which is the purpose of the dispute resolution under the Act.

10. Rule 13 of the Rules is in respect of time and place of sitting of the Labour Court. Normally, the Labour Court sits at a predefined place and at a prefixed time but if there is any change in the place and time, obviously the parties must be informed. The summons in terms of Rule 17 of the Rules are the summons to appear before the Labour Court to answer all material questions relating to the dispute and also to produce all books, papers or other documents in the possession of the noticee. The purpose of issuing summons in Form D is that the party is required to produce all documents say the evidence so that the Labour Court can decide the dispute expeditiously.

11. Rule 21 of the Rules empowers the Tribunal or Labour Court to call upon the parties in order to state their case as the Court may think fit. It gives liberty to the Labour Court to call upon the employer to state its case first as also the employee to state its case first. Such discretion is given to the Labour Court keeping in view the pleadings and the dispute involved as to which party should be called upon to state its case first.

12. In **Bhagwan Das** (**supra**), the employer filed its statement of claim but the employee did not. The fact remains that the employer was represented before the Tribunal, therefore, it was incumbent upon the employer to cause appearance before the date of proceedings fixed by the Tribunal from time to time. This Court has examined the provisions of Sub-rule (3) of Rule 10-B read with Rule 13 of the Rules but the scheme of the Rules particularly of Rule 10-A and Sub-rule (1) and (2) of Rule 10-B of the Rules makes it abundantly clear that the notice of the first hearing is not required to be given when the party has already appeared before the Labour Court on the basis of the notice issued by the Court. If any of the parties does not appear, notice is required to be issued to the party to cause appearance before the Labour Court. The Sub-rule (3) of Rule 10-B has to be read in the context of which such Rule appears and not in isolation. The purpose of the notice in terms of Sub-rule (3) of Rule 10-B is that the parties must be aware of the proceedings pending before it. The Labour Court is not expected to follow a party after a notice was served upon it.

13. Still further, Sub-rule (3) of Rule 10-B of the Rules pertains to matter of procedure. Such Sub-rule (3) is not a mandatory provision. The question whether provisions in a statute are directory or mandatory has very frequently arisen before the Courts in India. A Division Bench of this Court in its decision rendered on 25th January, 2018 in **W.P. No. 20647/2017 (Kameshwar Sharma and another vs. State of M.P. And others**) has considered this aspect in detail and came to the conclusion that there is no general rule but in every case the object of the statute must be looked at. When the provisions of

the statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been a practice to hold such provisions to be directory only. The use of word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. The Constitution Bench of Supreme Court in its judgment reported as **AIR 1957 SC 912 (State of UP vs. Manbodhan Lal Srivastava**), has quoted the following quotation from Crawford on 'Statutory Construction':-

> "The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other….."

14. The Supreme Court in its judgment reported as **(2003) 8 SCC 498 (P.T. Rajan vs. T.P.M. Sahir and others)** has held that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. It was held to the following effect:-

> "**45**. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words "shall" and "may". Such a question

must be posed and answered having regard to the purpose and object it seeks to achieve.

46. What is mandatory is the requirement of sub-section (3) of Section 23 of the 1950 Act and not the ministerial action of actual publication of Form 16.

47. The construction of a statute will depend on the purport and object for which the same had been used. In the instant case the 1960 Rules do not fix any time for publication of the electoral rolls. On the other hand, Section 23(3) of the 1950 Act categorically mandates that direction can be issued for revision in the electoral roll by way of amendment in inclusion and deletion from the electoral roll till the date specified for filing nomination. The electoral roll as revised by reason of such directions can, therefore, be amended only thereafter. On the basis of direction issued by the competent authority in relation to an application filed for inclusion of a voter's name, a nomination can be filed. The person concerned, therefore, would not be inconvenienced or in any way be prejudiced only because the revised electoral roll in Form 16 is published a few hours later. The result of filing of such nomination would become known to the parties concerned also after 3.00 pm.

48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefore, the same would be directory and not mandatory. (See *Shiveshwar Prasad Sinha versus District Magistrate of Monghyr, AIR 1966 Patna 144; Namita Chowdhary versus State of WB (1999) 2 Cal LJ 21; and Garbari Union Coop. Agricultural Credit Society Ltd versus Swapan Kumar Jana (1997) 1 CHN 189*).

49. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. (See *Raza Buland Sugar Co. Ltd versus Municipal Board, Rampur, AIR 1965 SC 895; State Bank of Patiala versus S.K.Sharma, (1996) 3 SCC 364; Venkataswamappa versus Special Dy. Commr (Revenue), (1997) 9 SCC 128; and Rai Vimal Krishna versus State of Bihar, (2003) 6 SCC 401*)."

15. Still further, for a provision to be mandatory, the language alone is not decisive and Court must have regard to the context, subject-matter and object of provision. The Court is required to consider the nature and design of the statute; the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for contingency of the non-compliance with the provisions; the fact that the non-compliance with the provision is or is not visited with some penalty; the serious or the trivial consequences, that flow therefrom; and the factors which are required to be determined whether the provision is mandatory or directory. Reference may be made to recent decision of the Supreme Court reported as **(2017) 8 SCC 746 (Amardeep Singh vs. Harveen Kaur**) wherein it is held as under:-

> "**18**. In determining the question whether provision is mandatory or directory, language alone is not always decisive. The court has to have the regard to the context, the subject-matter and the object of the provision. This principle, as formulated in Justice G.P. Singh's *Principles of Statutory Interpretation* (9th Edn., 2004), has been cited with approval in *Kailash* v. *Nanhku* [(2005) 4 SCC 480] as follows: (SCC pp. 496-97, para 34).
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> > "*34*. … 'The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said: "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by

> carefully attending to the whole scope of the statute to be considered.
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> "'For ascertaining the real intention of the legislature', points out Subbarao, J. 'the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the noncompliance with the provisions; the fact that the noncompliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered'. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory."

16. In **M/s Surendra Trading Company vs. M/s Juggilal Kamlapat Jute Mills Co. Ltd. and others, (2017) 16 SCC 143**, the Supreme Court was examining as to whether the period mentioned for removal of defaults in terms of proviso to sub-section (4) of Section 10 of the Insolvency and Bankruptcy Code, 2016 is mandatory. It was held that no purpose is going to be served by treating the said period as mandatory. The Court concluded as under:-

> "**24**. Further, we are of the view that the judgments cited by the NCLAT and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible.

> **25**. Thus, we hold that the aforesaid provision of removing the defects within seven days is directory and not mandatory in nature. However, we would like to enter a caveat."

17. In the present case, the provision of Sub-rule (3) of Rule 10-B of the Rules is that a party to the dispute is required to have a notice of the pendency of the dispute before the Labour Court. The fixation of date for hearing of the dispute within six weeks of the date on which it was referred for adjudication has the purpose that the dispute should be resolved expeditiously but it does not contemplate a separate notice for leading of evidence if the parties have put in appearance at an earlier stage. Therefore, Sub-rule (3) of Rule 10-B is not a mandatory provision.

18. It is equally well settled that the procedure of conduct of proceedings is handmaid of justice. Reliance is placed upon the Supreme Court decision reported as **(1994) 3 SCC 569 (Kartar Singh vs. State of Punjab**). In a judgment reported as **(2006) 1 SCC 46 (Shaikh Salim Haji Abdul Khayumsab vs. Kumar and others**) the Court held that the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. The relevant extract reads as under:-

> "**10**. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment

> ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.
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> **11**. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer."

19. In a judgment of the Supreme Court reported as (**2015) 7 SCC 601 (Rajasthan Housing Board vs. New Pink City Nirman Sahkari Samiti Limited and Another**) in the matter pertaining to land acquisition, knowledge of the proceedings was held to constitute notice. The relevant extract of the said decision reads as under:-

> "**16**. In the instant case it is apparent that the Housing Society had preferred objections and was aware of the land acquisition process and determination of compensation and has filed objections which stood rejected on 4.9.1982. Thus, the constructive knowledge of the award is fairly attributable to it when it was so passed. Constructive notice in legal fiction signifies that the individual person should know as a reasonable person would have. Even if they have no actual knowledge of it. Constructive notice means a man ought to have known a fact. A person is said to have notice of a fact when he actually knows a fact but for wilful abstension from inquiry or search which he ought to have made, or gross negligence he would have known it. Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice. The concept of constructive notice has been upheld by this Court in *Harish Chandra Raj Singh vs. Land Acquisition Officer, AIR 1961 SC 1500*.

20. The Supreme Court in a recent judgment reported as **(2018) 2 SCC 674** (**Macquarie Bank Limited vs. Shilpi Cable Technologies Limited**) relying upon its earlier decisions reported as **AIR 1961 SC 882** (**Mahanth Ram Das v. Ganga Das)** and **Surendra Trading Co. (supra),** again held that the procedure is handmaid of justice and a procedural provision cannot be considered as mandatory. The Court held as under:-

> "**39**. This judgment also lends support to the argument for the appellant in that it is well settled that procedure is the handmaid of justice and a procedural provision cannot be stretched and considered as mandatory, when it causes serious general inconvenience. As has been held in *Mahanth Ram Das v. Ganga Das AIR 1961 SC 882*, we have traveled far from the days of the laws of the Medes and the Persians wherein, once a decree was promulgated, it was cast in stone and could not be varied or extended later: (AIR pp. 883-84, para 5)
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> > "5.....Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed."

21. In view of the above, we find that fixation of date of hearing of the dispute is a matter of procedure so that the parties are aware that the dispute shall be taken up by the Labour Court on a date fixed but once the party has put in appearance, such party is not expected to be served with another notice of hearing of the dispute as the notice of hearing before the Labour Court has a specific object in mind that the party should be aware of the matter pending before it and lead evidence as they may consider appropriate. Therefore, we find that Sub-rule (3) of Rule 10-B is a procedural provision and a separate notice is not contemplated after the parties have put in appearance before the Labour Court.

22. Still further, since the object of the Act and the Rules made thereunder is expeditious disposal of the dispute, therefore, the interpretation of the Rules has to be keeping in view the object of the Act, therefore, the deferment of the hearing after the parties had notice of the dispute by a notice from the Labour Court is not conducive to the industrial disputes resolution, therefore, the interpretation which defeats the purpose of the Act, cannot be accepted.

23. A cumulative reading of Rule 10-A read with Rule 10-B of the Rules and other Rules is that a party to dispute must receive a notice from the Labour Court. Once the notice is received from the Labour Court, no further notice is required to be issued including after completion of the pleadings, for hearing which is considered to be synonymous of the leading of the evidence by the parties. Therefore, we hold that the judgment of this Court in **Bhagwan Das's case (supra**) and other Single Bench judgment in **Smt. Meena Gupta (supra**) do not lay down the correct law. Consequently, the said judgments are overruled.

24. In view of the above opinion, the matter be placed before the Bench in accordance with the Roster for final disposal.

(Hemant Gupta)
Chief Justice

(Vijay Kumar Shukla)
Judge

(Subodh Abhyankar)
Judge

S/