New Labour Codes of India
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Lecture 11
Industrial Disputes - Introduction - Definitions

Dear students, we are going to discuss industrial disputes and industrial dispute resolution under the new codes. So, industrial dispute resolution is one of the important aspects of collective bargaining. So, if there is no mechanism for the resolution of disputes, and it is very difficult for any of the employees, it is very difficult for the workers to have the resolution of their disputes. So, the earlier act, the Industrial Disputes Act of 1947 provides elaborate provisions for the resolution of disputes.

So, in this class, our objective is to look into some of the definitions like what is the definition of workmen, the definition of worker, what is the difference between the old act, the terminology differences between the old act and the new act, and then we are going to see the definition of the strike, layoff, closure and some of the other important definitions.

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So, the Industrial Disputes Act of 1947 was ruled for many years and it was working effectively, very effectively in the country. So, this particular old Act has the lifeline of any workers in case of dispute between workers, employer and employees, and employer and employee. So, this class is confined to the difference.

So, we are going to look into the differences and aspects of what you mean by layoff, lockout, retrenchment, strike and also workman industry. So, there is a jurisprudence, which is available under the Industrial Disputes Act, what constitutes industry and also what constitutes industrial disputes. So, we will confine this particular class to the definitions.

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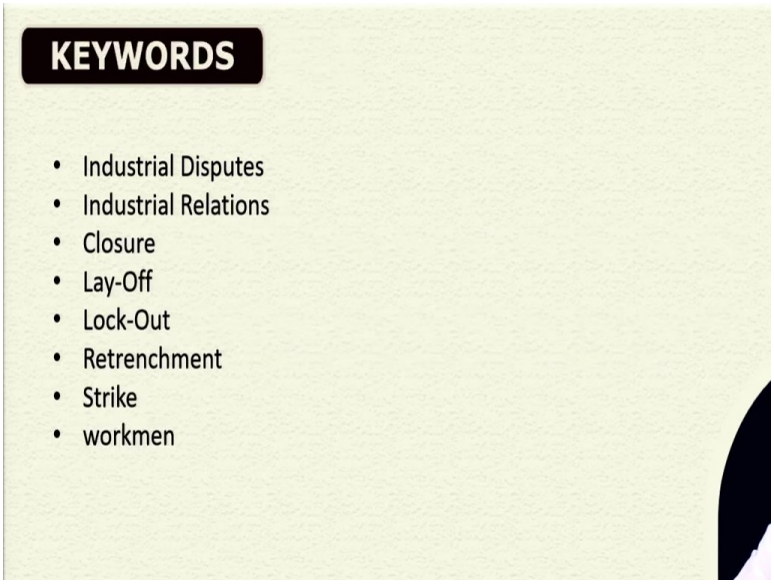

And then in the coming classes, in the other classes this week we will discuss about all these aspects in detail. So, I said that we are going to confine to only the definitions of these particular terminologies in this particular class.

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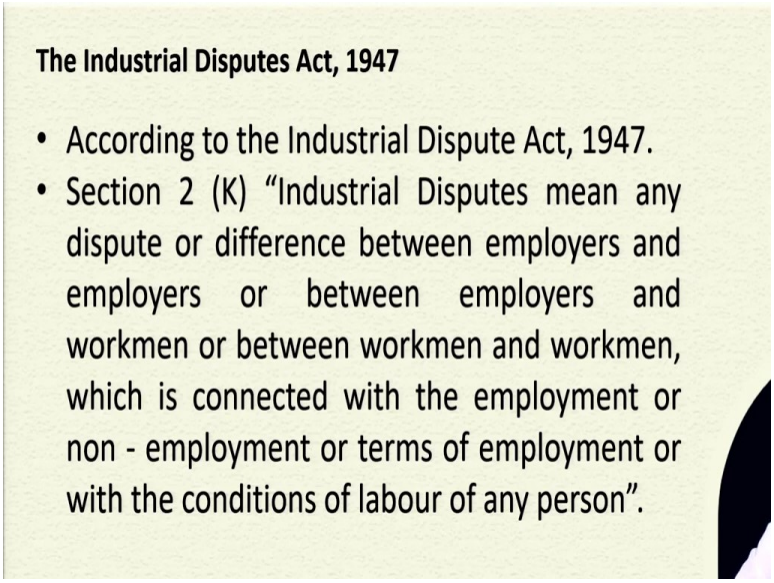

So, the Industrial Disputes Act 1947 defines what you mean by industrial disputes under the old section 2(k). So, Section 2(k) says industrial dispute means any dispute or difference between employers and employers, between employers and workmen or between workmen and workmen. So, it may be related to employment or not employment, terms of employment or conditions of labour of any person. So, this is the comprehensive definition, which was or I would say that which is still until the notification is made in place. So, the industrial dispute is a very simple and clear definition provided under the Industrial Disputes Act.

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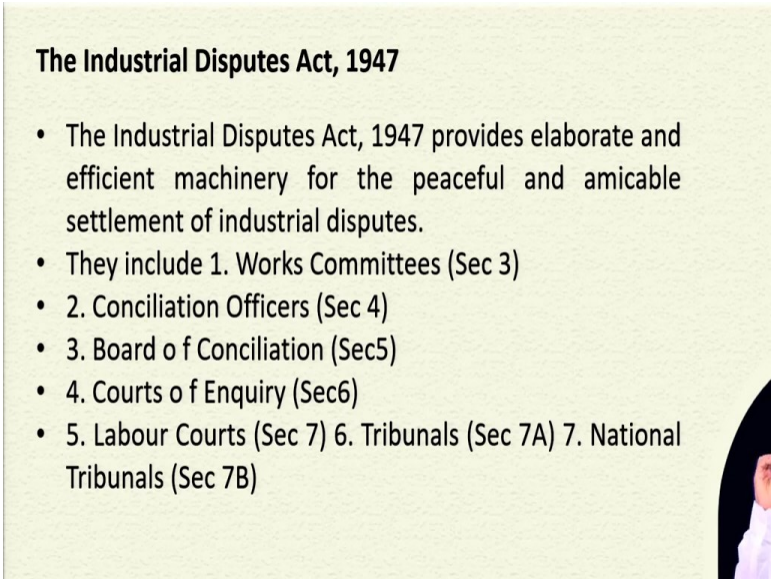

And also, the Industrial Disputes Act provides for elaborate provisions and machinery for amicable settlement of disputes. And we can see that there are five types of machinery pacifically or systems, I would say that the five ways of disputing resolutions amicably. So, the first ones are work committees, the second is the conciliation offices, the third, are the board of conciliation, the Fourth, are the courts of inquiries, and labour codes and the sixth is tribunals. And these tribunals include state tribunals and national tribunals. So, at least there are seven types of machinery mentioned, specifically mentioned under the Industrial Disputes Act 1947. And almost most of these working systems have been adopted in the IR code as well.

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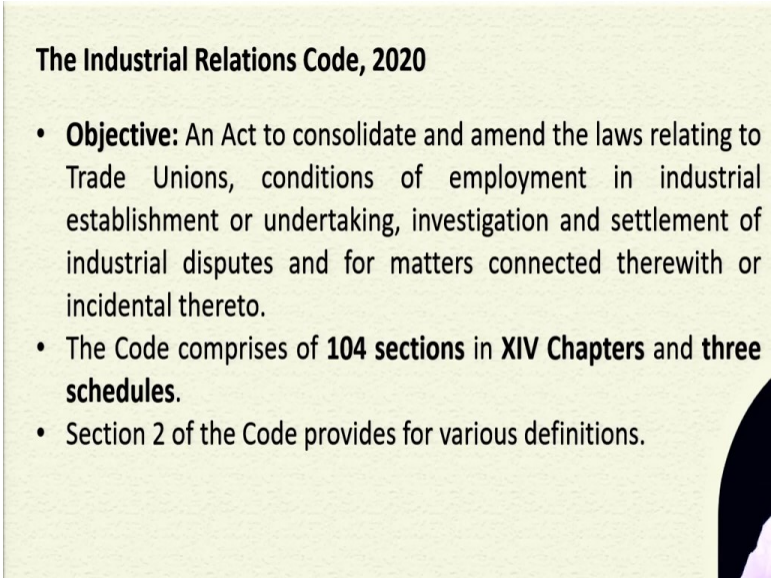

So, the Industry Relations Code very clearly says what is the objective of the industrial relations code. So, it says the amending the law relating to the trade unions which we already dealt with conditions of employment, industrial establishment or undertakings, investigation and settlement of disputes and for matters connected with. So, specifically, the IR code's objective is to amend the laws relating to the trade unions and employment and industrial establishments, undertake, investigate and settlement of disputes.

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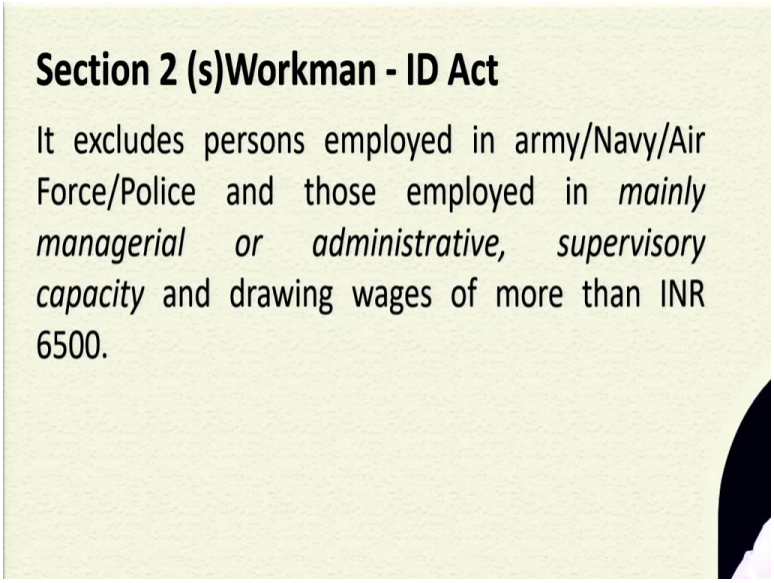

So, we can see certain differences in the definitions. So, we saw the definition in section, the earlier section 2(k) of the Industrial Disputes Act what is mean by industrial disputes, here we can see the definition gives you exclusion of certain people, exclusion of certain people like Army Personnel, Navy, Air Force, Police and more importantly, those who are working in a managerial or administrative and supervisory capacity and there is a wage ceiling as well in the old act.

So, we can see the amendment to this particular provision. And most of these, the personals other than the forces, forces include the Army, Navy, Air Force and Police Personals, the other people who are in the managerial capacity, administrative capacity and supervisory capacity are included in the new IR code. So, these people were excluded from the old definition of the workman.

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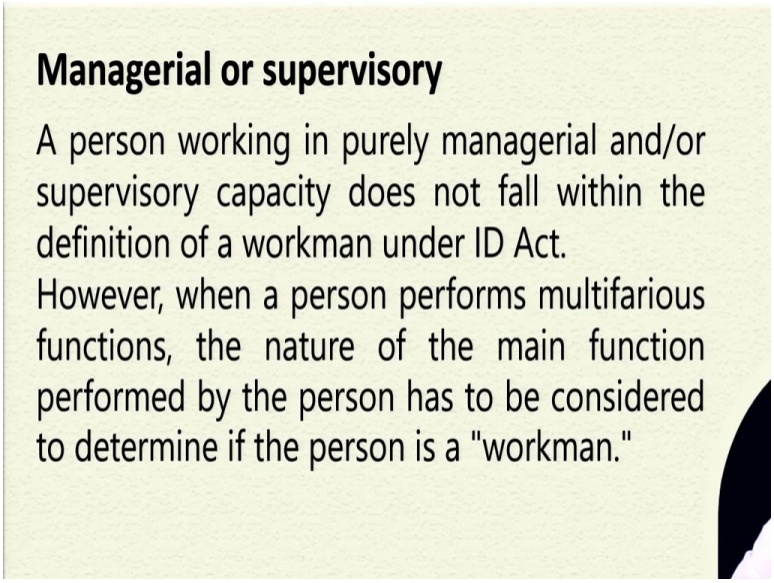

So, there are various jurisprudence and various interpretations by the courts, what do you mean exactly by managerial and supervisory capacity? So, the earlier position was that people who are falls in the managerial capacity or supervisory capacity, cannot raise an industrial dispute. So, I think modern society, also must have an avenue for the resolution of their disputes. So, who is the manager or supervisor? The court said that it will depend upon what is their function. So, whether they will come under the definition of workman or supervisor or manager will depend upon the nature of the work.

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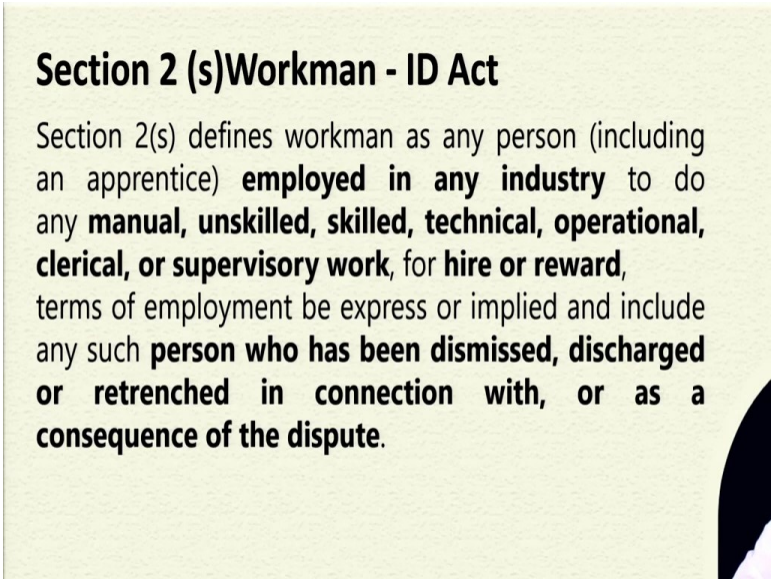

So, who are the workmen? So, the definition of workman under the Industrial Disputes Act, says that other than an apprentice, the apprentice, which is mentioned under the Apprenticeship Act, people any person employed in any industry to do any manual unskilled, skilled, technical, operational, clerical or supervisory for hire or reward. So, this can include the person who has been dismissed, discharged or retrenched in connection with a particular trade dispute. So, the workmen under section 2(s) include in almost all the categories skilled, unskilled or semi-skilled, technical or operational or clerical or supervisory.

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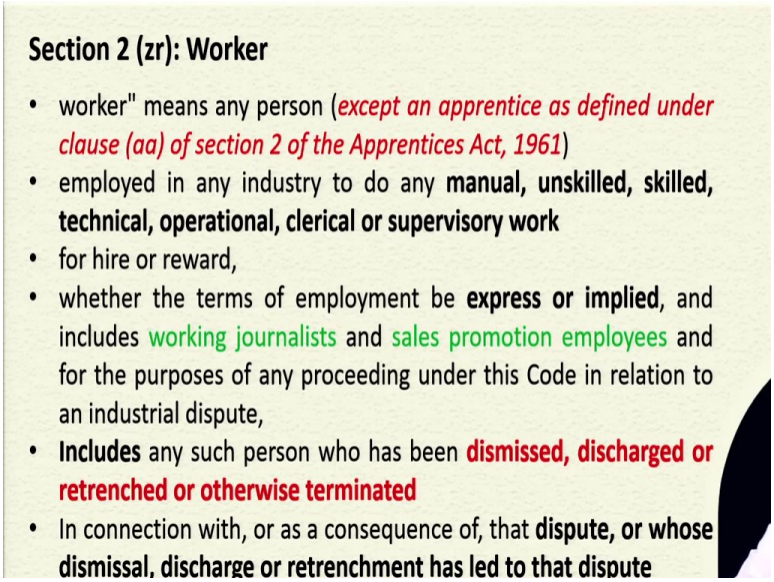

So, this is the definition of workmen. When it comes to the new IR code, the IR code has made certain improvements. So, I would say that some changes in the technology, so, workmen become a worker. So, the new IR code defines who is a worker. So, worker means any person other than an apprentice, which you have mentioned. So, again including manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward.

So, they have just taken the Indian definition from the old Act. So, what is the addition? The addition of working journalists, and sales promotion employees also come within the purview of the Industrial Dispute Act, industrial dispute provisions of the IR code. And this includes any person who has been dismissed, discharged or retrenched or otherwise their services are terminated they also come under the definition of worker.

So, it means even though somebody is terminated, services are terminated he will be continued to be within the ambit of the definition of a worker under the new provisions. So, such dismissal discharge or retrenchment should be in connection with a trade dispute. So, the addition is I can see only the addition is the working journalist and sales promotion employees are included in this particular definition.

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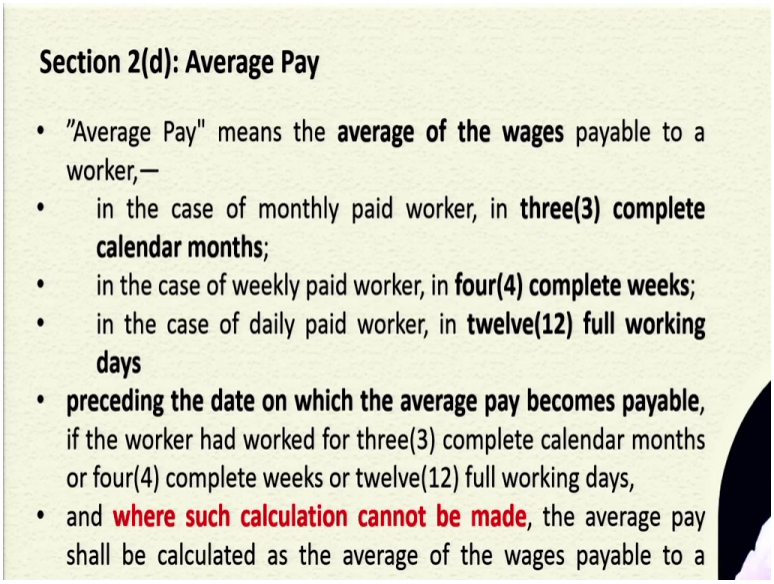

So, what do you mean by average pay? Average pay there are a lot of calculations. So, in the case of a monthly paid worker, in the case of a weekly paid worker, in the case of a daily paid worker what are the average wages? So, in the case of a monthly worker, you have to take note of 1 month, 3 complete calendar months, and you have to take into consideration of average wages. In the case of a weekly paid worker, a minimum of four weeks means, a one-month wage to be taken into consideration for the calculation of the average weekly paid worker.

In the case of a daily paid worker, 12 full working days should be taken into consideration. So, proceedings to the particular calculation are made, and the date of the particular calculation is made. So, otherwise, probably the disparity in calculating monthly wages can be mitigated through this particular provision. So, this is to see that the average pay is calculated based on the working wages payable to him during the actual period he is working. So, there is a mandatory period to be taken into consideration for the calculation of wages and average wages.

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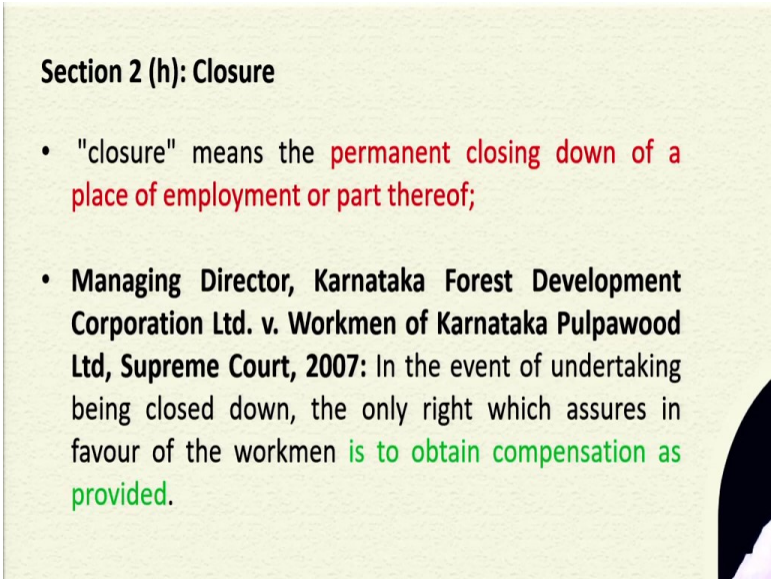

So, what is the closure? What do you mean by the closure of an establishment? So, closure is nothing but the permanent closing down of the place of employment, not the temporary closing. So, here there is a legal consequence of the permanent closing of a particular industry. So, in this particular case, the 2007 case, the managing director of Karnataka Forest Development Corporation Limited versus Workmen of Karnataka, so Parkwood limited.

So, Supreme Court said that, if an undertaking is going to be closed, the only right which is left to the workmen is compensation. So, if somebody is going to close down an establishment, you cannot prevent anybody from closing the establishment subject to the other provisions of the legislation. You cannot stop anybody, there is no right on the workers to stop closing out and the only remedy which is available to the workers is available compensation, they can ask for compensation, that is the only remedy which is available to the workmen.

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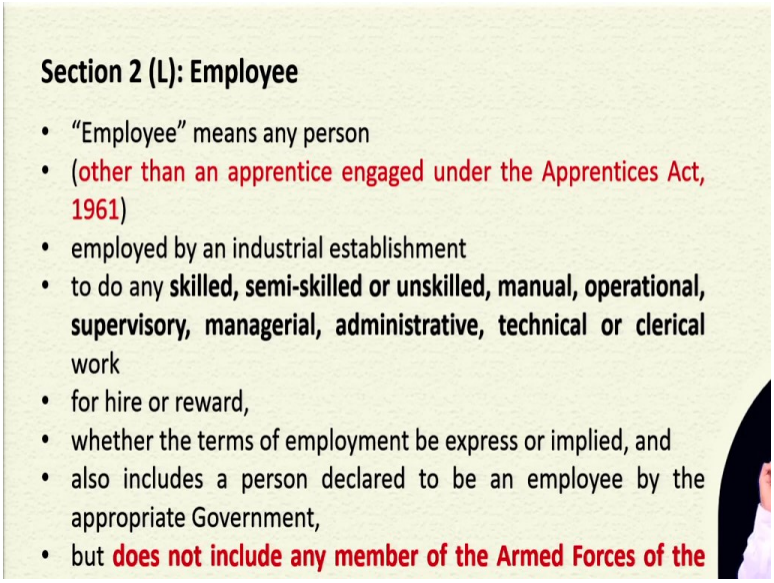

And now, you can see the definition of an employee. So, employee and worker, are the two definitions which you can find. And I would say that the employee is a larger definition, the large definition is included the employee the terminology employee is including a larger category of people. What are those categories of people? They are skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical and clerical work for hire or reward.

So, it means a larger category of people including supervisory and managerial personnel are included in the ambit of the definition of employee, so the workman is limited. The definition of employee is opened up but definitely, it does not include armed forces or police or police forces. So, it is a divided ambit of the employee, so I think anybody or everybody can come up with a definition of this employee. He may not be for the purposes of a worker, but he can become the definition of an employee.

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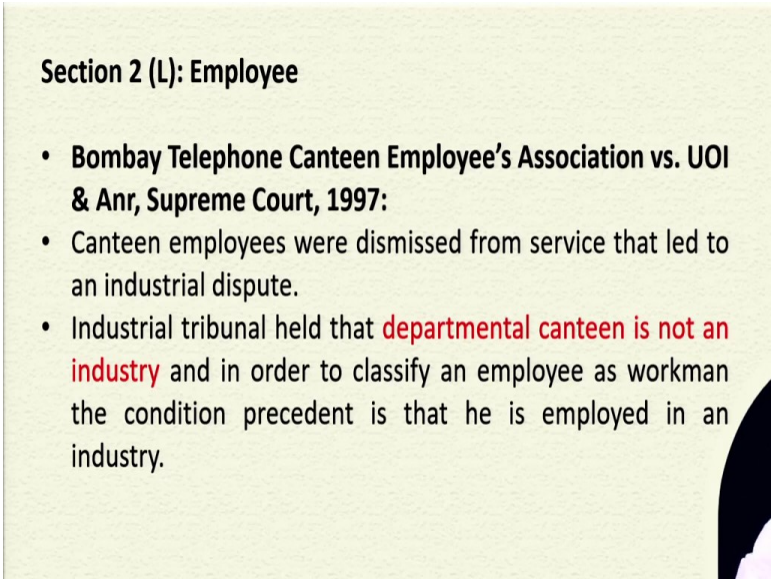

So, here the question is some canteens, there are some canteens run by industry. So, in this Bombay Telephone Canteen Employee's Association versus the Union of India, the Supreme Court said that and so this is very clearly said that the departmental canteen is not an industry. So, the people who are working are not going to be workmen.

So, the condition precedent to raise a dispute is he must be a workman under the Industrial Disputes Act of 1947. So, if some establishment is declared to be not an industry, then the people who are working in that establishment is not going to be workman then they cannot raise an industrial dispute under the Industrial Disputes Act of 1947.

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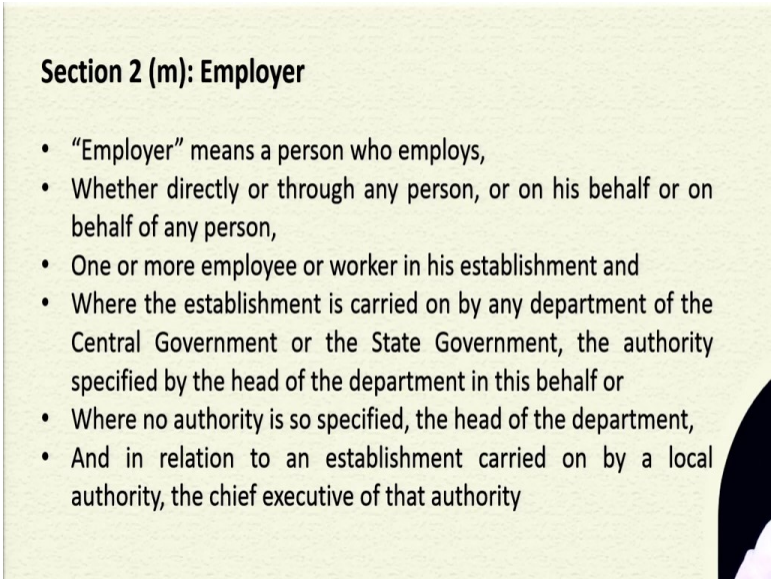

And here the definition of employer is an elaborate definition. So, the employer can be working directly or with any other person on his behalf of him. So, and also, so, in the case of state governments and central governments, it is the specific head of department or the authority specified by the government who will be acting as the employer. If such no authority is specified, then the local authority or chief executive of that particular authority is going to be considered as the employer.

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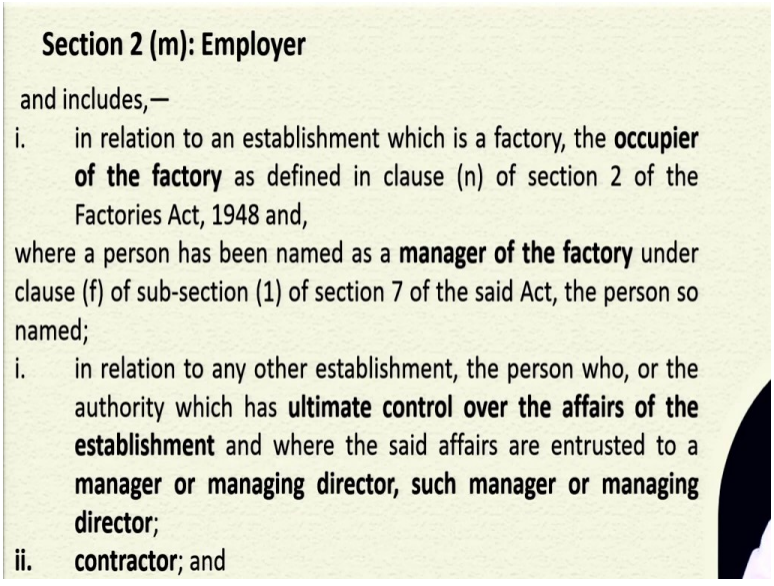

And also, with regard to any factory, the occupier of a factory is going to be the employer or the manager of a factory is going to be the employer or no such persons are appointed or nominated, then the ultimate, so the court is going to see that who has the ultimate control over the affairs of the establishment. He may be a director, he may be a manager, he may be a managing director, even a contractor and even a legal representative of the deceased employer can be considered as an employer for all the purposes of this particular code.

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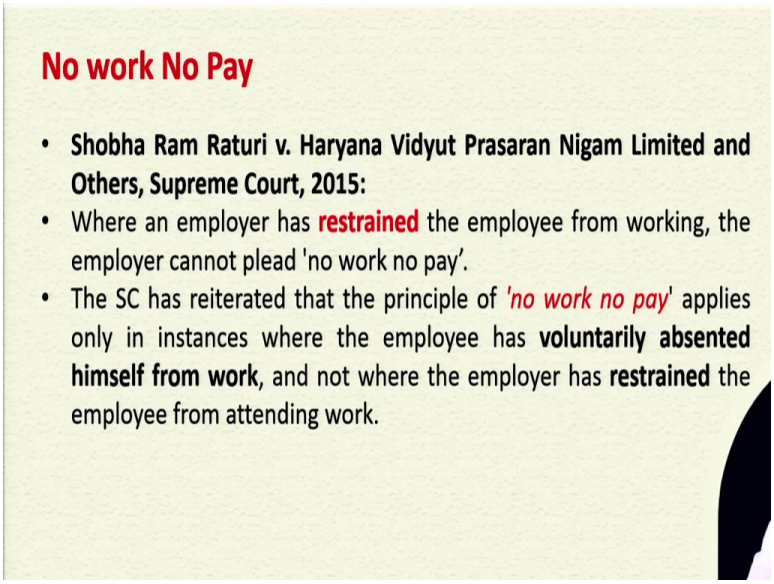

So, in most cases, most governments adopt now the policy of no pay no work or no work no pay. So, no work no pay. So, what the Supreme Court held in 2015 in the case of Shoba Ram Raturi versus Haryana Vidyut Prasaran Nigam Limited. So, if the employer has restrained the employee from working, if the employer restrained the employee from working and then later on the employer says, no work no pay, that cannot be accepted.

So, the Supreme Court has accepted the principle and retreated to the principle that no work no pay is applied only in the case of voluntary absence, if somebody is voluntarily absent from the work, then only this no work no pay is applicable. And if the employer himself restrained the employee from enduring or attending the work then this rule of no work no pay is not applicable.

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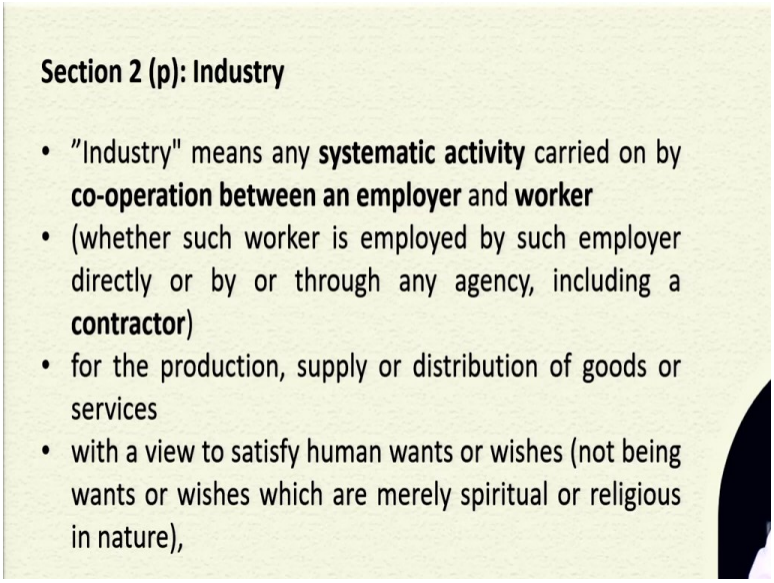

The most important definition is the industry. We have a vast jurisprudence of what constitutes an industry. So, the definition of industry under the particular provision says that industry means any systematic activity carried out by cooperation between employer and worker. So, the worker may be worked directly by the employer or through a contractor or through any other agency, they will also be considered a worker. So, it may be for the production, supply or distribution of goods or any other work which is related to satisfying human wants or wishes. So, besides being spiritual and religious, it can be considered an industry.

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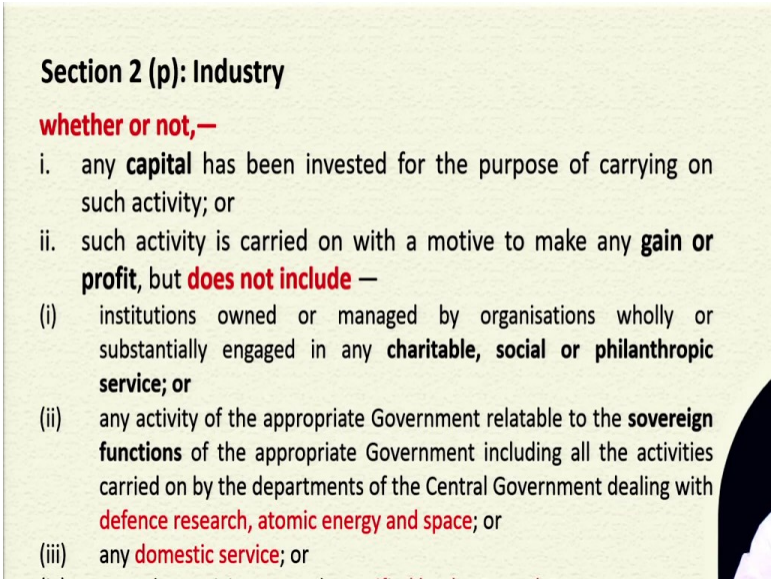

So, this is the definition. But it does not include charitable organizations or social on philanthropic services. And also, it does not include sovereign activities of governments, defence research, atomic energy, space, etcetera, and also, domestic services. Or the central government can notify any service to be not included as come within the definition of industry. So, the central government can notify.

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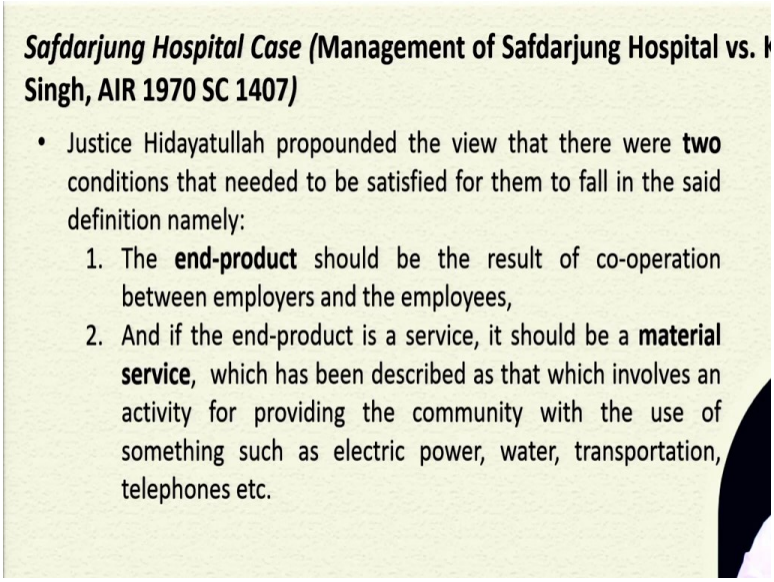

The most important case or the famous case, is the Safdarjung Hospital case, the management of the Safdarjung Hospital versus Kuldeep Singh, 1970 Supreme Court. So, the lordship of the Supreme Court, Justice Hidayatullah has very clearly propounded what constitutes an industry. So, there are two conditions put forward by the Supreme Court in this particular case not be satisfied them to fall within the definition of industry.

One, the end product should be the result of cooperation between employer and employee. And if the end product is a service, it should be a material service which involves an activity for providing the community with the use of something. For example, electric power, water, transportation, telephones and all other services. This can also become another definition of industry.

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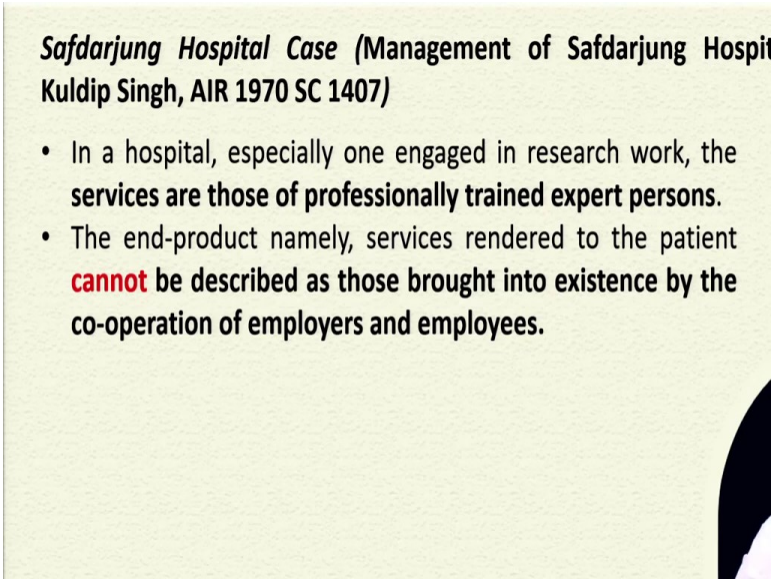

So, in this case, the question was whether a hospital engaged in search work and services are those professionally trained expert personals will come under the purview of the industry. So, here the end product is services rendered to the patients. So, here the court said that the services rendered to a patient cannot be described as those brought into existence by the cooperation between employer and employees. So, a hospital cannot be held as an industry in this particular case. But, we can see the other cases that the Supreme Court said.

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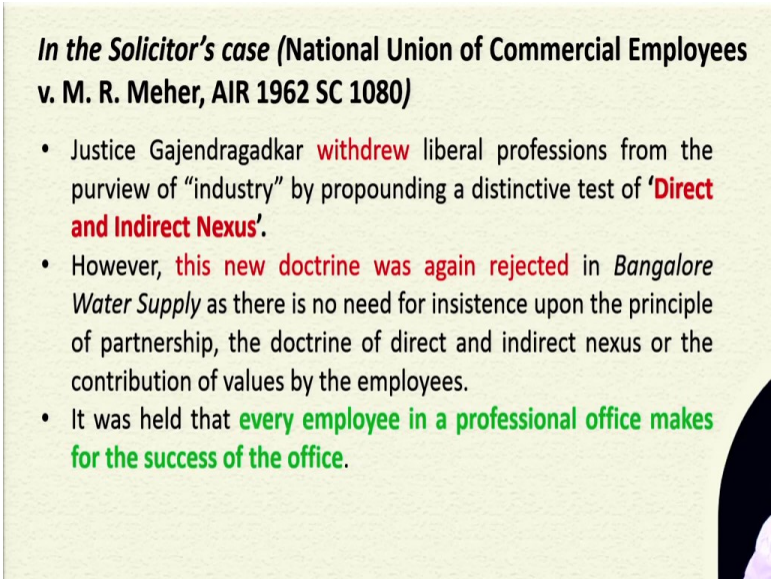

So, in the Solicitor's case, that is the National Union for Commercial Employees versus Mr M. R. Meher. Justice Gajendragadkar said that, so, what is the liberal view? So, what constitutes inside the industry? The distinctive test of direct and indirect Nexus, a test was propounded. So, direct and indirect Nexus test, but later on this direct and indirect Nexus test in the Solicitor's case was rejected by the Supreme Court in the Bangalore water supply storage case, the famous case. So, in this particular case, the court said that every employee in a professional office makes for the success of the office. So, that is why it came the direct and indirect Nexus of every employee.

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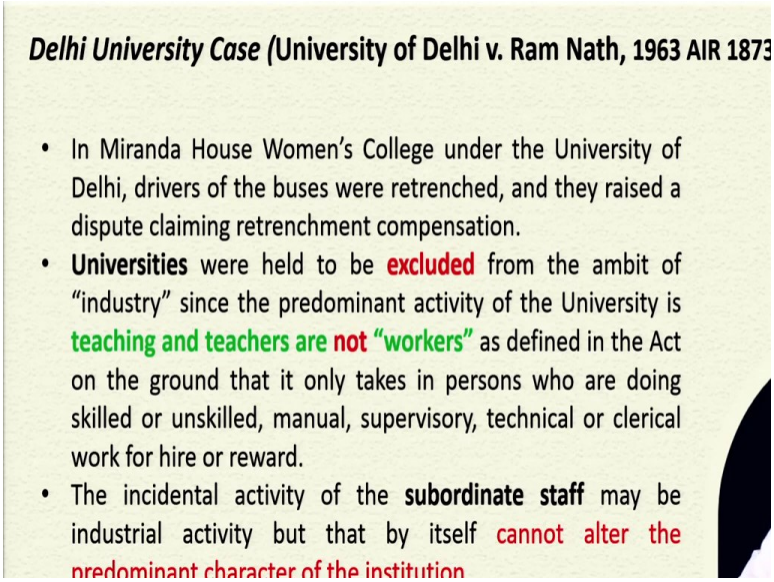

In the University of Delhi versus Ramnath, we can see that, so, the university, a college under the university, Delhi University, hires the services of a driver, and the driver has been retrenched. And he claimed that universities also come under the definition of industry, and he is a workman so he can raise an industrial dispute. So, the court said that the universities were held to be excluded from the purview of the ambit of industry, the definition of industry.

And so, he is not a worker, defined under the particular act. So, in the case of subordinate staff within an industry, the nature of the work determines whether he will come under the definition of worker or workmen. So, the court very clearly said that the driver of a bus of a college is not going to become a workman and he will not come into the purview of the Industrial Disputes Act.

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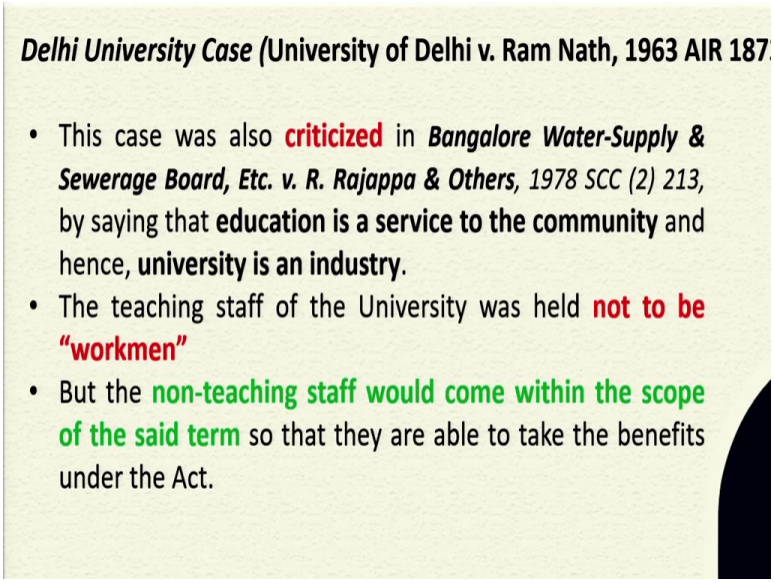

And the Delhi University case was severely criticized in the famous case of Bangalore Water-Supply and Sewerage Board versus Rajappa. So, here you can see this particular case. The court said that education is a service to the community and university then to that extent, the universities also come within the definition of industry. And the teaching staff of the university was held to be not a workman.

At the same time, non-teaching staff would come within the scope of the said term or definition within the industry. I do not know why the court has made this distinction in the case of the teachers, the staff and teachers and non-staff, so the driver comes where within the definition of staff or non-staff, this is again a moot question.

So, non-teaching staff, the court said that non-teaching staff will come within the definition of industry. So, it means that a teacher in a university cannot raise an industrial dispute because he does not come with a definition of the workman, but a non-teaching staff will come within the definition of a workman. So, this was the definition which is given by the Supreme Court in the Bangalore Water-Supply case.

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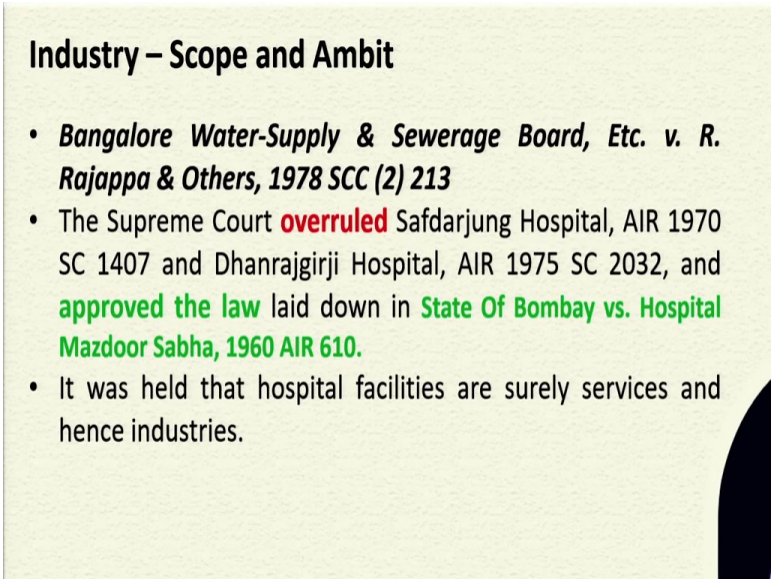

So, all earlier cases were overruled by the Supreme Court, in this case, the Bangalore Water-Supply case, the Safdarjung Hospital case was overruled, and Dhanrajgirji Hospital case was approved and also an earlier case of 1960 was approved by the Supreme Court. So, the court said that hospital facilities are surely services and hence industries. So, we have to see the new code, whether the hospitals and universities come within the purview of the new IR code, the Industrial Relations Code.

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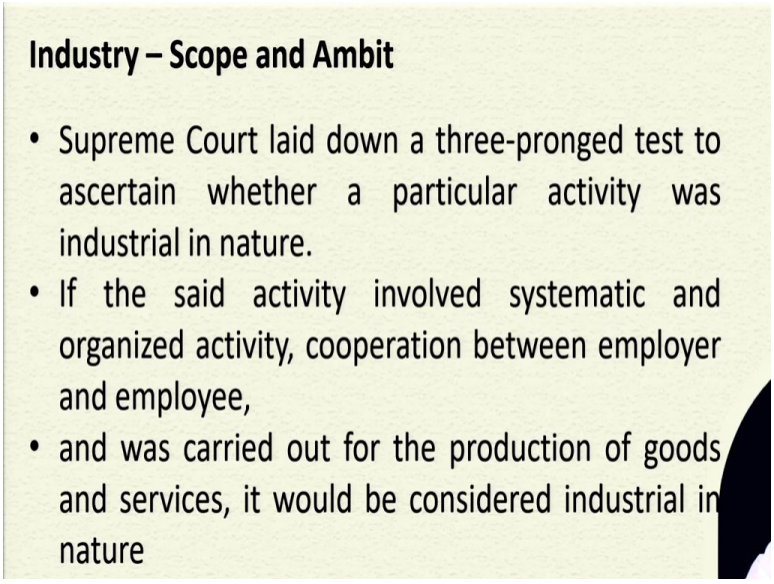

So, the scope of the ambit of this definition of the industry has been widened by the Supreme Court through various judgments. So, whether it is the Safdarjung case or the Delhi University case or when it comes to the Bangalore Water-Supply case, the Bangalore Water-Supply case is a milestone in all sets of cases.

So, the question is we can find a set of cases I think later on we will see these cases. So, the question is whether there is an involving a systematic and organized activity or whether there is a cooperation between employer and employee. So, the code has been interpreted and why ambit has been given to the definition of industry.

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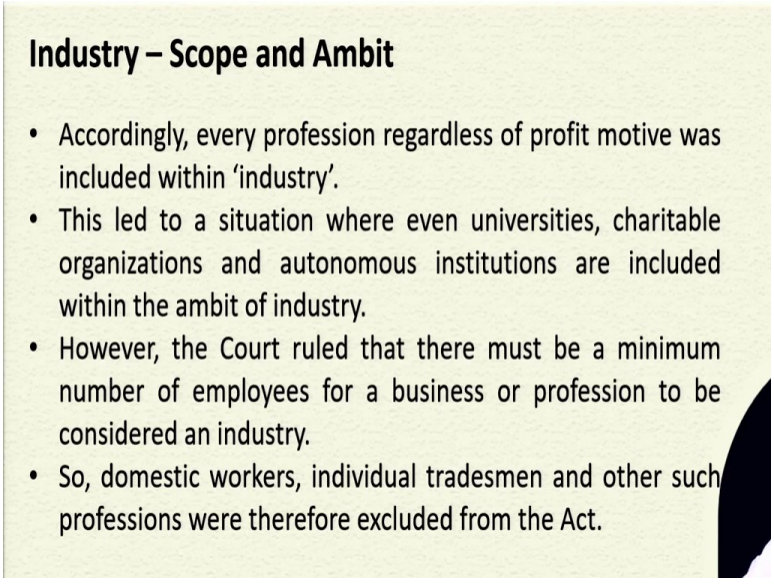

So, we can see that, irrespective of the industry or profession and even the universities, so, where there is a specific exemption for charitable societies and autonomous institutions, but through the Bangalore Water-Supply storage case, certain activities of these autonomous institutions and charitable organizations come within the definition of industry. So, the minimum number of employees is prescribed by the court in order to qualify to be an industry. So, individual tradesmen, and domestic workers are specifically excluded from the definition of industry.

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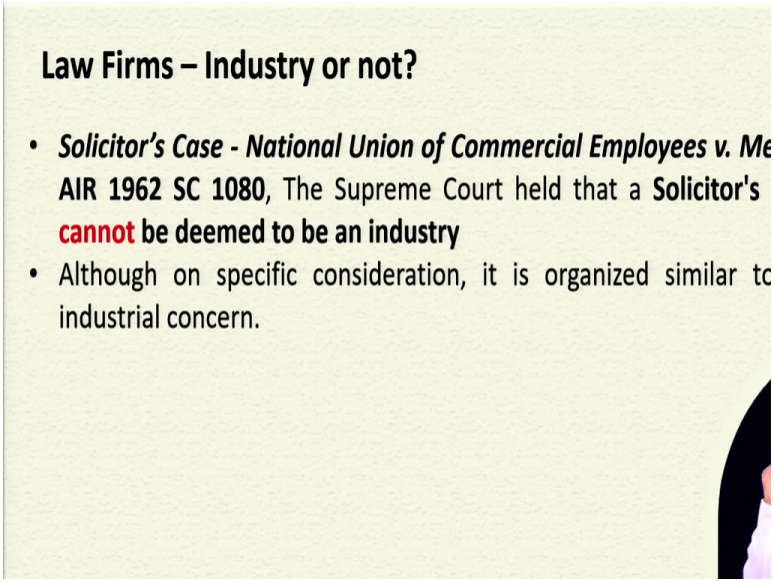

So, the question raised was whether Solicitor's Firm, a Solicitor's Firm will come under the definition of industry. So, the court readily said that a Solicitor's Firm, a law firm cannot come within the definition of an industry. So, because there is no industrial action.

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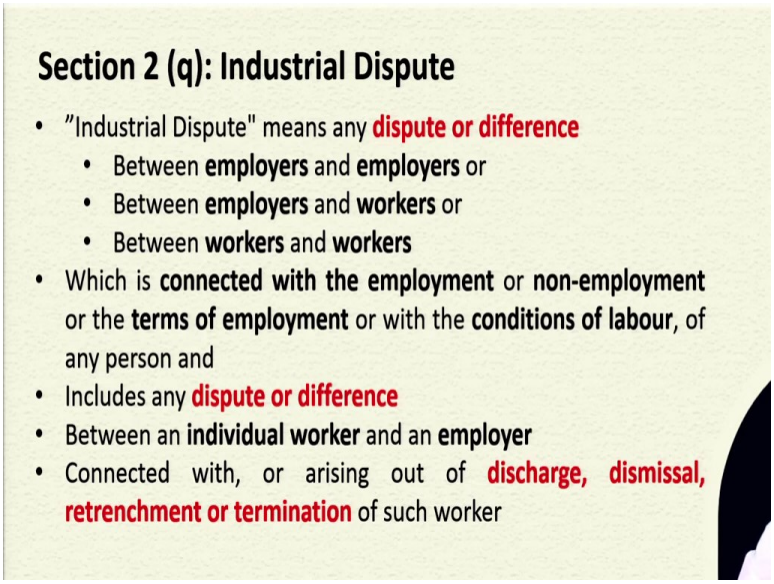

Then the question arises as to why the court has included universities and hospitals within the ambit of industry. And most importantly, we can see the IR code what constitutes an industrial dispute. So, we already saw the definition, industrial dispute difference between employer and

employer, the difference between employer and worker men, employer and workers, and workers and workers.

So, this is to the extent of dispute or differences between the employer and employee or it is employee and employee and workers and workers. And this is also connected with discharge, dismissal, retrenchment and termination of service all these will be qualified to be an industrial dispute.

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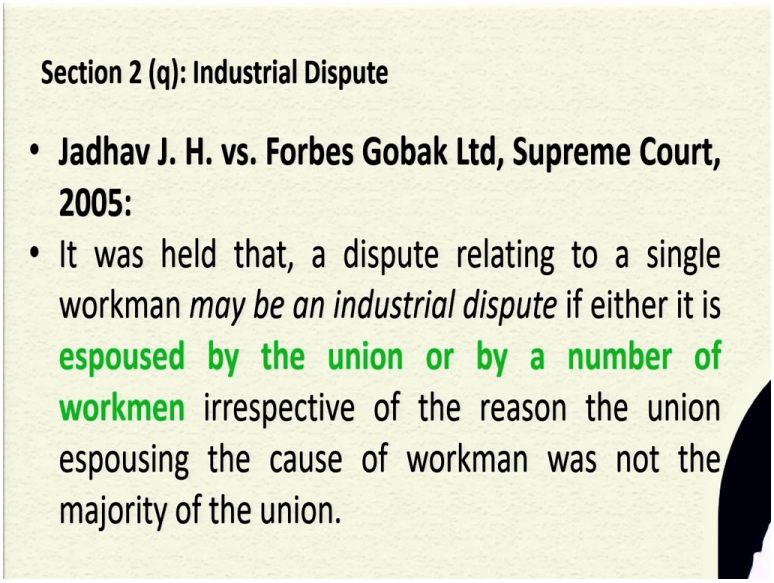

So, in this particular case, Jadav J. H. versus Forbes Gobak Limited, the Supreme Court said that held that a dispute relating to a single workman may be an industrial dispute if either it is exposed by the union or by a number of workmen, irrespective of the reason the union is passing the costs of the workman was not the majority of the Union.

So, it means termination of an employee or raising an industrial dispute on behalf of a single member single workmen can also be done, that can be done by even by a non-recognized union as well. So, but then again, the question is whether this particular provision is going to be applicable to the new IR code as well.

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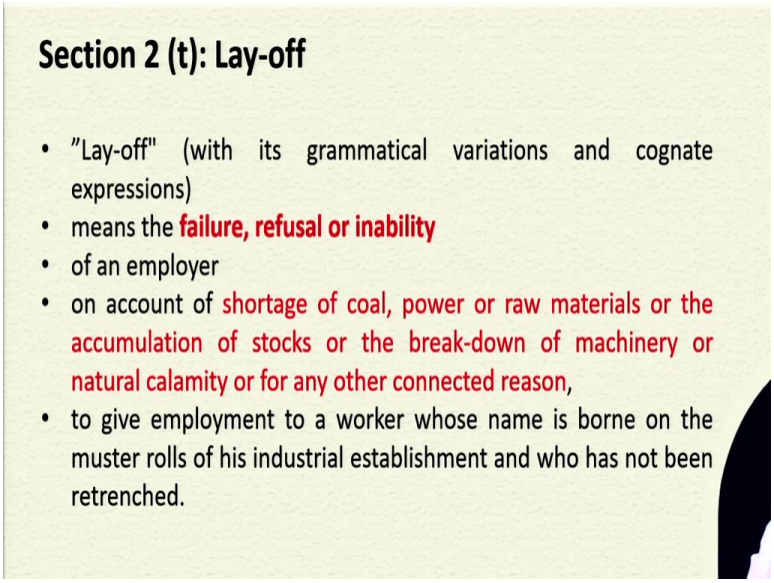

So, if we look into the definition of layoff, the layoff is very clear, it means the failure or refusal or inability on the part of the employer to run the establishment, it can be the reason can be the shortage of coal, power, raw materials or accumulation of stocks, breakdown of machinery or any natural calamity or any connected reasons. So, the crux of layoff is that it is the inability of the employer to run the establishment by the employer due to certain reasons.

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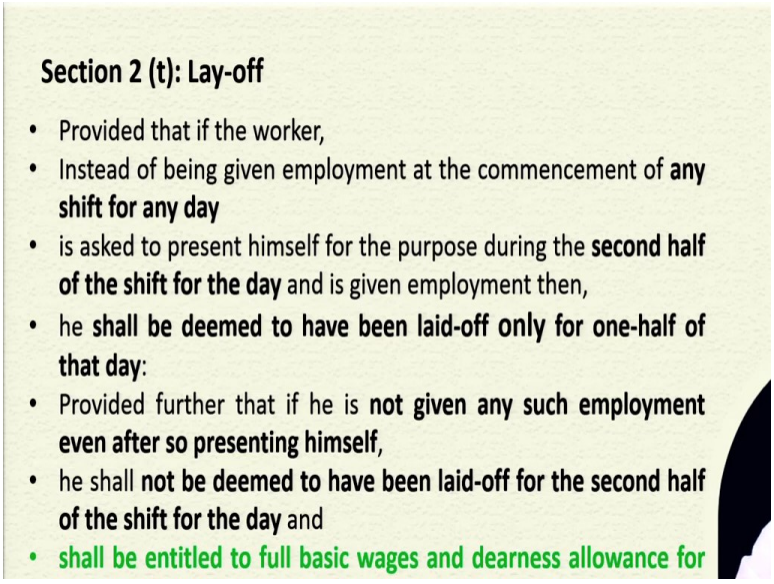

So, this is the definition of layoff under Section 2(t). So, the layoff can be clear, the layoff can be commenced any day of its working, any shift and it can be for one shift or the other shift. And

also, you can see that, so, he shall not be deemed to have laid off for the second half, he may be working one half, second half he may be not working. So, in the case of a layoff, he shall be entitled to full basic wages and the endless elements allowances for that part of the particular day. So, the layoff is an inability on the part of the employer to continue with this work of the establishment due to certain reasons.

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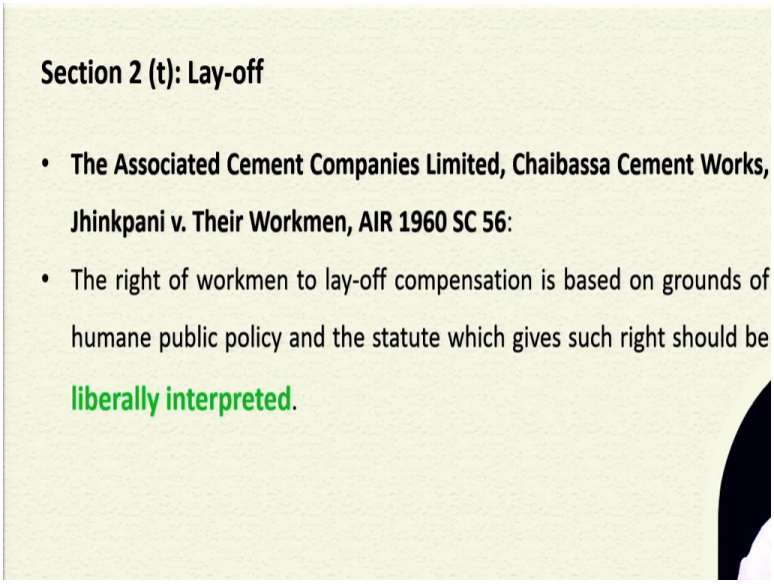

So, in this particular case, the Associated Cement Companies Limited versus Their Workmen. The court said that say layoff compensation is based on the ground of human public policy. So, this particular provision is to be interpreted very liberally in favour of the workmen. So, the lay off compensation is a statutory right of the workman where they lay in the lead of industry.

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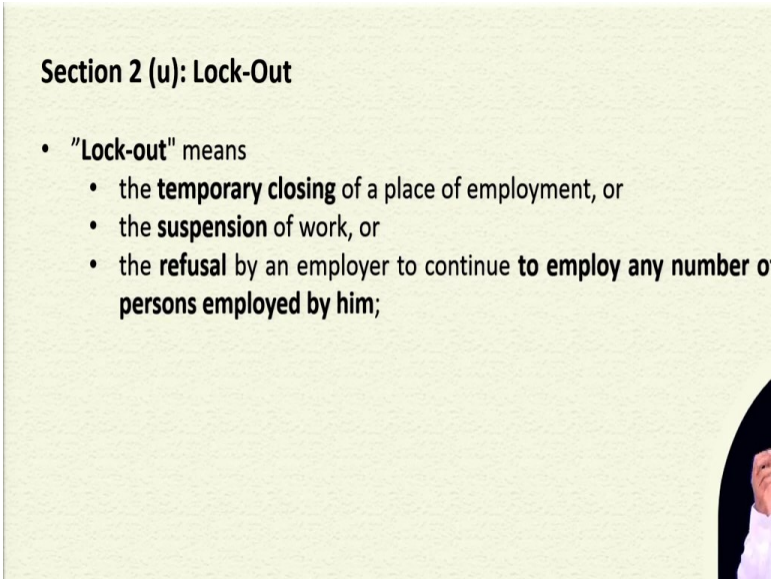

And what is lockout? By lockout, the definition says it is the temporary closing of a place of employment or suspension of work or the refusal by an employer to continue to employ any number of persons employed by him. This is a lockout. The layoff is also an initiation on the part of the employer, lockout is also an initiation on the part of the employer.

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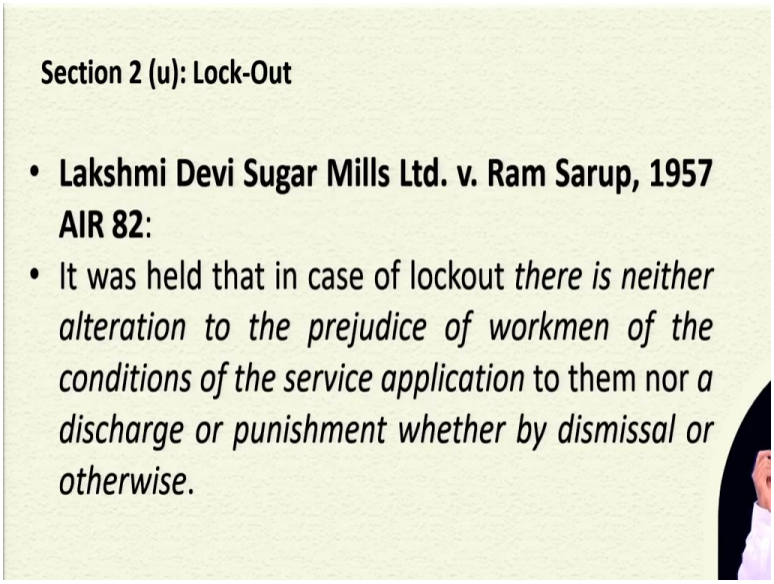

And in this particular case, Lakshmi Devi Sugar Mills Limited versus rammed through. The court said that lockout, there is neither alteration to the prejudice of workman of the conditions of the service obligations to them, nor a discharge or punishment, whether by dismissal or

otherwise. So, the lockout is not amounting to the discharge of the employees or dismissal of employees, discharge is a temporary measure.

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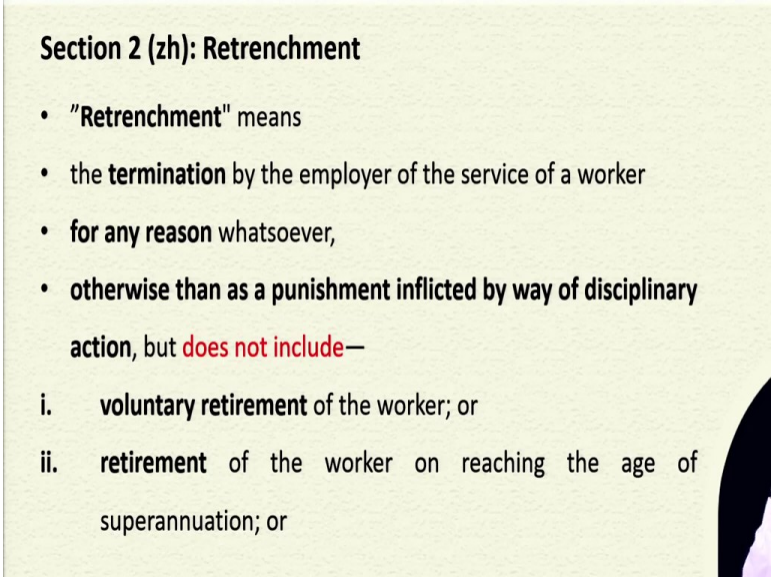

And when it comes to retrenchment, retrenchment is a termination of the employment of a worker by the employer of the service of a particular worker is terminated from service for any reason. So, it can be inflicted or imposed as a punishment. Also, by way of disciplinary action. It may be due to these or it can be voluntary retirement of the worker even superannuation. So, these two categories of retirement, voluntary retirement is not included in the category of retrenchment. Other than these two categories, if a person is terminated from his service, whether it is as a punishment or not, in accordance with the discipline reaction, it is retrenchment.

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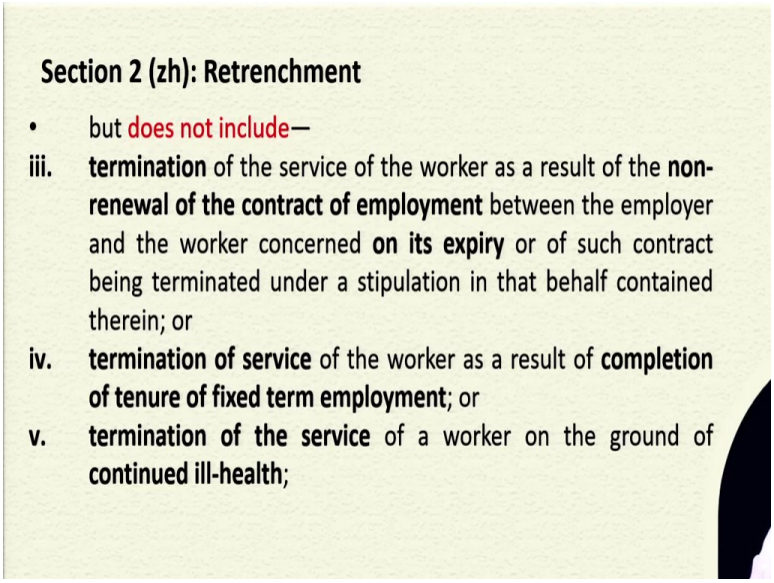

And also, as I told you, in the case of contractual workers, if a person's contract is ended, the contract is ended or terminated that cannot be also considered as a retrenchment because termination of his employment as a completion of his tenure or term of employment cannot be considered as retrenchment, so, he is not eligible for retrenchment benefits. So, if somebody's termination of the service due to the ground of continued ill-health also cannot be considered as a retrenchment because he is continued ill-health is affecting his work.

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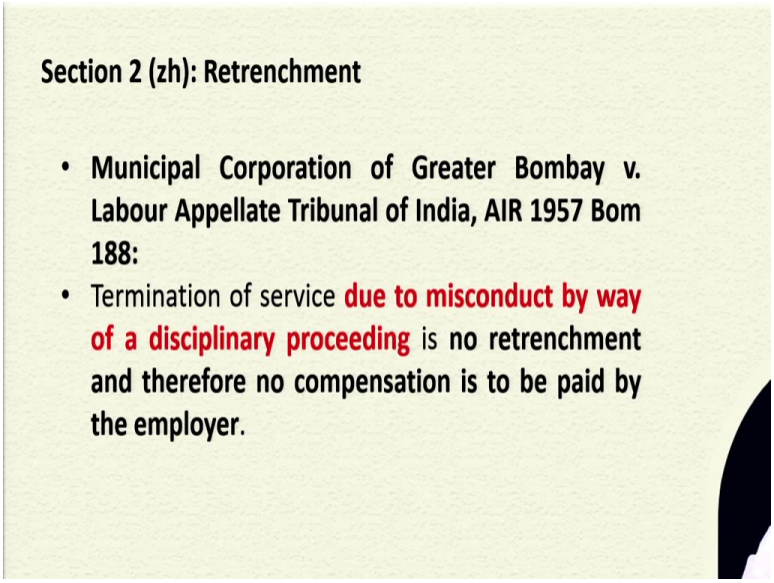

So, the Municipal Corporation of Greater Bombay versus the Labour Appellate Tribunal of India is one of the old cases. The court said that termination of service due to misconduct by way of a disciplinary proceeding is not a retrenchment. So, he is not eligible to get retrenchment benefits at all. So, retrenchment is very clear. Retrenchment, termination of the service, as a disciplined action is not eligible to get retrenchment benefits, it's not a retrenchment benefit at all.

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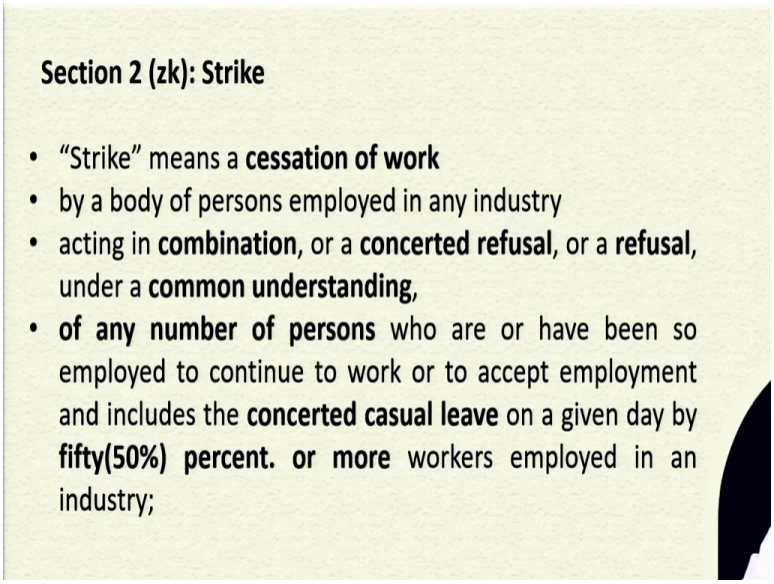

The strike is considered as an antithesis of layoff. A strike is initiated by the workmen or employees, it is a cessation of work by a body of persons those who are employed in a particular industry in combination they refuse to work. So, it may be concerted work, concerted effort or concerted effort to refuse to work based on a common understanding.

And also, anybody is taking on a common understanding, they are taking casual leave on a given day, more than 50 percent of the employees. It means, that if more than 50 percent of the employees in furtherance of a common understanding, take casual leave then also it will be considered as a strike. So, all the formalities of a strike are to comply with cases.

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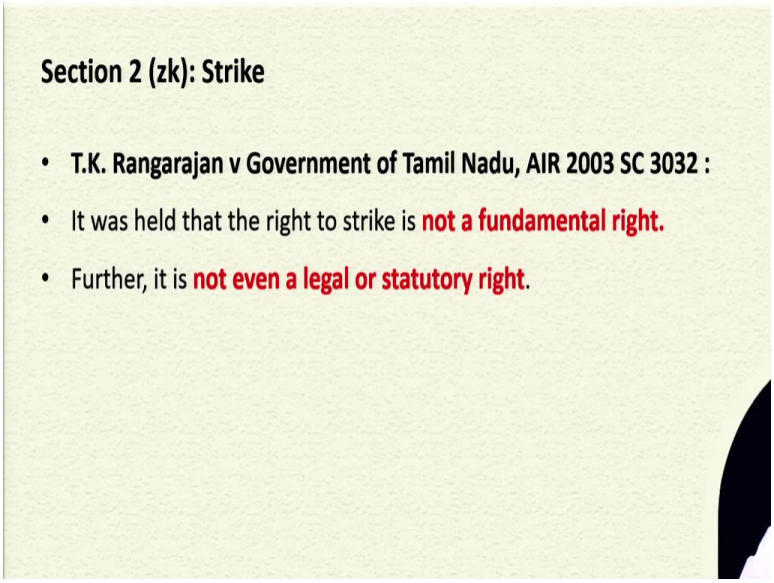

So, in T. K. Rangarajan versus Government of Tamil Nadu, the Supreme Court held that the right to strike is not a fundamental right neither it is a fundamental right nor a legal right nor a statutory right. So, the right to strike is neither a fundamental right nor even a legal right or statutory right. So, nobody has the fundamental right to strike.

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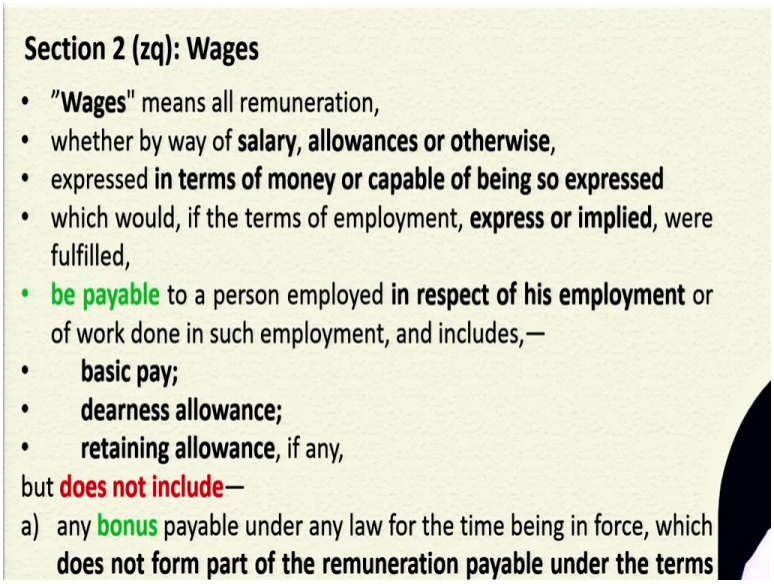

So, wage definition is very important in the new code. So, the definition of the wage, new code says that it includes by way of salary allowances or otherwise. In terms of money or capable of

being so expressed, it can be express terms or implied terms payable as salary or allowances or any other gains, the legal gains or legal means of gains. So, that will be considered as wages.

So, these wages very specifically include the basic pay, dearness allowance and retaining allowances. The retaining allowances are a new entry into the definition, early it was only basic pay and dearness allowance. So, these retaining allowances are the new entry into the IR code. But it clearly excludes bonus.

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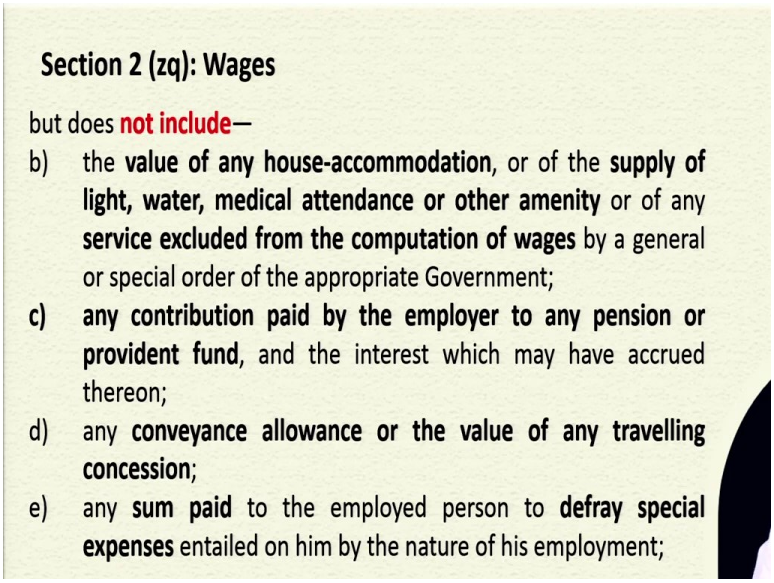

The wage does not include a bonus, it does not include house rental allowances, house accommodation, the value of house accommodation, supply of electricity, supply of water, medical attendance or any other amenities. So, for the computation of wages, the general or the government can specify this exclusion of this particular allowances like house rent allowance, or medical or other electricity bills can be excluded from the definition of wages.

The question is whether any contribution to the provident fund, whether the employee contribution to the Provident Fund will cover the definition of wages or contribution to the pension schemes provident fund to ESI. This is also excluded from the definition of wages. Conveyance allowances and any travelling concessions will not cover the definition of pages. And also, any special allowances or differing special expenses or special allowances given to the employee bond come under the definition of again wages.

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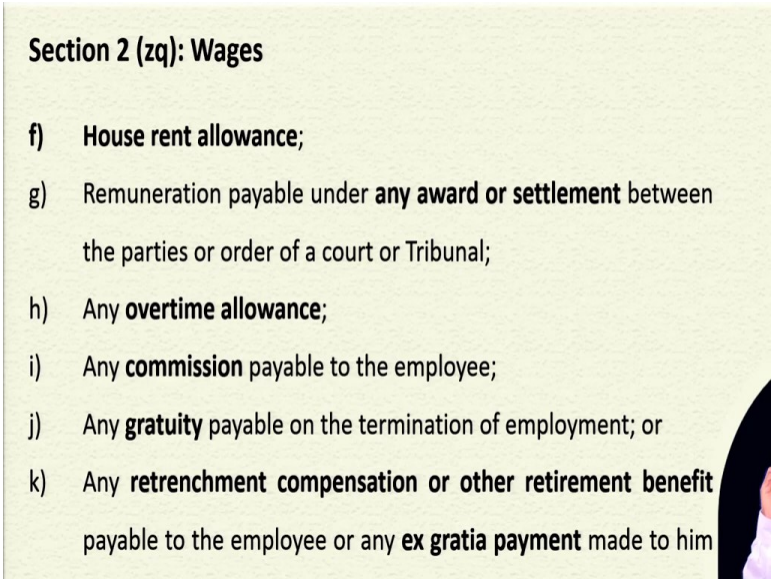

So, we already said that the house rent allowances, any awards any money which is given to them as awards or settlements as a part of the court or tribunal awards, overtime allowances, commission, gratuity, bonus, retrenchment compensation, retrenchment benefit, retrenchment allowances any type of excretion payment to the workmen will not come under the definition of wages.

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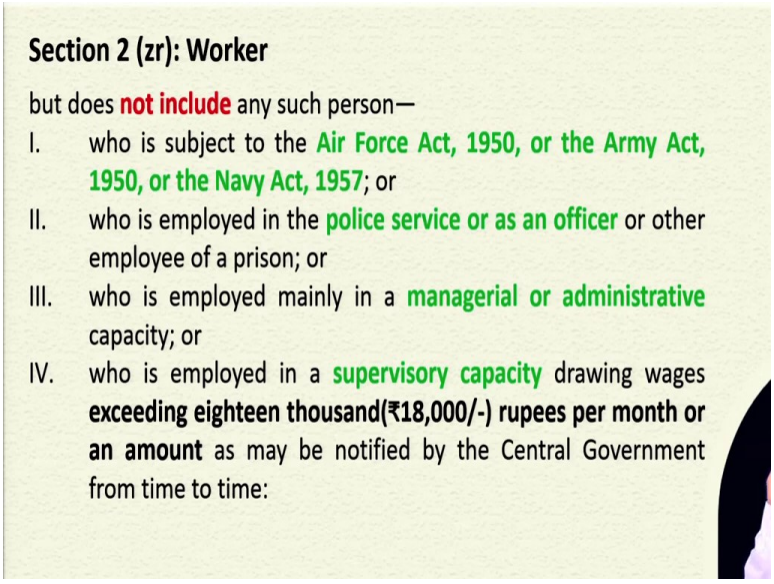

So, we already said that there is a difference in the definition of worker and workman which is already mentioned. So, if somebody is accepting a salary above 18,000 and working as a

supervisor, then the central government notification will say, whether he will come up with the definition of workmen or not.

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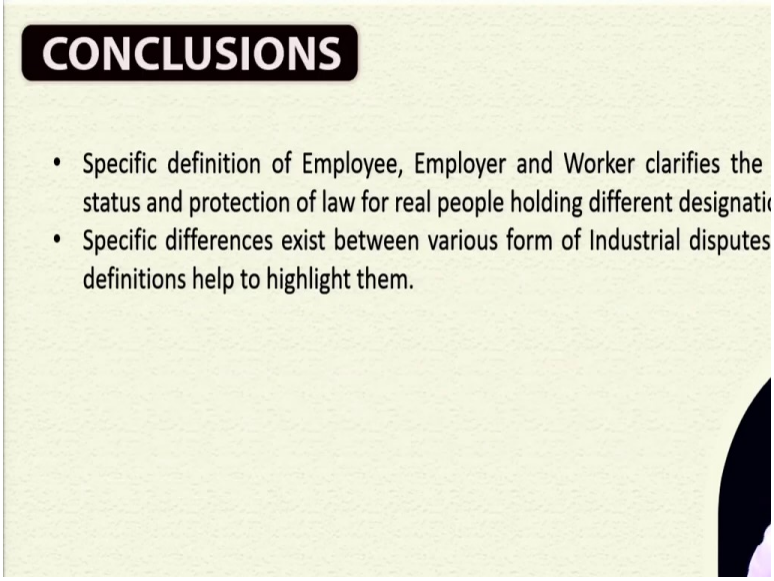

So, in this class, we have gone through certain important definitions, which we are going to discuss in the coming classes. So, the definition of workmen, the definition of worker, the definition of employee and the definition of the strike, lockout, and layoff and also are very important definitions for the purpose of industrial disputes.

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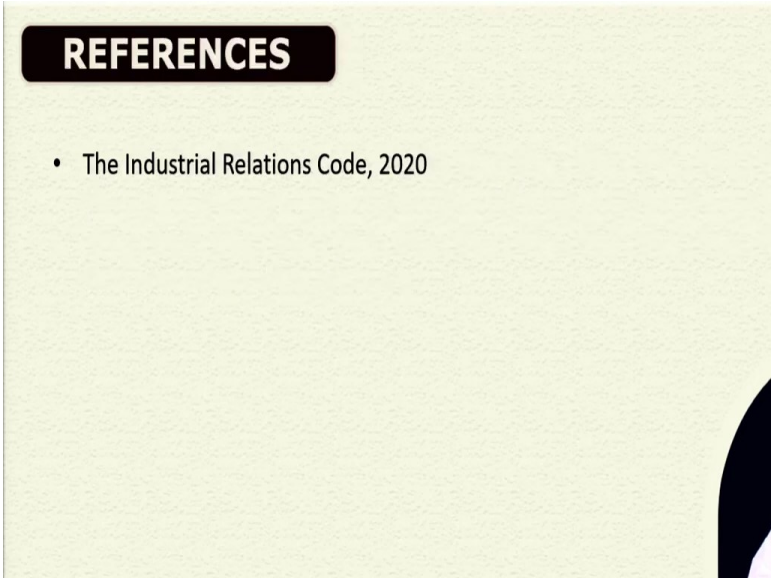

So, in the next class, we will talk about industrial disputes in detail. Thank you.