[Secretary.]

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

MR. DEPUTY CHAIRMAN: We now revert to the discussion on the Industrial Disputes (Amendment) Bill, 1956.

THE INDUSTRIAL DISPUTES (AMENDMENT) BILL, 1956—*continued*

SHRI LAVJI LAKHAMSHI: Sir, when we broke up for recess I was dealing with the provisions of this amending Bill. Now I will particularly refer to clause 3. By this clause 3 Government is seeking to add a new section 25FF. The proposed section 25FF directly deals with the section 25F of the Industrial Disputes Act. Here I would like to point out that, while printing this amending Bill, although they have printed section 25C for reference purposes, they have not printed this section 25F. It would have been more convenient if that section 25F had also been printed. Now, Sir, the Statement of Objects and Reasons itself begins by saying "Doubt has been raised" as to what happens to a claim for retrenchment compensation in case of transfer of the ownership or management of an undertaking and many a time, as soon as there is a transfer, there arises the claim for retrenchment compensation and the difficulty as to who should meet the claim. In order to do away with this doubt provision has been made that merely by reason of the transfer of its ownership or management no retrenchment compensation could be claimed provided of course the terms and conditions of service are the same and the services are deemed to be continuous. In this Sir, according to me there is a lacuna, a loophole left whereby there is a possfbility of a workman losing his retrenchment compensation claim altogether. This provision deals with the transfer of ownership of the undertaking and also the transfer of management of the undertaking. In the case of transfer of ownership of an undertaking it is all right that retrenchment compensation could be claimed by the workman because the transferee happens to be the owner of the factory or the undertaking. That means he is a substantial man. But many a time a circuitous way could be adopted by the owner of an undertaking to transfer the management—transfer of management is a generic term—who may lease or hire it out for a temporary period, and thereby the transferor's liability to pay retrenchment compensation will be passed on to the transferee, who may not be a substantial man. I will illustrate my remarks by giving an example. Supposing, Sir, a workman has worked for a period of ten years with the owner 'A' of an undertaking. Now if at that very moment he is retrenched, he is entitled to 150 days' average wages. Now, Sir, supposing there is a transfer of management either by lease or hire for a period of twelve months only, A's liability for retrenchment compensation at that time does not arise at all by reason of the provisions of this section 25FF. Supposing within six months of the transfer, B the transferee of this management or of the lease closes it down and runs away. Now the liability for retrenchment compensation, that is, for the period of ten years and also for the subsequent period of six months is not that of the original transferor but that of the transferee, who may not be a man of substance. Thus the transferor retains the ownership of this factory or the undertaking without having to pay retrenchment compensation for which he is solely liable even for the period during which the workman has served under him, and through these transfers possibly there may be fraudulent transfers with a view to evade payment of retrenchment compensation altogether.

This, Sir, is a very serious lacuna to which I would draw the attention of the hon. Minister. I have given notice of an amendment which, I would submit, I may be permitted to move although I have been late in putting it in. At any rate I am drawing the attention of the hon. Minister to this aspect of the case. That is all that I have to say.

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, I would congratulate the Ministry in a way for having brought this legislation.

SHRI H. C. DASAPPA (Mysore): Why in a way?

DR. SHRIMATI SEETA PARMANAND: I will explain it very soon, because if it gives relief even in some cases it is something that was worth doing as early as possible. Sir, I have said "in a way" because, if piecemeal legislation was to have been brought, especially as the big amending Bill to amend the Industrial Disputes Act is before the other House, already introduced in the Lok Sabha, it would have been better to introduce in this, a sort of a quick passage Bill, which would be only dealing with two or three clauses, to introduce one most important clause which deals with the definition of a 'workman', because so many cases, Sir, are pending before the tribunals in which the workman's definition not being quite clear in accordance with the present circumstances and as at present it does not apply to supervisory staff, foremen and engineers and others of that kind. Though, Sir, workman under the Workmen's Compensation Act includes a person who draws a salary below Rs. 400, in those cases it does not apply to them. It is giving a bad tool in the hands of employers. So, Sir, if the hon. Minister had brought at least that clause of the bigger Bill in this, it would have been better but, maybe that when that Bill was introduced there, or was ready, there was no intention of bringing this, and this lacuna was pointed out later on; so that is why this Bill is here. Anyway now that we are going to devote some time of the House to it, it is my duty to point out a few things with regard to this. I would also show how it is difficult to make some suggestions that have bearing on this clause without the whole picture of the industrial disputes legislation before us. This clause which has been made clear by the use of the words continuously or intermittently' is very good but all the same there is a difficulty which we will have to remove in the case of all labourers by making it compulsory for the managements to give cards of attendance. Because what has been happening so far is this. Even if it is compulsory for the employers to keep daily registers there are always means of getting round it. The illiterate workmen do not understand whether they have been marked present or not and even during these 45 days often, even if they are present, they would be marked absent and various such practices are indulged in to get round the law so that when any claim is to be put in there are hundreds of difficulties. So along with this if it had been possible to add that little clause—but it cannot come until the whole picture, as I said, is in front of us because it relates to other clauses also—it would have been better.

Similarly with regard to the definition of 'Badli workman'. It is necessary to change that definition. When a workman can be dismissed or retrenched after 30 days' notice though he may get compensation according to law for a longer period, it is right that *Badli* should be considered to be a person who is not less than one year in service. I personally think that after a man has been in service continuously for two months, it is not right to call him *Badli*. These are the few things which I do realise are not possible to cope with in this piecemeal legislation.

Sir, I would congratulate the hon. Minister for having made these two points clear about the continuous and

[Dr. Shrimati Seeta Parmanand.]

intermittent service. This was one of the things which was always being used in the case of lay-offs particularly in mines by the proprietors in doing the workers down of their dues.

Then with regard to the agreement, I feel there is still some lacuna. I refer to page 2, line 22 of the Bill where it is said, 'whether by agreement or by operation of law.....'. Wherever the word 'agreement' is used, from my experience I feel it is necessary to provide in the legislation that will come before us the expression 'agreement made through a union' because very often due to circumstances the workers put down their signature to anything that is put before them. There are so many cases day in and day out that come up where the workers say, 'We were told that this was to enable us to get our grain allowance. We did not know what exactly it was.' They are very often cheated; so it is absolutely necessary, when we are going to change the law —though it has not been done here— that we should say 'agreement through a recognised union'. That will make it clear to the workers how necessary it is for them to be members of a union and that will enable the labour to be organised too.

Similarly with regard to retrenchment. I would like just to take this opportunity to put before the House and before the hon. Minister that it is a common custom for the management even when they know there is a lay-off and even when they know that they may not be able to take back the labour, not to serve them with notice and the reason that they say is that at any moment they may start another venture or open another mine or take them to some other work. For instance, if they are working on one type of mine, they may have lime quarries near about and these days it is not possible to get labour all at once. They are doing everything in their power and using all their ingenuity for not paying the workers. I will give one example. They would say that the workers themselves have voluntarily gone on strike and then call it an illegal strike. What is done is to make the workers wait, when there are two or three holidays ahead like Sunday, Diwali etc., for negotiations until about one o'clock or till some time after the second shift starts. And you know they are contract labour. After they are released from the office after the successful termination or failure of the negotiations—even if the negotiations are successful—they go back to the contractor who will say, 'You are one hour late and I cannot take you for this shift because I would not be paid by the management as I cannot give work for the full period.'. Then there will be two or three days' holiday and they would then say to the Labour Conciliation Officer that these people have gone on strike, they have absented themselves for three or four days and so on and the result would be that they would be dismissed. So this too will have to be looked into and some provision made to see that this type of retrenchment where the labour is kept waiting deliberately and not even given notice is not indulged in. If the management does not require that labour, it is their duty not to keep them waiting for an indefinite period in the hope that they will be able to give them work.

With regard to the amendment, rather than take the time of the House, I will speak when the amendment has to be moved but I will just say that this is also a usual trick of the employers that when they find a certain rule is applicable to a certain class of workers, they shift them to a new work. For instance even the clerical staff working under a mine management is called a worker. They would transfer a worker before a particular rule becomes applicable to him to the Head Office hundreds of miles away. There may be a worker doing some work connected with the mine but they would transfer him as

a chowkidar or a domestic waterman for a short period and thus get round the law that would be applicable to him as a worker and that would bring him within the orbit of compensation payment. So the amendment says that in spite of the categorisation or nomenclature of the post after the change, even though it may be to the advantage of the workman, he will be entitled to the benefits. Very often an ordinary workman is made an overman and usually even today the workers do not know that there is a separate law applicable to them if they are working as overmen. They think that it is a dignified type of work. The salary of an overman would be ordinarily Rs. 300 or Rs. 250; it is a glorified type of job to which an ordinary head workman may be shifted though not on a higher salary of Rs. 250 or so but on Rs. 80 or 90. So this amendment of mine seeks to introduce a provision which will not allow the employers to short-circuit the intention of this clause 3(b) where it says that the conditions of service after such transfer are not in any way less favourable. Thank you, Sir.

SHRI ABID ALI: I am thankful to the hon. Members for having taken so much interest in this small amending Bill. Some new points have been brought out for the attention by the Ministry and certainly these will be given due consideration whenever appropriate occasion arises. This small amending Bill has received support from both the sides. That is very good. I may refer to a few points which have been mentioned about which I have taken note. One was about the mistake which the hon. Shri Parikh has mentioned and he referred to a feeling that we were not having an open mind when we introduce amending Bills. I may assure him that not only we have an open mind when we bring in the amending Bill, the open mind is there at the time of discussion and even after the Bill becomes an Act. We have an open mind both before and after. And so whenever an occasion arises that an amendment is necessary, we come forward here and place our suggestions. It is not that because an amendment has been suggested to a particular Act, a serious mistake had taken place. Sometimes mistakes also take place. The High Court gives one ruling, but the Supreme Court expresses a different opinion and the decision of the Supreme Court prevails, because it is the supreme authority. Nobody can say that the Sub-Judge was wrong or the High Court was wrong, or the Supreme Court was wrong. It is a question of interpretation.

One hon. Member, perhaps Shri Mazumdar, said that retrenchment should be banned. Such a thing cannot happen because if in a factory or establishment a department is closed, the option will be either to send away the surplus number of workers or if the retrenchment is banned and the factory cannot afford to pay all the workers, then the factory will close down. So, between the two we think that if all the workers are not required and the factory or establishment concerned cannot afford to pay all, then such of the workers should be retrenched as are not required.

SHRI S. N. MAZUMDAR: It should be the intention of the Plan to see that the factory can continue without retrenchment.

SHRI ABID ALI: Yes, yes, that is the intention. By the previous one and the amending Bill which is under consideration,—we are not legislating for retrenchment or giving authority to employers to retrench—we are making it difficult for the employers to retrench the workers. Formerly there was no protection. An employer could give simply a notice of fifteen days or hand over to the worker the wages for the notice days. By the previous amending Bill and this Bill we are making it more difficult. When it is very necessary to retrench a number of workers, they may be retrenched if these conditions are complied with. The difficulty which the hon. Member Shri Mazumdar mentioned with regard to notice is not correct,

[Shri Abid Ali.]

because according to section 25F, no retrenchment is possible unless and until a workman has been given one month's notice in writing and all that. So, even if this lay-off compensation is paid for forty-five days, the worker remains a worker in the employment of the employer concerned and if he is to be retrenched, then notice of one month is necessary. That position remains. So, what I was submitting was that we are not in favour of retrenchment. We do not want retrenchment to take place. But if it takes place, we are giving some protection to the workers so that they may not be simply told to go away without being paid the amount which is due to them under the Act.

About the points referred to by the hon. lady Member Dr. Seeta Parmanand, I may submit that these difficulties are perhaps due to the fact that the area has no proper trade union organisation. Law can take care of most of the things, but the implementation of the provisions of the law has to be taken care of by proper trade union movement. It is for the trade union organisations to tell the workers not to sign an agreement and an agreement signed by an individual worker cannot have any effect on the rest of the workers who may be in the factory. If the agreement is entered into between the union and employer, certainly that may cover the workers concerned. But I do not think that any union worth the name will enter into an agreement which may not be in the interests of the workers.....

SHRI S. N. MAZUMDAR: But in the coalmines many things are being done.

DR. SHRIMATI SEETA PARMANAND: I did not make myself sufficiently clear. My intention was that if this was made compulsory for an agreement to be signed even with an individual worker for bettering his condition and for transferring him, as is envisaged in this clause, it will not only protect the interests of the workers, but it will strengthen the trade union movement, which is in the interests of all the workers—the individual worker too.

SHRI ABID ALI: Yes. This discussion is beside the point. But as she referred to it, I was mentioning that these things do come to our knowledge. And when I was myself working in the trade union organisation, these contingencies did arise but only where there was no proper trade union movement. I am happy that the trade union movement is becoming stronger and stronger every day. Workers are becoming much more responsible and disciplined. Our good friend, Shri Saksena, was referring to industrial truce and the mentality of the workers, but I must submit that during the last few years the standard of discipline amongst the workers has risen considerably. They have been also appreciating that they are citizens and good citizens they want to be. They know that the prosperity of the country is becoming better and better and they are sure that they will be co-sharers in the prosperity. With that confidence they are, having more enthusiasm. There are, of course, here and there some recalcitrant elements also; but fortunately they are becoming more and more unpopular.

About *Badli* the hon. Member said that those who may be working for two months may also be considered as permanent workers. We are not concerned whether the worker is temporary or permanent. We are only concerned with the worker. Whoever has put in one year's service is entitled to the benefits under these enactments.

With regard to the question of standing orders and the controversy about section 33, referred to by Shri Mazumdar, I do not think that the Bill has been delayed because of the proposal to amend section 33. The Bill was introduced in the other House, I think, in September and we are every day approaching the friends concerned to give us time, so that the Bill may be passed there and come here. Somehow, even for the smallest piece of legislation that comes up before either House, some hon. Members are always insistent that longer number of hours should be allowed. Therefore, these Bills which are intro-

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duced get blocked more and more. Sometimes there is criticism that we are not bringing forward this Bill or that Bill. There cannot be any pleasure only in introducing a Bill either here or in the Lok Sabha. What we want is that they should be disposed of. I hope that Members will try to take the minimum possible time through the Business Advisory Committee.

SHRI S. N. MAZUMDAR: It should be taken up with the Minister for Parliamentary Affairs for the proper planning of work.

SHRI ABID ALI: Every member of the Advisory Committee is to share credit or discredit in this respect. Therefore, there is no delay so far as the Ministry is concerned.

The lady Member was mentioning about the definition of 'workers.' There is no ambiguity about it. Workers who are covered are covered and workers who are not covered are not covered.

DR. SHRIMATI SEETA PARMANAND: Workers for a month. They are paid less.

SHRI ABID ALI: He is not a worker according to the present definition. The amending Bill which is introduced covers larger categories of workers.

With regard to the amendments which have been given notice of and on which some discussion has also taken place, I do not propose to speak at this stage. When these are moved, I shall attend to them.

Mr. DEPUTY CHAIRMAN: The question is:

> "That the Bill further to amend the Industrial Disputes Act, 1947, be taken into consideration."

The motion was adopted

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clause 2—Amendment of section 25C

SHRI N. C. SEKHAR: Sir, I move:

> *2. "That at page 2, line 11, after the word 'compensation' the words 'over and above forty-five days' be inserted."

> *3. "That at page 2, line 13, after the word 'may' the word 'not' be inserted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are before the House.

SHRI N. C. SEKHAR: Sir, in moving these amendments, I must say a few words regarding what the Minister has just said here. He says that retrenchment will be there according to law and that this amendment does not affect it. At the same time, I would point out that this proviso says that this compensation paid to the workman for having been laid off during the preceding twelve months may be set off against the compensation payable for retrenchment. If this is there, how can a worker who is likely to be retrenched get the notice pay? That is not clarified by the Minister. Even the law is there. But our experience is otherwise. So, this is a dangerous clause. If this is allowed to remain in this, as the Minister claimed, the worker cannot get his retrenchment notice pay or any other amenities. For example, a worker gets 45 days' full compensation for this lay off. Then immediately he is retrenched. Then the employer will say, "Already you are being paid so much for 45 days. You have already served for two years. According to law, 15 days' gratuity per annum, *i.e.* one month's pay, is there. There is the notice pay for your work. But you have already received the notice pay in the form of compensation for 45 days of lay-off". So that is set off. That money is lost. Then, if there is any balance, that would be taken over

*These stood in the names of Shrimati Parvathi Krishnan, Shri J. V. K. Vallabharao and Shri Govindan Nair also.

[Shri N. C. Sekhar.]

to the gratuity amount. They say, "You are entitled to get only 15 days' gratuity." This is how the employers have been going on and are going on today. But this, the worker has no safety. I have just explained it. That is why we are very particular that this amendment should be added there that "after the word 'compensation' the words 'over and above fortyfive days' be inserted." Then only the worker has got safety from being deprived of what he is entitled to get.

The second amendment is that "after the word 'may' the word 'not' be inserted," at page 2, line 13. If my first amendment is accepted, then I will not press for the second one. If the first amendment is not accepted, then certainly I will be compelled to press the second one. Here only the word 'not' is to be added after the word 'may'. That is very simple. Nothing is going to be affected by it. Only the interests of the workers are going to be safeguarded. If the Minister is true to his profession that he is here to safeguard the workmen, then certainly he must take this amendment into serious consideration. As my hon. friend, Mr. Mazumdar has said early, the view of the government is already changing. Government wants to introduce labour management and industrial truce between the worker and the employer and all that. If this is what the Government is seriously thinking of, then the background and the basis for that should be created like that. You cannot treat the labour and the employer alike. Labour is not just like the employer who has got the money invested. He has got the State machinery behind him, whereas the worker has only his organized force in order to safeguard his interest. So the employer and the labour cannot be treated alike. On the other hand, the worker should be given more weight and safeguard from the side of the Government. If the Labour Minister is certainly true to his profession, then he is compelled to accept this amendment.

With regard to retrenchment, I heard particularly Mr. Parikh arguing—of course, he has to—that because of surplus labour, the employer is forced to retrench a certain number of workers or lay them off. That is a pet argument ever since capitalism came into existence. But when the Minister who is well versed and well experienced in the trade union movement says that only surplus labour is laid off, that is not true. I have my own experience in Travancore-Cochin and Malabar and Madras and can say that in the factories and mills, workers who were active in trade union movement were laid off for one reason or other under the pretext that there was surplus labour, whereas the next day some other workers were put in their places. After being laid off, a number of workers—not one or two or ten, but hundreds—were told that their services were no longer required, and that they were retrenched. This is how things were going on in our part and certainly in other parts of India also. So, you cannot hide these facts from this House. These facts are there. It is my request to the Labour Minister to kindly accept the first amendment.

SHRI C. P. PARIKH: Sir, with regard to the statement regarding lay-off and retrenchment, the provisions lay down that certain conditions must be fulfilled if the worker is to be laid off. When retrenchment is to be undertaken, it cannot be done under clause 25F.

SHRI N. C. SEKHAR: I cannot hear the Member. There is something wrong with the mike.

SHRI C. P. PARIKH: Even though the lay-off may be for a period of six months, lay-off and retrenchment are two quite different things. Another thing is: How can an employer lay off or retrench a worker? Both are grounds for industrial disputes. Lay-off cannot be effected by the employer

as and when he likes. The workers in that case are entitled to go in for an industrial dispute in the court for that. For retrenchment also, even if the employer follows all the conditions which have been mentioned, it becomes an industrial dispute, because the only thing that this section provides is the quantum of compensation. Both lay-off and retrenchment are matters of industrial dispute and no employer can do this at his own will. Even as regards surplus labour, what Mr. Sekhar said is not correct. Even if the employer thinks that there is surplus labour and wants to lay off or retrench, if the workers feel that their employer is wrong, then it becomes an industrial dispute, and men cannot be laid off or retrenched by merely giving notice or by giving lay-off compensation. Until the matter is settled in court or by voluntary agreement between the union and the employer, no man can be laid off or retrenched. All these privileges are there, and I do not know why Mr. Sekhar is moving these amendments.

SHRI N. C. SEKHAR: I know that these provisions are there, but they are not implemented by the Labour Ministry.

SHRI C. P. PARIKH: If they are not implemented, it shows that the union is weak because of the Communists. Wherever a union is strong, all these provisions are implemented. If his union wants merely to disrupt things, naturally it will have no membership and it will have no bargaining power. No employer can lightly discharge any worker or retrench or lay off a worker because it becomes a matter of industrial dispute. As regards notice, there are two conditions. Notice has to be given, and for all the thirty days the worker will have to be paid, and that is not taken into account in determining the lay-off or retrenchment compensation that the worker gets. They have to be paid the notice pay, even if there is no work. I do not know why Mr. Sekhar should object to this. I am opposing the amendment.

SHRI S. C. KARAYALAR (Travancore-Cochin): Sir, I find it rather difficult to understand the object of this amendment. In the Statement of Objects and Reasons it is said that this amending Bill is brought forward only for the purpose of clarifying the existing provisions and to put the matter beyond all doubt. So, the object of the Bill is not to amend the provisions in the original Act but only to clarify the position and make the law clear on this subject. If that is the position, then the amendment which is sought to be moved by Mr. Sekhar goes beyond the object of this Bill, and it would be out of order in my opinion. If the object is not to lay down fresh law or amend the law on the subject and it is only to clarify the position and make the position clear, then this amendment cannot be accepted. The amendment says 'compensation over and above 45 days'. That would be introducing a new factor or new set of circumstances and that would be to negative the object of this Bill. So, I oppose this amendment on this short ground.

SHRI ABID ALI: I do not take objection to this amendment on technical grounds.

SHRI S. C. KARAYALAR: Is it not going beyond the object of this Bill?

SHRI ABID ALI: So far as I am concerned, what I wish to submit is that there is not the least doubt in our minds that the workers are entitled to one month's notice pay, either notice or wages for one month, if they are asked to go earlier, by the provisions that we are trying to insert in the Act.

The hon. Member made reference to retrenchment also. I may submit that no permission is being given to any employer to retrench. We do not want any retrenchment. But I agree with my good friend, Mr. Parikh. What he was telling was a fact. If he calls Mr. Sekhar as

[Shri Abid Ali.]

Mr. Sekhar, I need not object to it, as Mr. Sekhar is Mr. Sekhar. A fact remains a fact. If trade union workers are retrenched wrongly, then there is the Industrial Disputes Act to take care of it. They can go in for adjudication. There cannot be any victimisation for trade union activities. There can be no two opinions about that.

SHRI N. C. SEKHAR: We have seen so many cases.

SHRI ABID ALI: There are so many thefts and murders.

SHRI N. C. SEKHAR: Why do you make the workers go to industrial courts?

SHRI ABID ALI: A murderer remains a murderer. If a person has committed a murder, he remains a murderer and he will be treated accordingly by law. Therefore, if there is wrong retrenchment, if a trade union worker has been victimised, then certainly the Act will take care of him. Such a thing should not be permitted, but the situation has been improved by us. If a trade union worker was victimised, he would have gone empty handed but now we are giving him some cash. So, we are not making the position worse. Even in such circumstances we are putting some money in his hands. That is the intention of the amending Act which was passed two years ago and which we are clarifying now by the present Bill. We are improving the situation. Why the hon. Member should have any grievance with regard to this particular matter, I do not understand.

SHRI N. C. SEKHAR: Why are these provisions being brought forward at all now?

SHRI ABID ALI: Therefore I oppose the amendments. Of course, I am one with him so far as the intention is concerned. The law also says the same thing that the worker will be entitled to the notice period.

MR. DEPUTY CHAIRMAN: The question is:

2. "That at page 2, line 11, after the word 'compensation' the words 'over and above forty-five days' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

3. "That at page 2, line 13, after the word 'may' the word 'not' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—Insertion of new section 25FF.

MR. DEPUTY CHAIRMAN: There are three amendments to this.

SHRI C. P. PARIKH: Sir, I move:

4. "That at page 2, line 18, after the words 'entitled to' the words 'or shall ever be deemed to have been entitled to' be inserted."

5. "That at page 2,—

(*i*) at the end of line 36, after the word 'transfer' the word 'and' be inserted; and

(*ii*) after line 36, the following be added, namely:—

'(*d*) compensation has been settled through negotiation or by court before the coming into force of this section.' "

DR. SHRIMATI SEETA PARMANAND: I am not moving No. 6. I will leave it for the other amending Bill which will be coming before us.

MR. DEPUTY CHAIRMAN: Are you accepting Mr. Lavji's amendment?

SHRI ABID ALI: I am not accepting it.

MR. DEPUTY CHAIRMAN: It is belated. The clause and the amendments are open for discussion.

SHRI C. P. PARIKH: My amendment is simple in that it falls in line with what the hon. Minister said and also with the Statement of Objects and Reasons. If you read it, you will find that it says: "Doubt has been raised whether retrenchment compensation under the Industrial Disputes Act, 1947, becomes payable by reason merely of the fact that there has been a change of employers." Then it proceeds: "This has created difficulty in the transfer, reconstitution and amalgamation of companies and it is proposed to make the intention clear by amending section 25F of the Act." It is all very well, because he admits here that the doubts have been caused, that the doubts are there. So his intention is that these doubts should not be there. So when that is his intention, my point is that whatever disputes are there pending in the courts, between the employers and employees since the year 1954, since the amended Act came into force, why should not those disputes be settled on this basis? He has clearly laid down the intention of the Government and he himself admits that it is the intention that they should be settled in that way. The only thing is that doubts were raised and he wants to clear the doubts. Sir, I am pressing this point because I am anxious that there should be harmonious relationship between labour and capital, between employer and employees and all this litigation in courts will serve no purpose. When the employer and employees go to court, naturally there are bickerings and their good relationship is disturbed. That is not desired by the hon. Minister and that is why he has brought forward this Bill. I submit that this may be applicable to all the transfers that took place after the date. As regards transfers which had happened and for which no agreement had been arrived at, why disturb the harmonious relationship existing in those cases between the employees and the employers? So my suggestion is that the words "or shall ever be deemed to have been entitled to" be inserted. The law will apply to them just as at present. There is the further proviso suggested: namely, provided that:

> "compensation has been settled through negotiation or by court before the coming into force of this section."

If the workers and the employer have arrived at an agreement or if the court had given an award, then it is all right. That agreement or award may stand. But where the dispute is still pending, that dispute should be settled under the amended Act.

DR. SHRIMATI SEETA PARMANAND: No.

SHRI C. P. PARIKH: Certainly it should. The words "shall ever be deemed to have been entitled to" will apply to the workers. Before 1954 there was no retrenchment compensation. So it was not applicable. Since January, 1954 when this Act came into force, naturally the disputes are pending. Those disputes may take one or two more years to be settled. During that period the relationship between the employer and the employees would, be disturbed and unnecessarily disturbed. Some organisations force the issue. The whole difficulty is that there are some unions which want to disturb the peaceful working of other unions and they take a case to a court, the case of one or two workers, simply in order to disturb the good relations

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between the employer and all the employees. They think that they alone represent the workers. But just on account of the supremacy of certain unions they go to court and disturb the whole relationship between employees and employer. And in order that this may not happen and in order that good relations may be established it is obvious that the change that I suggest is necessary and if this change is made I must say that the worker will not lose anything. He does not lose even a month's service or even a day's service, because his service is continuous and it has been expressly mentioned that the service of the workman "has not been interrupted by reason of the transfer".

With regard to Shrimati Seeta Parmanand's amendment about the terms and conditions of service, I may say that these cannot be less favourable to the workmen than those applicable to them immediately before the transfer. The employer cannot ask the workman to go some 250 miles away. That would become an industrial dispute. Every man has the right to demand the same conditions and terms as existed previously. No employer can change these conditions, unless by agreement. And if the conditions are less favourable.....

DR. SHRIMATI SEETA PARMANAND: I have not moved my amendment and there is no point in moving it now. If he deals with it, I can reply.

SHRI C. P. PARIKH: I know the hon. lady Member can deal with it, but I am only submitting that the terms and conditions of the worker's service will always remain the same. Even with regard to giving them alternate employment, we cannot give them an alternate employment where the conditions of work are less favourable. They must be equal. All these things are there. And all these things can be done by agreement. If certain employers want to impose their will on the workers and if the workers submit, then it is a different thing. It is then by agreement.

DR. SHRIMATI SEETA PARMANAND: What kind of an agreement is that? That is forcing them.

SHRI C. P. PARIKH: But the workers have the right to go to court and restrain the employer from doing so, and in so many cases they have done it and done it successfully too. It all depends upon the organisation of the particular union concerned. Probably in the State to which the hon. Member belongs, the organisation may not be a strong one; otherwise the recent textile strike would not have been there. A good settlement had been arrived at, but it was broken up by other unions and thus we lost production to the extent of some two million yards merely on account of the fact that some other unions did not like the agreement arrived at between the management and the other union.

Sir, this much with regard to my amendment.

As regards the point which has been raised by my hon. friend Shri Lavji Lakhamshi..,....

MR. DEPUTY CHAIRMAN: His amendment is not before us.

SHRI C. P. PARIKH: But it also deals with this point and so I may just refer to it. As regards taking out the lease of an undertaking, whenever there is transfer of management then naturally the man who takes up the undertaking or management, he everytime puts it on the notice-board that such and such persons' service will commence from such and such a date". Each employer knows very well because he knows that since the passing of the Act he is responsible for giving compensation to the workers for the period for which they work in the factory and all employers are anxious to make clear by a notice which says that such and such service would be

deemed to have commenced from such and such a date. So all the previous service will entitle them for claims with the previous employers and not against the new employer.

SHRI LAVJI LAKHAMSHI: But suppose there is agreement between the two parties, that the transferee shall take over the liability to pay compensation, then there is no notice put up. In that case this becomes a circuitous way of defeating the provision about retrenchment compensation.

SHRI C. P. PARIKH: The whole position is that when this amending Bill becomes law, such a thing will be debarred. It was so before, but not now. Now every man knows that when he employs labour and when he takes over a concern as a lessee, that the liability is on him to pay compensation for the period of his lease. That he knows very well and he makes provision for that also and he gives notice at the time he takes over the factory under his control to say: "You are employed from such and such a date under my management and your services are therefore terminated against the old employer, the workers will then demand compensation against the previous employer and not against the new employer." If no such arrangement is made, if no such notice is given, then the workers have the right for compensation for all the period, from the new employer. No agreement between the old and new employer need worry the workers.

SHRI LAVJI LAKHAMSHI: That is exactly what I submit. In the absence of any agreement, under the section, the new transferee will be liable and he may not be a man of substance, because he is merely the lessee.

SHRI C. P. PARIKH: But he takes it over with the full knowledge of his responsibilities and just as he pays the wages so also he takes over the responsibility of retrenching the man. There is also the other specific provision.....

SHRI LAVJI LAKHAMSHI: Sub-para. (c)?

SHRI C. P. PARIKH: No, the provision only says that provided no such notice shall be necessary if the retrenchment is under an agreement which specifies the date for the termination of the service. If the lessee says, "Your services are here only for two years" then the worker will not have any compensation. That is expressly made clear under the proviso. That is quite a different thing. My amendments are meant to establish harmonious relationship between the employer and employee and that purpose will be served if my amendments are accepted.

DIWAN CHAMAN LALL: With your permission, if I may interrupt my hon. friend, I am rather doubtful as to what exactly he means to imply by the last part of his second amendment. He says in (d):

> "compensation has been settled through negotiation or by court before the coming into force of this section."

What is the value of this, in view of section 25F?

SHRI C. P. PARIKH: Under section 25F, in the amending Act of 1953, it was laid down that even if the transfer of service was there, the old employer was liable to pay compensation, because the services were terminated.

If a company was under liquidation, then the old employer is responsible for the payment of compensation even if the new employer engaged the same workers on the next day. I have made a provision that wherever compensation has been settled through negotiations or by court before the coming into force

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of this new clause these cases should not be taken up. If the employees and the employers have agreed upon the amount of compensation to be received by the employees then those cases should not be touched again. Let this clause apply not to the old settled cases but to the pending ones in which case there will be harmonious relationship between the employers and the employees.

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, though I have not moved an amendment, I am speaking on Mr. Parikh's amendment. He has not made it clear as to how he thinks that it is going to help matters by not making this clause apply to old cases, to cases settled through negotiations. He has also not made it clear as to what type of negotiations he has in mind, whether before the Regional Labour Commissioner or before a Conciliation Officer or by private negotiations.

SHRI C. P. PARIKH: Conciliation or arbitration. Either of the two.

DR. SHRIMATI SEETA PARMANAND: If it is through arbitration, then it has to be by somebody appointed by Government. It would be a different thing in this case but ordinarily unless you make it clear as to what you mean by negotiations, I do not know how it is going really to be in the interests of the workers. Also, Sir, I have been unable to understand as to whether the Act is to apply to any future cases or, as he says, to cases that are still pending. If this would not come in the way of the relations of the workers and the employers, in what way would that come in spoiling the relations between the two if cases settled through negotiations once and which are now considered unsatisfactory are brought forward? Everybody has a right to go in appeal. In the past the workers might have stopped there because usually they take time; also, they do not have the money and by the time the union people take up their case, time would have elapsed. Therefore, I do not think this amendment is the right one.

MR. DEPUTY CHAIRMAN: Negotiations must end in conciliation, that is, an agreement should be come to between the two parties. It is only then that his amendment comes in.

DR. SHRIMATI SEETA PARMANAND: After the negotiations, the workers have got a right to go up before the Tribunals.

MR. DEPUTY CHAIRMAN: Not when they have entered into conciliation. The word used here is "settled".

DR. SHRIMATI SEETA PARMANAND: What I am saying is that the new provision should apply to them. I do not agree with Mr. Parikh that it will spoil the relations between the employers and the employees.

SHRI C. P. PARIKH: I am saying the same thing as you do.

DR. SHRIMATI SEETA PARMANAND: You are saying that this provision should not apply to cases that have been settled already by negotiation. If the workers feel that with the new provision, they would get more advantages, then it should be open to them to avail themselves of this.

MR. DEPUTY CHAIRMAN: Even settled things should be reopened?

DR. SHRIMATI SEETA PARMANAND: Yes, they should be reopened because I do not feel that this reopening is going to spoil the relations between the employees and the employers in the future as has been pointed out by Mr. Parikh. I oppose the amendment.

SHRI N. C. SEKHAR: I oppose the amendment, Sir.

DIWAN CHAMAN LALL: One word, Mr. Deputy Chairman. I am sorry to interrupt my hon. friend who is generally exceedingly clear in regard to the issues that he raises on the floor of this House but I find that I am greatly exercised along with my very able friend to my left as to what exactly he means to imply by (d) of his amendment. If we look at section 25F, it deals with conditions precedent to the retrenchment of workmen, that is to say, it refers to the fact that before a workman can be retrenched, there are certain conditions that must be fulfilled. One of these conditions is this that he has been given one month's notice.

SHRI C. P. PARIKH: I am referring to new section 25FF. That is the whole difference.

DIWAN CHAMAN LALL: My learned friend is referring to new section 25FF. I am coming to it. My learned friend need not be anxious that I am going to miss the new part of the law that my able friend Mr. Abid Ali is responsible for. I am coming to that but I am trying to get back to the basic fact. What is the basic fact? What does section 25F say? It relates to the desirability of not retrenching a workman unless certain conditions are fulfilled. I take it that it is agreed. Now comes my learned friend, Mr. Abid Ali, with the proposed section 25FF which says that notwithstanding anything contained in section 25F regarding the desirability of not retrenching a person without fulfilling certain conditions, in a case where the ownership or the management of the undertaking in which the workman is employed is transferred, the workman shall not be entitled to compensation which is payable under section 25F if certain things happen. That is the clear position. Now, what are those certain things that happen. They are namely, number one, that the service of the workman has not been interrupted by reason of the transfer from one ownership to another ownership and the conditions of employment remain exactly the same —if the tenure of office, if I may put it like that, of the workman is not interrupted—then this condition does not apply. Secondly, the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer. That is perfectly clear, that if the conditions are equally favourable, then this does not apply. Lastly, the employer to whom the ownership or management of the undertaking is so transferred is under the terms of the transfer itself or otherwise, legally liable to pay to the workman in the event of his retrenchment compensation on the basis that his service has been continuous and has not been interrupted by the transfer. These are saving clauses in regard to 25FF and 25F. That is to say, certain things happen on the transfer of the ownership of the management but if certain conditions remain as they were before, then the worker is not entitled to anything further. That being so, for the life of me I cannot see where this (d) comes in. Compensation through negotiation is included in section 25F. This is settled by the coming into force of this section.

SHRI C. P. PARIKH: Section 25F does not provide for transfer.

DIWAN CHAMAN LALL: Of course it does not provide for transfer but it does provide for compensation settled through negotiation. It does provide for that and those conditions still remain. After all, if there is a negotiated settlement regarding compensation and the transfer is made of the ownership or of the management then the agreement unless it is a new agreement, will also remain. If it is a new agreement then the worker is entitled to all the safeguards that my learned friend has placed before us. If the new conditions are not imposed then obviously the new

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section 25FF comes in. That is the position and it is clear enough.

SHRI C. P. PARIKH: Instead of three conditions, I want four conditions. (a), (b) and (c) are there and I want a fourth (d) for negotiated settlements.

DIWAN CHAMAN LALL: We can have forty conditions instead of four conditions. It is immaterial but my point is that this particular addition is not necessary in view of the law as it is today and in view of the amendment that my learned friend, Mr. Abid Ali, has placed before us, this is absolutely unnecessary because it is quite clear that the objective of my learned friend is already achieved by means not only of the original section 25F but also by the amendment that my learned friend has moved. If that is the position.....

SHRI C. P. PARIKH: Will the hon. Member agree to the words "or shall ever be entitled to"?

DIWAN CHAMAN LALL: May I say that the expression "entitled to",—the use of that expression—includes what he was entitled to up to that particular period. I do not see how you are going to improve the language of the law. How can you improve the language of the law? If he is entitled to something all the time he is entitled to it although the matter may be in dispute. I cannot understand how by adding these words you are affecting the validity of the word 'entitled'. If I am entitled to-day I am entitled to certain rights which accrue to me from a certain period. Therefore whatever he was entitled to will not be affected by the addition of the words "or shall ever be deemed to have been entitled to".

SHRI C. P. PARIKH: Retrospective effect.

DIWAN CHAMAN LALL: "Ever" would mean an eternal thing. If I am entitled, I am entitled. The question does not arise "entitled all the time". It is not that I am being entitled to it now; I am being entitled to it under the provisions of the law and the moment I take my appointment in a particular factory, certain rights accrue to me. I am entitled to those rights from the moment that I enter the factory up to the time when compensation is payable to me after twelve months. If I am retrenched after twelve months, under the law I am entitled to certain compensation. Therefore my right begins from the period that I have taken this appointment and gone under the influence of this legislation. The question of "ever deemed to be entitled" does not arise. Therefore may I make a suggestion to my hon. friend that he might withdraw this amendment? Let us see the clear issue which, I have no doubt, my friend Mr. Abid Ali, will put before the House and let us see how this thing operates.

One objection, Mr. Deputy Chairman, has been raised, a very serious objection too, and that is this. Suppose the transfer is made to a bogus firm or a firm which is not capable of shouldering the responsibilities that have been placed upon it under the provisions of this law, the question is asked: What happens then? What safeguard is there? I should have thought that the safeguard would be that in those circumstances the transferor as well as the transferee would be liable to the workman. It is only just and proper that it should be so. Cases may happen—I do hope that it will not happen and I do hope that no such situation will ever arise—where people fictitiously, in a *benami* manner, transfer an undertaking in order to get rid of the responsibilities placed upon their shoulders under this legislation. Now what safeguard has my learned friend got in order to avoid such a contingency? And therefore my learned friend who raised this issue and my learned friend on my right who also raised this issue were perfectly right and I do hope that my hon. friend Mr. Abid Ali, will be able to find some ways or means in order to meet the objections that have been

raised, being very serious objections in view of the situation that we find in India-to-day. Therefore, I suggest, I recommend these suggestions to my hon. friend, that he might consider these and at the appropriate moment bring in necessary changes to meet these objections that my learned friends have raised.

SHRI ABID ALI: Sir, I am very much grateful to my good friend, Diwan Chaman Lall, for making the position sufficiently clear, which has lightened my burden. Also I am grateful to the good lady, Seeta Bahan, who has been always helping us. I do not agree on this occasion with Chandulal Bhai and I oppose his amendments, firstly because, Sir, we have no information about the cases which are pending, to make this provision applicable retrospectively. We should have proper information as to what are the disputes pending and what will be their outcome. Now, the successor employer might have disappeared; he might have become bankrupt. In such circumstances if the workers have no remedy on the original employer then, they will be the losers, and we do not want to be a party to such a position. About the 'court' which has been mentioned in that amendment, we do not want this matter should be the subject matter of a decision by either a regular court or an industrial court. The workers may get more; we shall be happy but they should get the minimum according to the Act which is already in existence, which assures them.

About the difficulty with regard to lessee and transferee, again the point which has been rightly mentioned by my learned friend Diwan Chaman Lall is correct The workers are to realise their dues from the property. It is not so much the person which is material here, the owner, but the assets. A factory owner may lease the factory for a given period, may be one year or ten years; the lessee may not be a solvent party; he may be a *benami*. Therefore the real owner of the factory or the establishment should be liable so far as the legitimate claims of the workers are concerned.

SHRI LAVJI LAKHAMSHI: May I just interrupt? Please read sub-para (c); it just goes contrary to your intention.

SHRI ABID ALI: What I was submitting, Sir, was that we do not want to bring in the lessee. We are concerned with the employer, who is the owner. And again, sometimes, it happens that the original employer may become bankrupt; the whole assets may be mortgaged or there may not be much for the workers to realise, but this is a contingency and once in a way it arises. If there is no asset from which anything can be realised; that cannot be helped. But these things are not common; may be exceptional cases here and there. Therefore, Sir, I am not inclined to make this provision of the Act retrospective and also to allow further litigation by accepting the amendment.

MR. DEPUTY CHAIRMAN: What about your amendments, Mr. Parikh?

SHRI C. P. PARIKH: I am not withdrawing them.

MR. DEPUTY CHAIRMAN: The question is:

> 4. "That at page 2, line 18, after the words 'entitled to' the words 'or shall ever be deemed to have been entitled to' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

> 5. "That at page 2,—
>
> (i) at the end of line 36, after the word 'transfer' the word 'and' be inserted; and
>
> (ii) after line 36, the following be added, namely: —

'(d) compensation has been settled through negotiation or by court before the coming into force of this section.'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 1, the Title and the Enacting Formula were added to the Bill.

SHRI ABID ALI: I move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: (*After a pause*) The question is:

"That the Bill be passed."

DR. SHRIMATI SEETA PARMANAND: I have to put a question.

MR. DEPUTY CHAIRMAN: What am I to do ,Madam? I have put the question. You cannot do it now. You could have done it when there was the pause before I put the question.

The motion was adopted.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. to-morrow.

The House then adjourned at fifty minutes past three of the clock till eleven of the clock on Friday, the 11th May 1956.