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FACULTY OF COMMERCE & MANAGEMENT

COURSE: MBA 3rd SEMESTER

SUBJECT: LABOUR LEGISLATIONS

SUBJECT CODE: MBAHR01

LECTURE: 15

NAME OF FACULTY: DR. H. L. BHASKAR

Lecture-15

Continue……

Industrial Disputes Act, 1947

Chapter IIA - Notice Of Change

Notice of change [Section 9A.]

No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice:

PROVIDED that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any 61[settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.]

THE FOURTH SCHEDULE : Conditions of Service for Change of which notice is to be given

(Section 9A)

1. Wages, including the period and mode of payment;

2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;

3. Compensatory and other allowances;

4. Hours of work and rest intervals;

5. Leave with wages and holidays;

6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;

7. Classification by grades;

8. Withdrawal of any customary concession or privilege or change in usage.

9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;

10.Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, 167[not occasioned by circumstances over which the employer has no control].

National Tribunal [Sec. 7 (B)]: The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals. Its main function is the adjudication of industrial disputes which involve questions of national importance or affecting the interest of two or more States.

According to [Sec 10 (1-A)] dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State, whether it relates to any matter specified in the Second Schedule or the Third Schedule, the government will order in writing refer to National Tribunal for adjudication.

According to [Sec 10 (2)] when parties in the industrial dispute apply to the government to refer dispute to the National Tribunal and if government satisfies it shall make the reference to the National Tribunal.

The Central Government shall appoint a National Tribunal consisting of one person only.

- A person to be appointed a presiding officer of a National Tribunal must be, or
- must have been, a judge of a High Court or
- must have held the office of the chairman or
- any other member of the Labour Appellate Tribunal for a period of not less than two years.

The Central Government may appoint two persons as assessors to advise the National Tribunal.

ARBITRATION

Voluntary reference of disputes to arbitration. [sec. 10 (a)]: an arbitrator is appointed by the Government. Whether the dispute is before Labour Court, or Industrial Tribunal or National Tribunal, the parties can go to arbitration by written agreement. The arbitrators conduct the investigation in to the dispute matters and give arbitration award (final decision or settlement or decree) as for making reference of an industrial dispute. If an industrial dispute exists or is apprehended and the employer and the workman agree to refer the dispute to an arbitration, they may refer the dispute to an arbitration. But such reference shall be made before the dispute has been referred under Sec. 19 to a Labour Court

or Tribunal or National Tribunal by a written agreement. The arbitrator may be appointed singly or more than one in number. The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

Grievance procedure

Grievance Settlement Machinery [Sec. 9 (c)]: This Section is incorporated as a new chapter II B of the Act. As per this Section, the employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months, shall provide for, in accordance with the rules made in that behalf under this Act, a Grievances Settlement Authority.

1. every industrial establishment employing 20 or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.
2. The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.
3. The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.
4. The total number of members of the Grievance Redressal Committee shall not exceed more than 6:
    - Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members is more than two, the number of women members may be increased proportionately.
5. The Grievance Redressal Committee may complete its proceedings within forty-five days on receipt of a written application by or on behalf of the aggrieved party.
6. The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned.
7. Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned.e

AWARDS (decree) [Secs 16, 17, 17A]

- The award of a Labour Court or Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer. [Sec 16(2)].

- Every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. [Sec 17(1)].

- The award published shall be final and shall not be called in question by any Court in any manner whatsoever. [Sec 17 (2)].

- An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication [Sec 17A (1)].

- where the award has been given by a National Tribunal, that it will be inexpedient (not advisable or not practicable) on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days. [Sec 17A (1) (b)].

- The appropriate Government or the Central Government may, within 90 days from the date of publication of the award under section 17, make an order rejecting or modifying the award, to legislature of sate or parliament [Sec 17A (2)]. And if no pursuance has made, the order become enforceable after the expiry of 90 days. [Sec 17A (3)].

- Any award as rejected or modified laid before legislature of state or parliament, shall become enforceable on the expiry of 15 days from the date on which is so laid. [Sec 17A (3)].

- Award declared becomes enforceable on the specified date if mentioned, if no date mentioned award becomes enforceable according to above rules.

Section 17B Payment of full wages to workman pending proceedings in higher courts.-

Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]

PERIOD OF OPERATION OF SETTLEMENTS AND AWARDS. [Sec 19]

- A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

- An award shall remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A: Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit :

- the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit, so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

Eg: if the court orders the employer to reinstate the workman in case of unreasonable removal or discharge , the employer is bind over for one year or in some cases, the period specified by the courts.

STRIKES AND LOCKOUTS

Strike [Sec. 2 (q)]: Strike means "a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal under a common understanding of any number of persons who are or have been so employed, to continue to work or to accept employment". Mere stoppage of work does not come within the meaning of strike unless it can be shown that such stoppage of work was a concerted action for the enforcement of an industrial demand.

Lockout [Sec. 2(1)]: Lockout means "the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him". Lockout is the antithesis of strike.

1. It is a weapon of the employer while strike is that of the workers.
2. Just as a strike is a weapon in the hands of the workers for enforcing their industrial demands, lockout is a weapon available to the employer to force the employees to see his points of view and to accept his demands.
3. The Industrial Dispute Act does not intend to take away these rights.
4. However, the rights of strikes and lockouts have been restricted to achieve the purpose of the Act, namely peaceful investigation and settlement of the industrial disputes.

General Labour Unlon (Red Flag) ... vs B. V. Chavan And Ors on 16 November, 1984

Supreme Court of India expressed
"Imposing and continuing a lockout deemed to be illegal under the Act is an unfair labour practice."

PROCEDURE OF STRIKES

According to Sec. 22(1) No person employed in a public utility service shall go on strike in breach of contract-

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Commentary

Subsection 1 is applicable to the workmen employed in public utility services and lays down that "no person employed in a public utility service shall go on without following below said steps

1. Notice of strike (with or without the date of strike) to the employer by the employees is mandatory.
2. If the date of strike by the employees is not mentioned in the notice such notice is valid for six weeks only.
3. If the date of strike is mentioned in the notice, the date of strike should not be before the expiry of 14 days from the date of notice of strike according to the clause (b).
4. Therefore employees should not go on strike before the expiry of 14 days from the date of issue of notice of strike to the employer.
5. Notice of strike without the date of strike is valid for six weeks only, if employees do not go on strike within six weeks, again a fresh notice of strike by employees is necessary if they want to go on strike.
6. Employees should not go on strike during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Significance of "within fourteen days & within six weeks":

The clauses 'a' and 'b' appearing in sub-section (1) of Section 22 are significantly incorporated to prohibit the workmen from going on strike without giving a minimum of 14 days' notice to the employer, a copy of which is also served on the Conciliation Officer. The purpose is quite obvious. It intends to give some time for the employer to consider. over the demands of the workers who are now appeared to be more serious to go on strike in furtherance of their . demand. It also imposes statutory obligation on the Conciliation Officer to commence conciliation proceedings immediately so that the strife between the workmen and employer shall not result in stoppage of work and production.

The sub-section(l) also prohibits the workers from going on strike before the expiry of the date mentioned in the strike (clause (c)). It necessarily follows that such date can be fixed after the period of fourteen days during which workers cannot go on strike (clause b). Now in clause (a) the phrase “within six weeks before striking” is incorporated to determine the effectiveness of the notice given by the workmen. In other words the notice of strike given by the workmen in accordance with Section 22 will be effective only for a period of six weeks, after the expiry of which, another fresh notice would be required. This can be explained more clearly by an example. Suppose workmen give a notice of strike under Section 22 on 1.1.2001 and fix the date to go on strike as 20.1.2001. Now they cannot go on strike before 20.1.2001 as is required under clause c. They cannot fix any date in the notice in this case before 14.1.2001 as they are prevented from going on strike “within 14 days” of giving such notice by virtue of clause (b). Thus the requirements of both the clauses (b) and (c) arc complied with. Now suppose workmen do not go on strike on or after 20.1.2001, the date fixed by them in the notice of strike and

kept quite for several months. Then suddenly they go on strike on any day after several months. This situation would defeat the very purpose of the I.D. Act to avert stoppage of work. Therefore to avoid such situation it is laid down in clause (a) that the workmen cannot go on strike "without giving to the employer notice of strike within six weeks before striking". It means that, in this example, the workmen cannot go on strike in consequence to their notice given on 1.1.2001 after the expiry of six weeks i.e. 15.2.2001, thus the effect of the notice is confined to a period of six weeks requiring the notice "within six weeks before striking".

Lastly the workmen cannot go on strike during the period of pendency of any conciliation proceeding before the Conciliation Officer and seven days after the conclusion of such proceedings (clause d).

Same conditions are incorporated under sub-section (2) relating to the employers who, too, cannot declare lockout without following the requirements laid down in clauses (a) to (d) of sub-section 2.

It must be noted .hat Section 22 of the I.D. Act does not totally prohibit the strike or lockout, but requires the parties engaged in Public Utility Service to give notice before resorting to the double-edged weapon of strike or lockout. This was also clarified by Court in ***State of Bihar v. Deodhar Jha***

Example:

Hi,
We are engineering industry, I am working as Plant HR. since last 2 months negotiations were going on on wage settlement with workers union. this union is registered but it is not recognised union as per MRTU & PULP Act. but yesterday all of sudden the committee members has walked out of meeting and stopped the work and went out side the gate and started shouting slogans against Management.

Given above scenario, please let me know,
How to handle this strike?
What preventive steps to be taken? and lastly how to break this strike?

Ans)Worker strike is illegal strike you can make notice against Union and submit the nearest labour office. after that labour officer is inspection on industry and discussed with management and union leader.

Facts [+]

New Delhi,2012: Air India pilots was called for strike on May 7 and continued till July 3, is the second longest strike Indian aviation history, has caused loss of Rs. 600 crores to Air India Management. The reasons behind commencement of strike by Air India pilots were irregularities and non-payment of salaries to pilots by Air India management. On this reason few pilots were dismissed from the services for not attending their duties to run flights and for causing loss to the management and Air India management approached the Delhi High Court requesting it to consider as illegal strike by pilots. Delhi High Court supported Air India management and declared it as illegal strike on the grounds of not following the procedure of strike. On July 4 Delhi High Court gave them 48 hours to join duty and asked the management to consider their grievances. Pilots on strike have agreed to join duties and also demanded to reinstate dismissed pilots into the services.

PROCEDURE OF LOCKOUTS

According to Sec. 22(2)

No person employed in a public utility service shall go on Lockout in breach of contract-

(a) without giving to the employer notice of Lockout, as hereinafter provided, within six weeks before lockout; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lockout specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Commentary

Subsection 2 is applicable to the workmen employed in public utility services and lays down that "no person employed in a public utility service shall go on without following below said steps

1. Notice of lockout (with or without the date of lockout) to the employees by their employer is mandatory.
2. If the date of lockout by the employer is not mentioned in the notice, such notice is valid for six weeks only.
3. If the date of lockout is mentioned in the notice, the date of lockout should not be before the expiry of 14 days from the date of notice of strike according to the clause (b).
4. Therefore employers should not go on lockout before the expiry of 14 days from the date of issue of notice of lockout to the employees.
5. Notice of lockout without the date of lockout is valid for six weeks only, if employer do not go on lockout within six weeks, a fresh notice of lockout by employer is necessary, if employer wants to go on lockout.
6. Employers should not go on lockout during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Notice of lock-out or strike

According to Sec. 22 (3) the notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service.

Prohibits an employer from declaring a lockout in any of the eventualities mentioned therein [Section 22(2) of the Industrial Disputes Act 1947]

No employer carrying on any public utility service shall lock-out any of his workman

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
(b) within fourteen days of giving such notice; or
(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

legal strikes and Lockouts **[Section 24 of ID Act 1947]**

A strike or a lockout shall be illegal, if employers or worker who ever disobeys or fails to follow [Sec 22, 23, 10(3), 10-A (4-A)] for commencing strikes or
lockout, those strikes and lockout are said to illegal.

Section

22 Prohibition of strikes and Lockouts (Notice is mandatory in public utility services)
23 General prohibition of strikes and Lockouts (if said matter is pending before board, a Labour Court, Tribunal or national tribunal or arbitrator as mention under Sec 10 & 10A or settlement or about is in operation)
10 Reference of disputes to Boards, courts or Tribunals
10A Voluntary reference of disputes to arbitration

Section 24 (3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

IN THE HIGH COURT OF UTTARAKHAND
(Under Article 226 of the Constitution of India)
Writ Petition (PIL) No. 115 of 2018

August 30, 2018.
Judgment : **View** **Download**

In the matter of Prevention of Recurrent Strikes
Organized by various Government/Non Government
Unions/Organizations .....Suo Motto PIL

Versus

State of Uttarakhand
And Another .....Respondents

No Work No Pay: Employees Of State Govt, PSUs Can't Take Part In Illegal Strikes, Says Uttarakhand HC

Taking a tough stance against indiscriminate strikes in the state, the Uttarakhand High Court has

directed the state to prohibit such strikes in certain departments like that of education, public health, transport service, public works department, irrigation and revenue. **The court also directed the state to consider invoking the 'No Work No Pay' principle in the larger public interest.**

The division bench of Acting Chief Justice Rajiv Sharma and Justice Manoj Tiwari passed several such directions in a suo motu PIL heard by the court after taking cognizance of a letter highlighting the tendency of employees of the state to resort to strikes without any genuine cause.

The court also noted that it is the duty of the state government to listen to genuine grievances of the employees from time to time.

Finally, the court directed the state government to prohibit strikes in certain essential services under Section 3 of the Uttar Pradesh Essential Services Maintenance Act and it to withdraw recognition of service association in case employees resort to illegal strikes.

The state has also been directed to set up Grievance Redressal Committee within eight weeks in order to address genuine grievances of employees.

General prohibition of strikes and lock- outs [Section 23] of The Industrial Disputes Act, 1947,

General prohibition of strikes and lock- outs.- No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock- out--

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings;
(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or] **[10A. Voluntary reference of disputes to arbitration]**
(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

No notice of strike and lockout is necessary in industrial establishments except in public utility services.

Strike	lockout
Workers shall do the strike.	Employer or owner shall do the lockout.
Workers do the strike because of the grievance and for its solution.	Owners do the Lockout because of the disputes between owners and workers.
Prior notice should be given by the worker to the owner of the factory.	Prior notice should be given by the owner of the factory to the worker.

Threat to go on strike:- in *State of Bihar v. deodhar Jha (All India Reporter 1958 Patna. 51), the Patna High Court examine the point as to whether or not threat go on strike is illegal. the court said that the actual resorting to strike cannot always be illegal, therefore threat to go strike is not illegal.*

Penalty for illegal strikes and lock-outs. [Section 26] of the Industrial Dispute Act 1947.

Penalty for illegal strikes and lock-outs.- (1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Lay-Off And Retrenchment

Chapter V A & V B

Bombay High Court
Veiyra M.A. vs Fernandez C.P. And Anr. on 7 December, 1955
Author: Chagla
Bench: M Chagla, P Dixit
JUDGMENT Chagla, C.J.

In ***Veiyra v. Fernandez,*** the Court held that employer has an option for lay-off or retrenchment.

Lay-Offs

Non-applicability of layoff provisions to certain establishments

According to section 25A of chapter VA of Industrial Dispute Act 1947, certain establishments do not have any provisions relating to layoff of the employees by the employer. In such circumstances, layoff would be considered without any authority of law.

Such establishments are:

1. Industrial establishments in which less than 50 workmen are employed, on an average per working day.
2. Industrial establishments which are of a seasonal character and in which work is performed only intermittently.

Employees employed in the above said establishments do not have right for laid-off compensation. However if there is any agreement between employer and employee for that purpose or on the grounds of social justice, laid-off competition can be paid.

In ***South India Corporation Ltd. v. All Kerala Cashewnut Factory Workers' Federation*** the Court held that if any establishment is not covered within the scope of this Chapter V-A, the Tribunal has no right to grant relief on the basis of any fanciful notions of social justice.

Except above said industrial establishments, all other industrial establishments (50 workmen and above industrial establishments which are not of seasonal character) have provisions relating to lay off of the employees by the employer.

Right of Compensation by workmen laid-off

[Right of workmen laid-off for compensation] ***Industrial Disputes Act,1947 Section 25-C***
workman has right to lay-off compensation subject to the following conditions, they are:

1. Workman name should be borne on muster rolls of the establishment and he/she is not a badli workman or a casual workman; and
2. The workman should have completed not less than one year continuous service as defined under Section 25-B; and
3. The workman should have laid-off, continuously or intermittently;
4. Then the workman shall be entitled to lay-off compensation for all days during which he was so laid-off;
5. However, the workman shall not be paid lay-off compensation for such weekly holidays as may intervene the period of lay-off.
6. The lay-off compensation is equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him, if he had not been so laid off.

Explanation: "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this. section, if he has completed one year of continuous service in the establishment.

In ***Vijay Kumar Mills v. Labour Court,*** the Madras High Court held that the badli workman is one whose name is not borne on muster rolls of the establishment. If his name is found on the muster roll, even if he is a badli workman, he is entitled to lay-off compensation.

Maximum days allowed to Layoff of employee by employer

According to section 25C of Industry and dispute Act 1947, maximum days allowed to Layoff of employee by employer is 45 days, for those days, employee who is laid-off is entitled for compensation equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him,had he not been so laid off.

However, if this contingency is prolonging beyond a reasnable time, say 45 days, it would be matter of serious concern. both to the employer and to the workmen because both of them are put to a loss of 50% wages i.e. The employer is required pay lay-off compensation without extracting work from workmen and workmen too, would be losing 50% wages which he would have earned had he not been so laid-off. Therefore the parties can enter into an agreement not to continue lay-off after a period of 45 days in a year.

Compulsory permission from competent authority by employer to lay off of workmen

For Industrial establishments in which not less than 100 workmen are employed, on an average per working day and are of not being seasonal character and in which work is performed only intermittently, have to seek prior permission from competent authority by the employer to layoff workman. if the employer does not apply to seek prior permission or where such permission is refused by the competent authority specified above, to effect lay-off, such lay-off shall be considered as illegal and the workmen laid-off shall be entitled to all benefits as if they have not been laid-off.

Can an employer avoid the lay-off compensation?

Section 25A of ***Industrial Dispute act 1947***

Following e**stablishments can avoid lay off compensation according to the Section 25E**

1. Industrial establishments in which less than 50 workmen are employed, on an average per working day, but not to industrial establishments in which more than 100 workmen are employed.
2. Industrial establishments which are of a seasonal character and in which work is performed only intermittently.

Workmen not entitled to compensation in certain cases [Section 25E] of Industrial Dispute act 1947

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of. the employer, such alternative employment does not call. for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

Retrenchment

Definition of retrenchment of employee

[Section 2(oo)]

"retrenchments" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the workman; or
(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
43[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or]
(c) termination of the service of a workman on the ground of continued ill-health;]

In ***Duryodhan Naik v. Union of lndia,*** the Court held that the **discharge of surplus labour by the employer·** for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action is called retrenchment, but where the services of all workmen have been terminated by the employer on a real and bona fide closure of business or the undertaking is taken over by another employer, it has no application of retrenchment.

In ***Santosh Gupta v. State Bank of India***, a female employee was **discharged on the grounds that she failed to qualify herself in the prescribed test for confirmation of services**. The Tribunal held that the termination does not amount to retrenchment. But the Supreme Court reversed the decision of the Tribunal and ordered reinstatement of the employee with full back wages. The Supreme Court further held that the expression “termination of service for any reason whatsoever” is wide enough to include every kind of termination of service except those which are expressly excluded by the proviso to the definition of retrenchment as given in Section 2(oo)|.

In ***Tatanagar Foundry Co. v. Their Workmen,*** it was held that employer cannot lay-off the workmen with mala fide intention or by way of victimisation.

Procedure for retrenchment [Section 25G]

The principle of 'last come; First go':-

Where any workman in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, t**he employer shall ordinarily retrench the workman who was the last person to be employed in that category**, unless for reasons to be recorded the employer retrenches any other workman.

Re-employment of retrenched workmen [Section 25H]

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for **re-employment shall have preference over other persons**.

Regularization of employee in service does not entitle retrenched employee to claim re-employment, Supreme Court.

Read Judgement

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 7 OF 2019
[Arising out of SLP (C) No. 17975 of 2014]

Management of the Barara
Cooperative MarketingcumProcessing
Society Ltd. ... Appellant
Versus
Workman Pratap Singh … Respondent

The Supreme Court has held that the regularization of an employee already in service does not give any right to a retrenched employee to invoke Section 25(H) of the Industrial Disputes Act, 1947 in order to claim re-employment.

The Court has explained that if an employer regularizies the services of an employee already in service,

it does not amount to offering fresh employment to any person to fill any vacancy, and therefore, Section 25(H) would not apply.

"In our view,there lies a distinction between the expression 'employment' and 'regularization of the service". The expression 'employment' signifies a fresh employment to fill the vacancies whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations."

The judgment was passed by a Division Bench of Justices AM Sapre and Indu Malhotra in an appeal against an order passed by the Punjab & Haryana High Court directing the appellant to reinstate the respondent workman into service with back wages.

The respondent was working as a peon with the appellant, a Cooperative Marketing Society which terminated his services in July 1985.

The Labour Court held the termination was bad in law and awarded a lump sum compensation of Rs. 12,500 to the workman in lieu of reinstatement in service. Both the parties then moved the High Court challenging the legality and correctness of the Labour Court's Award. However, after the High Court upheld the decision of the Labour Court, the workman accepted the compensation awarded to him.

After learning that the appellant has regularized the services of two peons, the workman filed a representation to the appellant, claiming re-employment in terms of Section 25(H) of the ID Act. The same was rejected by the appellant.

In the industrial reference at the instance of the workman, the Labour Court held that he had no right to claim re-employment in the appellant's services under the provision.

Aggrieved by the award, the workman then moved the High Court under its writ jurisdiction. A Single Judge Bench allowed the writ petition and set aside the award passed by the Labour Court, directing the re-employment of the workman. The decision was upheld by a Division Bench. The appellant then moved the Supreme Court in appeal.

Restoring the award of the Labour Court, the Supreme Court held that there was no case made out by the respondent workman to seek re-employment in the appellant's services on the basis of Section 25 (H) of the ID Act.

The Court observed that since the workman had already accepted the compensation awarded to him in lieu of his right of reinstatement in service, "the said issue had finally come to an end".

The Court also stated that Section 25(H) had no application to the case at hand.

It observed that the object behind Section 25(H) is to give preference to retrenched employee over other persons by offering them re-employment in the services when the employer takes a decision to fill up the new vacancies.

"…in order to attract the provisions of Section 25(H) of the ID Act, it must be proved by the workman that firstly, he was the "retrenched employee" and secondly, his ex-employer has decided to fill up the vacancies in their set up and, therefore, he is entitled to claim preference over those persons, who have

applied against such vacancies for a job while seeking re-employment in the services."

Drawing a distinction between 'employment' and 'regularization of services', the Court held that the workman was not entitled to invoke the provisions of Section 25 (H) and seek re-employment by citing the case of another employee who was already in employment and whose services were only regularized by the appellant.

It thus set aside the order passed by the High Court and restored the award passed by the Labour Court.

Retrenchment conditions

To an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [50 but not more than 100] workmen were employed on an, average per working day for the preceding twelve months.[Section 25A]

According to the Section 25F [Conditions precedent to retrench ment of workmen]

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government [for such authority as may be specified by the appropriate government by notification in the Official Gazette].

To an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were employed on an, average per working day for the preceding twelve months.[Section 25K].

Sec 25F of Industrial Disputes Act not applicable if Workman abandons service, Supreme Court.

Read Judgement

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 1176611767 OF 2018
(Arising out of SLP (Civil) Nos. 3020530206 of 2017)

Manju Saxena ...Appellant
Versus
Union of India & Anr. ...Respondent(s)

The Supreme Court has reiterated that once a workman voluntarily abandons his service, Section 25F of the Industrial Disputes Act, 1947 would cease to apply to him as he could not be deemed to be in "continuous service" at the time of his retrenchment.

"Once it is established that the Appellant had voluntarily abandoned her service, she could not have been in "continuous service" as defined under S. 2(oo) the I.D. Act, 1947. S. 25F of the I.D. Act, 1947 lays down the conditions that are required to be fulfilled by an employer, while terminating the services of an employee, who has been in "continuous service" of the employer. Hence, S. 25F of the I.D. Act, would cease to apply on her", the Court stated.

The judgment was passed by a Bench comprising Justices Abhay M Sapre and Indu Malhotra in an SLP challenging the termination conditions of the Appellant, imposed by employer HSBC Bank.

The Appellant, Manju Saxena who worked as Lady Confidential Secretary with HSBC Bank, was promoted to the post of Senior Confidential Secretary to the Senior Manager (North India), HSBC**. After the officer with whom the Appellant was attached left his office, Appellant's post of Senior Confidential Secretary became redundant.**

HSBC management, therefore, **offered her four alternate jobs in the same pay scale**, namely Business Development Officer, Customer Service Officer, Clearing Officer, and Banking Services Officer. The Appellant, however, **declined to accept any of these jobs.**

At last, HSBC terminated the services of the Appellant on the ground that her current job had become redundant and she had refused to accept the alternative offers made to her. The **Bank offered a generous severance package** to the Appellant, which she declined. The Bank **nonetheless paid 6 months' compensation in lieu of Notice as per the contract of employment and also paid her compensation equivalent to 15 days' salary for every completed year of service.**

The **Appellant raised an Industrial Dispute before the Regional Labour Commissioner, seeking enhancement of the severance package** paid to her, but did not raise any claim for reinstatement to HSBC. S**ince the Appellant sought a severance package of over Rs 91 lakh, and HSBC was ready to pay approximately Rs 57 lakh, the conciliation proceedings failed.**

The Appellant then filed her Statement of Claim before the Central Government Industrial Tribunal claiming enhanced severance package, waiver of outstanding Housing Loan, and full pension. The Tribunal directed HSBC to reinstate the Appellant, with full terminal benefits.

HSBC filed a Writ Petition before the Delhi High Court to challenge the Award passed by the Tribunal.

The High Court remanded the matter to the Tribunal to consider whether the Appellant could be

considered to be a “Workman” as per the Industrial Disputes Act, 1947. While the writ was still pending, the Tribunal passed a second award, holding the Appellant to be a workman. It further directed HSBC to reinstate the Appellant with continuity of service, full back wages, and all consequential benefits.

Meanwhile, the High Court directed HSBC to pay monthly interim maintenance to the Appellant under Section 17B of the Industrial Disputes Act.

Ultimately, the Award passed by the Tribunal was set aside by the High Court in the writ petition. It held that the Appellant’s conduct amounted to “abandonment” of her job, and thus there was no question of her services having been illegally terminated.

The High Court also recorded that the Appellant had already received monetary benefits in excess of the compensation she was entitled to under the law. Hence, the Appellant was not entitled to any additional amount.

The order of the Single Judge Bench to the extent that the Appellant had abandoned her job, was upheld by the Division Bench in appeal as well as Revision. The Appellant then preferred the present SLP.

Observing that the HSBC had complied with all the statutory requirements under Section 25F of the Industrial Disputes Act, the Supreme Court held that HSBC was justified in terminating the services of the Appellant.

It stated that the intentions of the Appellant to abandon her job could be inferred from her refusal to accept any of the four alternative positions offered by HSBC. It also noted that across all forums, the Appellant had only claimed enhancement of compensation and not reinstatement.

“The Appellant’s conduct would constitute a voluntary abandonment of service since the Appellant herself had declined to accept the various offers of service in the Bank. Furthermore, even during conciliation proceedings she has only asked for an enhanced severance package, and not reinstatement”, the Court recorded.

Since the Appellant ceased to be in “continuous service” of HSBC by virtue of her abandonment, the Supreme Court held that Section 25F of would cease to apply to her.

The Court also reiterated that the requirement of clause (c) of Section 25F, i.e., notifying the appropriate Government or authority about the retrenchment, can be treated only as directory and not mandatory.

The Court also rejected any claim for payment of more money to the Appellant, stating that she has already received almost double the amount claimed by her.

It thus decreed,

“The Civil Appeals stand dismissed, with no order as to costs. All applications stand disposed of accordingly.”

HSBC was represented by Senior Advocate Dhruv Mehta, with Advocate Gagan Gupta. The Appellant appeared in-person.

According to the Section 25N **[Conditions precedent to retrenchment of workmen]**

1. Employee should have continuous service for not less than one year under an employer
2. Three months notice in writing indicating the reasons for retrenchment or payment for the period of the notice
3. Compensation which shall be equivalent to fifteen days' average pay[for every completed year of continuous service] or any part thereof in excess of six months.
4. An application for permission to specified authority for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
5. Compulsory permission from competent authority by employer retrenchment of workmen For Industrial establishments in which not less than 100 workmen are employed, on an average per working day and are of not being seasonal character and in which work is performed only intermittently, have to seek prior permission from competent authority by the employer to layoff workman.

If no application seeking permission to retrench workmen is made by the employer or where such permission is refused, **such retrenchment shall be deemed to be illegal**and the workmen shall be entitled to all benefits as if they have not been given any notice. (sub-Section 7).

HSBC axes 200 employees from city offices

April 2012, HYDERABAD: HSBC India did a massive layoff exercise showing the door to as many as 200 employees ranging from assistant manager to vice presidents from its centres in Hyderabad alone.The axe had fallen on over 350 employees at HSBC's Pune centres. It is estimated that a total of 750 employees were asked to leave across locations and designations. So from assistant managers to vice presidents were summoned to the meeting room, asked to choose between termination or resignation, pack their bags and leave.

An "adequate" compensation (one month's salary for each year spent in the company plus three months salary) was part of the layoff deal. While the new entrants into the international bank are crying hoarse, the senior ones are taking solace in the cash with some having made Rs 8-15 lakh.

Penalty for lay-off and retrenchment without previous permission [Section5Q]

This section applies to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were employed on an, average per working day for the preceding twelve months.[Section 25K]

- Compulsory permission from competent authority by employer to lay off of Workmen [Section 25M] of Industrial Dispute act 1947
- Section 25N [Conditions precedent to retrenchment of workmen]

Any employer who contravenes the provisions of section 25M or section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

UNFAIR LABOUR PRACTICES

FIFTH SCHEDULE

I - On the part of employers and trade unions of employers

1. To interfere with, restrain from, or coerce, workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted
activities for the purposes of collective bargaining or other mutual aid or protection, that is to say, -

(a) threatening workmen with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organised; and

(c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say :-

(a) an employer taking an active interest in organising a trade, union of his workmen; and

(b) an employer showing partiality or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.

3. To establish employer-sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say :-

(a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which it deemed to be an illegal strike under this Act);

(c) changing seniority rating of workmen because of trade union activities;

(d) refusing to promote workmen to higher posts on account of their trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen -

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer's rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumpet up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
7. To transfer a workman mala fide from one place to another, under the guise of following management policy.
8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.
9. To show favouritis or partiality to one set of workers regardless of merit.
10. To employ workmen as "badlis" casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and
privileges of permanent workmen.
11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any
industrial dispute.
12. To recruit workmen during a strike which is not an illegal strike.
13. Failure to implement award, settlement or agreement.
14. To indulge in acts of force or violence.
15. To refuse to bargain collectively, in good faith with the recognised trade unions.
16. Proposing or continuing a lock-out deemed to be illegal under this Act.

II - On the part of workmen and trade unions of workmen

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.

2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union, that is to say –
(a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as willful "go slow", squatting on the work premises after working hours or "gherao" of
any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in willful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.