

Industrial Disputes Act, 1947

7/26/2016

PATANJALI ASSOCIATES

Law Firm & Corporate Advisors

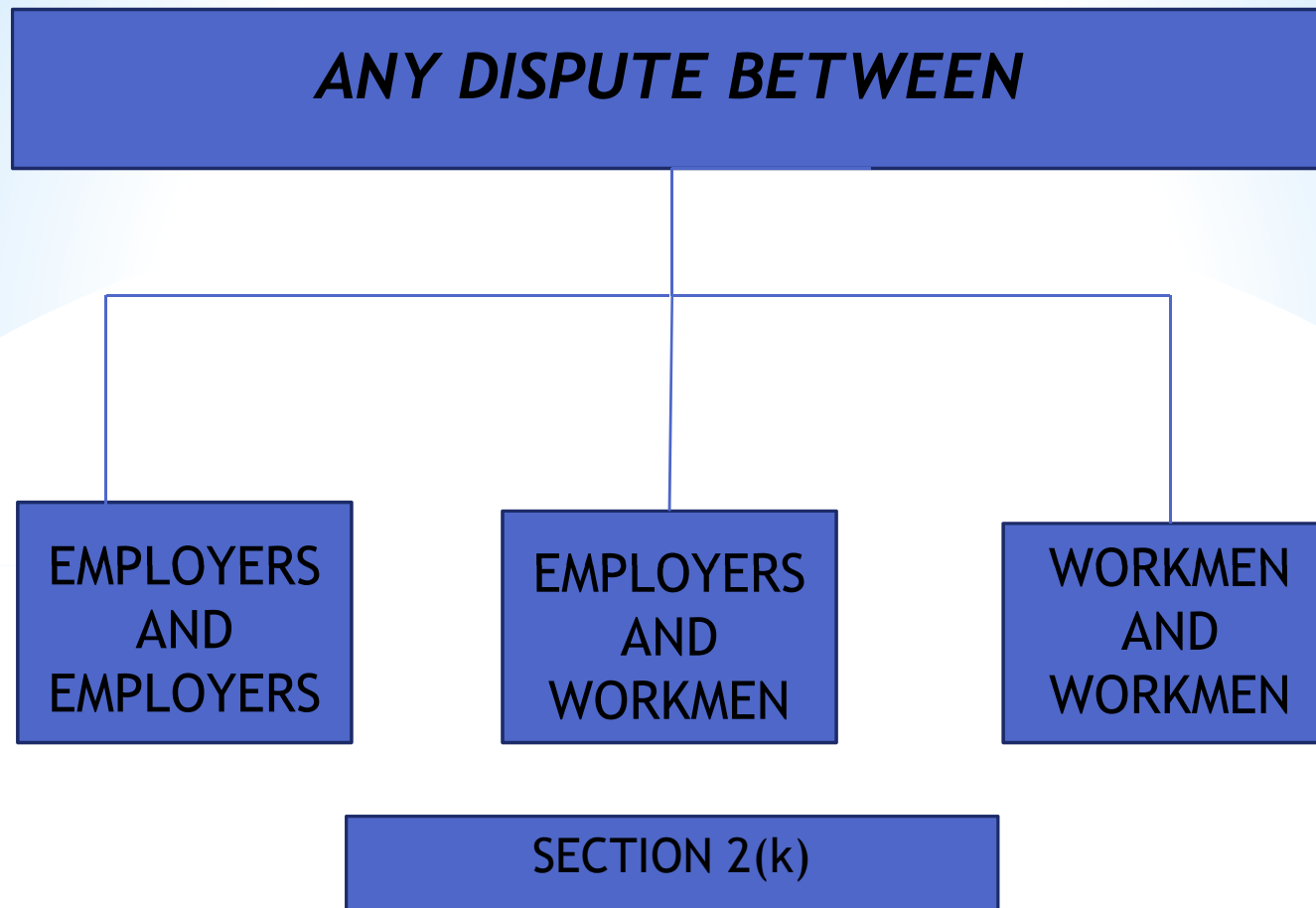
"The word Patanjali is derived from the name of the sage who pioneered the concept of Yoga. Patanjali Associates aspires to grow with the universal appeal and to service clients globally. Truly like the art of Yoga, it promises to be flexible and adaptable in providing pragmatic Business solutions."

WHAT IS AN 'INDUSTRY'?

Will the following be classified as 'industry'?

- *MUNICIPAL CORPORATION?*
- *DEPARTMENTS OF MUNICIPAL CORPORATIONS?*
- *HOSPITAL?*
- *EDUCATIONAL INSTITUTIONS?*
- *GOVT. DEPARTMENT?*
- *CLUBS?*
- *SOLICITOR'S FIRM OR LAWYER'S OFFICE?*
- *AGRICULTURAL OPERATION AND IMMOVABLE PROPERTY?*
- *PARTNERSHIP FIRM OF ACCOUNTANTS?*

WHAT IS AN 'INDUSTRIAL DISPUTE'?



Industrial disputes means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.

WHAT IS AN 'INDUSTRY'?

Section 2(j) - Industry

ANY SYSTEMATIC ACTIVITY CARRIED ON BY COOPERATION BETWEEN AN EMPLOYER & HIS WORKMEN FOR:

- *Production, supply or distribution of goods or services;*
- *With a view to satisfy human wants or wishes.*

Whether or not:

- *Any capital has been invested for the purpose for such activity;*
- *Such activity is carries on with a motive to make gain/profit (includes activity under Dock Labour Board established u/s 5-A of the Dock Workers (Regulation of Employment) Act, 1948.*

But does NOT include:

- *Any agriculture operation;*
- *EXCEPT where the agriculture operation is carried on with any other activity.*

Bangalore Water Supply v. A. Rajappa & Ors. *(1978 AIR 548)*

Scope of definition of 'Industry'

- Where (i) systematic activity; (ii) organized by cooperation between employer & employee; (iii) for the production &/or distribution of goods & services calculated to satisfy human wants & wishes;
- Absence of profit motive or gainful objective is irrelevant, be the venture in the public, private or other sector;
- If the nature of activity is with special emphasis on employer, employee relationship & true focus is functional;
- If the organization is trade or business, it will be covered by the definition of Industry though the organization is philanthropic.
- With this judgment, besides manufacturing activity, professions such as attorney, activities like clubs, educational institutions, co-operatives, research institutes & charitable projects were also covered. Respective category of professions, clubs, co-operatives etc. may qualify for exemption from the definition of 'Industry'.

Bangalore Water Supply v. A. Rajappa & Ors.

Hon'ble Supreme Court further held that:

- In deciding whether an enterprise is an industry, the absence of profit motive or gainful objective is irrelevant.
- Whether the venture is public/joint or private or other sector is also irrelevant.
- Absence of capital does not qualify an enterprise for exemption from the scope of Section 2(j) of the Act.
- Welfare economic activities undertaken by the Govt. or statutory bodies not being sovereign functions are covered by the definition of Industries.
- Research institutes, educational institutions, hospitals, professions like attorney, co-operative societies, clubs, philanthropic enterprises, performing business functions fall within the definition of Industry.
- Charitable Institutions make no profits but hire the employees as in other like businesses. From the point of view of workers there is no charity. Noble objectives, pious purposes are no reasons to bring charitable institutions out of the definition of Industry.

Bangalore Water Supply v. A. Rajappa & Ors.

BASED ON THIS JUDGMENT, THE FOLLOWING ACTIVITIES HAVE BEEN CONSIDERED 'INDUSTRY' BY VARIOUS COURTS:

INDUSTRY	CASE NAME
<i>Public Works Department of Govt.</i>	State of Punjab v. Hari Dass & Anr., 1999
<i>Doordarshan</i>	All India Radio v. Santosh Kumar, 1998
<i>Tata Sports Club</i>	Ratilal B. Ravji v. Tata Sports Club & Anr., 1997
<i>Research Institute</i>	Central Council for Research in Ayurveda & Siddha v. Central Govt. Industrial Tribunal & Anr., 2010

Will the following be called 'INDUSTRY'?

Municipal Corporation	Budge Municipality v. P.R. Mukerjee (1953, 1, LLJ 195)	YES. <i>“A public utility service such as railways, telephones and supply of power, light or water to the public may be carried on by private companies or business corporations & if these public utility services are carried on by local bodies like Municipality they do not cease to be an industry.”</i>
Department of a municipal corporation	Nagpur Corporation v. Its Employees (AIR 1960 SC 675)	YES. <i>“The predominant functions of the department shall be the criterion for the purposes of this Act.”</i>

Hospital	Bangalore Water Supply v. A. Rajappa	Such hospitals as are run by the Govt. as part of its sovereign functions with the sole object of rendering free service to the patients are not industry. But all other hospitals, both, public and private; whether charitable or commercial would be industry if they fulfill the triple test laid down in Bangalore Water Supply case.
Educational Institutions	Bangalore Water Supply v. A. Rajappa	<i>Educational Institutions including the university are industry in a limited sense. Those employees who are covered under section 2(s) of the ID Act, 1947, will be treated as workman of an industry.</i>
Govt. Department	State of Rajasthan v. Ganeshi Lal (I.L.L.J. 670 (SC))	<i>Held that law dept. of Govt. is an industry. Certain departments have been held to be industry.</i>

Clubs	Bangalore Water Supply v. A. Rajappa	<i>Clubs or self-service institutions or non-proprietary member's club will be an industry provided they fulfill the triple test laid down in Bangalore Water Supply Case.</i>
Solicitor's Firm or Lawyer's Office	Bangalore Water Supply v. A. Rajappa	<i>A solicitor's firm employing persons to help in catering to the needs of his client is an industry.</i>
Agricultural Operations & Immovable Property	Thiru Arcoran Sugars Ltd. v. Industrial Tribunal Madras (1970) II LLJ 249	<i>A sugar mill owned a cane farm & used its produce for its own consumption & there was evidence that the farm section of the mill was run only to feed the mill, it was held that the agricultural activity being an integral part of industrial activity, the farm section was an industry.</i>
Partnership firm of accountants	Industrial Employer's Union U.P. v. Price Water House Peat & Co., Kanpur (1963) II LLJ 273	<i>Held to be an industry within the meaning of the term under Section 2(j) of the Act.</i>

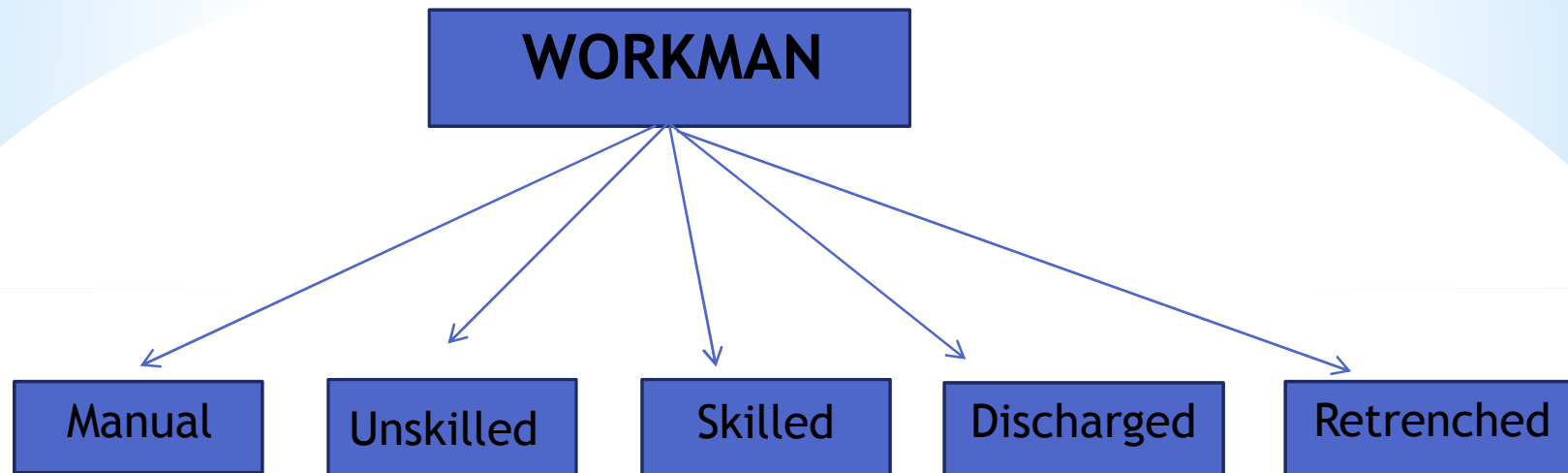
WHO IS A 'WORKMAN'?

Will the following be classified as 'workman'?

- *SALESMAN?*
- *SHOP-MANAGER?*
- *DAILY WAGER?*
- *ACCOUNTANTS?*
- *STATION MASTERS?*
- *APPRENTICE?*
- *DOCTOR?*

WHO IS A 'WORKMAN'?

Workman shall include a person employed for any Industry.

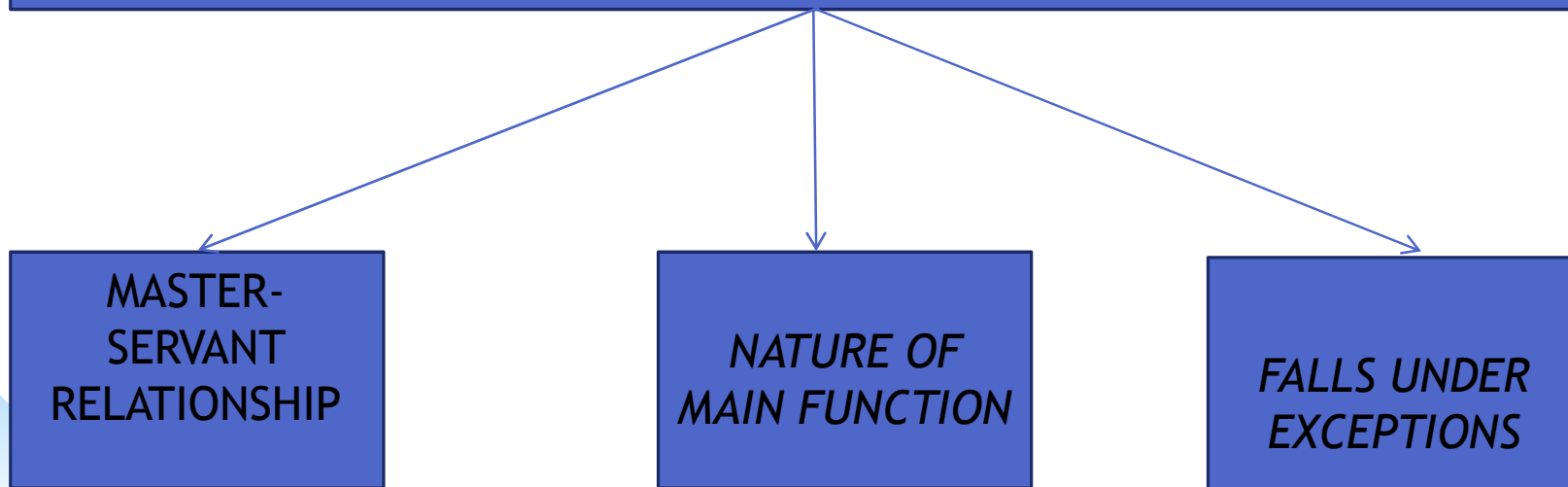


SECTION 2(s) OF ACT - *“workman” means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.....* contd...

Exceptions to definition of 'workman' as provided under the provision:
Any such person:

- subject to Air Force Act, 1950, or Army Act, 1950, or Navy Act, 1957;
- employed in the police service or as an officer or other employee of a prison;
- employed mainly in a managerial or administrative capacity;
- employed in a supervisory capacity, draws wages exceeding 6500/- per month or exercises, either by the nature of duties is managerial.

Factors to be considered



WHO IS A 'WORKMAN'?

Will the following be classified as 'workman'?

- *SALESMAN? - Yes. If his duties include manual as well as clerical work. - Carona Sahu Co. Ltd. v. Labour Court (1993) 1 LLN 300*
- *SHOP-MANAGER? - NO. - S.K. Maini v. Carona Sahu Co. Ltd. - (1994) 3 SCC 510*
- *DAILY WAGER? - Yes. - Executive Engineer, Garhwal Jal Sansthan v. Chhotey Singh (2000) 3 LLN 549*
- *ACCOUNTANTS? - Yes. South India Bank Ltd. v. A.R. Chacko (AIR 1964 SC 1522)*
- *STATION MASTERS? - NO. - Orissa State Road Transport Corpn. Employees' Association of Union v. Orissa State Road Transport Corpn. (2001) 2 LLN 520*
- *APPRENTICE? - NO. - Hanuman Prasad Chaudhary v. R.S.E Board (1986) Lab IC 1014*
- *DOCTOR? - NO. - Joseph Sunder Kangarayar (Dr.) v. Tuticorin Port Trust - (2001) 4 LLN 884 (Mad.)*

Strike, Lock Out & Closure

2(q) - “*strike*” means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal, under, a common understanding of any no. of persons who are or have been so employed to continue to work or to accept employment.

Penalty for illegal strikes (Section 26) - 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 1 month, or with fine which may extend to Rs.50, or with both.

Penalty for instigating of illegal strikes (Section 27) - Any person who instigates or incites others to take part on an illegal strike is punishable with imprisonment for a term upto 6 months, or a fine upto Rs.1000, or with both.

2 (l) - “*lock-out*” 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.

2 (cc) - “*closure*” means the permanent closing down of a place of employment or part thereof.

Case Studies

STRIKE

Lakshmi Devi Sugar Mills vs. Ram Sarup (1957 - 1 LLJ. 17 SC)

- Sudden concerted stoppage of work.*
- Strikers cannot be exempted from the consequences.*
- Employer has the right to suspend the striking workmen.*

LOCK OUT

- *Northbook Jute Co. Ltd. vs. Their Workmen (MANU/SC/0233/1960)*
- Workmen objected to the introduction of a rationalization scheme in the mills of the co.*
- 1 of the mills put the rationalization scheme into operation but the workmen refused to do additional work as required under the scheme.*
- Mills declared a lock-out.*
- Work resumed again, dispute arose regarding the wages during the lock-out.*
- Referred to tribunal.*
- Tribunal - Closure of the mills by the employer amounted to illegal lock-out, and the workmen, unable to work in consequence of the lockout, are entitled to wages for the period of absence. Upheld by the Supreme Court.*

Case Studies

CLOSURE

Raj Hans Press v. Labour Court & Ors. (1977) ILLJ 524 Del

- ❑ *Labour Court had held that termination of services of the workmen was illegal & void & they were entitled to reinstatement with full back wages & continuity of service.*
- ❑ *Appellant claimed that the termination was on the basis of closure of machine binding composing dept. of the Press. The Labour Court concluded that there was no Closure and secondly, there was inter-changeability in the duties of the workmen & the workmen concerned were not employed only in respect of the alleged closed department.*
- ❑ *Delhi HC - Upheld the Labour Court's judgment.*
- ❑ *Held - "It has to be determined whether an independent portion of the business of the Petitioner has closed down....As the press is continuing to work I cannot say that closing down of a particular machine used by the petitioner can be described as a closure....if the press is still running, then it cannot be described as having been closed...The replacement of a particular kind of machine by another machine cannot be described as closure."*

Lay-off

LAY OFF - Section 2(kk)

- *“the failure, refusal or inability of an employer on account of shortage of coal & power or raw material or the accumulation of stocks or the breakdown of machinery or any other reason to give employment to a workmen whose name is borne on the muster roll of his industrial establishment & who has not been retrenched.”*

- Lay-off provisions:

Section 2 (m) of the Factories Act, 1948

Section 2 (i) of Mines Act, 1952

Section 2 (f) of Plantation Labour Act, 1951

Penalty for Lay-off - Any employer who contravenes the provisions of lay-off is punishable with imprisonment for a term which may extend to Rs.1000/- or both.

If a workmen has been laid-off by his employer due to shortage of power or natural calamity, the appropriate government makes an enquiry if it thinks fit. If the authority does not communicate the permission within two months with the employer then lay-off is deemed to be granted. If the appropriate govt. refuses the permission, then the lay-off is deemed illegal.

Retrenchment

RETRENCHMENT - Section 2(oo)

- *“Retrenchment 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 workmen on reaching the age of superannuation if the contract of employment between the employer & the workman concerned contains a stipulation in that behalf OR (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment; (c) termination of the service of the workman on the ground of continued ill-health.”*

No workmen who has been employed for 1 year can be retrenched until:

- 1 month notice in written & reason for retrenchment;
- 15 days' average pay for every completed year of service;
- Notice served to the appropriate government.

Current Position of Law - Retrenchment

Raj Kumar v. Director of Education & Ors. (MANU/SC/0407/2016)

- Termination of services of a driver (appellant) by Managing Committee of DAV Public School (respondent) by 'retrenchment'.

Facts:

- *Appellant was employed as driver by DAV Public School. His terms of service covered under relevant sections of the Delhi School Education Act, 1973 (DSE Act).*
- *Managing Committee of the school (respondent) sold two of its old vehicles to buy new vehicles. However, no new vehicles were purchased.*

Contd...

Raj Kumar v. Director of Education & Ors.

- *As a result, the appellant was declared as 'surplus'.*
- *Respondent issued a notice to him in accordance with Section 25F (a) of the ID Act - retrenchment. Retrenchment compensation was paid to him after the extended notice period.*
- *Appellant filed a writ petition before the HC. HC disposed off the writ granting liberty to the appellant to seek remedy under the DSE Act.*
- *Appeal filed by appellant before the Presiding Officer, Delhi School Tribunal. Appeal was dismissed.*
- *Thus, appeal before the SC.*

ISSUES	SC's VIEWS
<p><i>Whether the appellant is a 'workman' for the purpose of ID Act?</i></p>	<p><i>'Workman' under ID Act - (1) manual; (2) unskilled; (3) skilled; (4) technical; (5) operational; (6) clerical; (7) supervisory.</i></p> <p><i>Educational Institution is an 'industry' in terms of section 2 (j) of the ID Act, though not all of its employees are workmen.</i></p> <p><u><i>Driver employed by a school, being a skilled person is a workman.</i></u></p>

ISSUES	SC's VIEWS
<p><i>Conditions precedent for retrenchment have been fulfilled?</i></p>	<p><i>Notice required to be sent to the appropriate Govt. (Delhi State Govt.) u/s 25 F(c) of the Act was not sent.</i></p> <p><i>It is intended to give intimation to the appropriate govt. about the retrenchment, & that only helps the govt. to keep itself informed about the conditions of employment in the different industries within its region.</i></p> <p>NOTICE TO APPROPRIATE GOVT. IN THE PRESCRIBED FORMAT IS ESSENTIAL.</p> <p><i>Retrenchment set aside - bad in law.</i></p>

Lay Off & Retrenchment

BASIS FOR COMPARISON	LAY-OFF	RETRENCHMENT
Meaning	Lay-off refers to the provisional termination of the employee, at the instance of the employer.	Retrenchment means involuntary separation of an employee due to the replacement of labor by machines or the close of the department.
What is it?	Action step.	Business strategy.
Defined in	Section 2(kkk) of ID Act, 1947	Section 2(oo) of ID Act, 1947
Nature	Temporary	Permanent
Operation of Company	Stops after the declaration.	Continues even after the declaration.
Re-appointment	As soon as the lay-off period ends.	Employee's connection with the organization are severed immediately.

Workmen	Lay-off	Closure	Retrenchment
100 or more workmen	<ul style="list-style-type: none"> - Prior permission of govt - state/central through prescribed application. Deemed approval in 60 days. If either approval or refusal is not granted in 60 days then appeal possible. 	<ul style="list-style-type: none"> - Prior approval at least 90 days from the intended date of closure. 	<ul style="list-style-type: none"> - 3 months notice and prior approval of the Govt.
More than 50 but less than 100	<ul style="list-style-type: none"> - No special permission required. - Employer to pay 50% of the total basic and DA during the period of lay-off. 	<ul style="list-style-type: none"> - 60 days' notice to be given by the Employer to the authorities. 	<ul style="list-style-type: none"> - Employer to give 30 days' notice. - 15 days' pay for every year of continuous work by workmen.
Less than 50 workers	<ul style="list-style-type: none"> - Employer may lay-off without permission. 	<ul style="list-style-type: none"> - Compensation to be paid. - No notice required. 	<ul style="list-style-type: none"> - No notice required.

LABOUR COURTS

The Labour Courts can deal with disputes relating to:

- Proprietary/legality of an order passed by an employer under the standing Orders;
- Application & interpretation of Standing Orders;
- Discharge & dismissal of workmen & grant of relief to them;
- Withdrawal of any statutory concession or privilege;
- Illegality or otherwise of any strike or lock out;
- All matters not specified in the third schedule of the ID Act, 1947.

TRIBUNALS

The Industrial Tribunals can deal with disputes relating to:

- Wages, including the period and mode of wages;
- Compensatory & other allowances;
- Hours of work & rest intervals;
- Leave with wages & holidays;
- Bonus, profit sharing, provident fund & gratuity;
- Shift working otherwise than in accordance with standing orders;
- Rules of discipline;
- Rationalization;
- Retrenchment;
- Any other matter that may be prescribed.

NATIONAL TRIBUNALS

- These tribunals are meant for those disputes which, as the name suggests, involve the questions of national importance or issues which are likely to affect the industrial establishments of more than one state.

Section 33 (1)

During the pendency of any conciliation proceeding (before conciliation officer, Tribunal, Board, Labour Court etc.) no employer shall change these conditions

In regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding.

OR

For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute.

Save with the express permission in writing of the authority before which the proceeding is pending.

Section 33 (2)

During the pendency of any such proceeding the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute -

ALTER, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding

OR

For any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman

Provided that no such workman shall be discharged or dismissed, unless he had been paid wages for 1 month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

Section 33 (3)

Notwithstanding anything contained in sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any PROTECTED WORKMAN concerned in such dispute

By altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding

OR

By discharging or punishing whether by dismissal or otherwise, such protected workman

Save with the express permission in writing of the authority before which the proceeding is pending.

Protected Workman - Member of executive or other office bearer of a regd. trade union connected with the establishment.

Section 33 (C) (1) - RECOVERY OF MONEY DUE FROM AN EMPLOYER

Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorized by him in writing in this behalf, or, in the case of death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Govt. for the recovery of the money due to him, and if the appropriate Govt. is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue;

Provided that every such application shall be made within 1 year from the date on which the money became due to the workman from the employer.

Provided further that any such application may be entertained after the expiry of the said period of 1 year, if the appropriate Govt. is satisfied that the applicant had sufficient cause for not making the application within the said period.

Section 33 (C) (2)

Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act be decided by such Labour Court as may be specified in this behalf by the appropriate Govt. within a period not exceeding 3 months;

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

Punjab Beverages Pvt. Ltd., Chandigarh v. Suresh Anand & Anr. (MANU/SC/0273/1978)

- The Respondent was a workman in the appellant's undertaking from 1st March, 1970, receiving Rs.100/- per month as salary.
- The salary was to be increased to Rs.115/- per month from 1st August, 1972. However, the Respondent was terminated from service on 21st December, 1971, a chargesheet was served on him and based on a regular inquiry by the Appellant the Respondent was found guilty and dismissed.
- At the time of his dismissal, an industrial dispute was pending before the Industrial Tribunal.
- As such, the Appellant approached the Tribunal for approval of its action, the Respondent resisted this application.
- The Tribunal dismissed the application as 'withdrawn'.
- The Respondent thus demanded full wages from the Appellant from the date of his suspension till the date of demand contending that the termination of the Respondent by the Appellant was not approved by the Tribunal, as such, the Respondent would be deemed to be still in service, entitled to the emoluments.
- The Appellant did not respond to this demand and the Respondent filed an application for determination & payment of wages from suspension.

Contd.

- The Appellant contended that the application for approval for termination was 'withdrawn' and the position was as if no application had been made and as such, there was no contravention of Section 33(2)(b). Thus, the dismissal was illegal and unless it was set aside in an appropriate proceeding the Labour Court had no jurisdiction to determine the wages.
- Labour Court dismissed this contention of the Appellant.
- Supreme Court: "If an employee is dismissed or demoted and it is his case that the 'dismissal' in fact, is wrongful, it would then not be open to him to make a claim for the recovery of salary or wages under Section 33 C (2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried. The Judgment of the Labour Court was set aside.

PATANJALI ASSOCIATES
Law Firm & Corporate Advisors

PATANJALI ASSOCIATES
Law Firm & Corporate Advisors

**E-7, Kailash Colony,
New Delhi - 110048**

Tel: +91-11- 40539766 / 41580222

Website:

www.patanjaliassociates.com

Email:-

contact@patanjaliassociates.com

PROPRIETARY REPORT AND COPYRIGHT

This document is the Intellectual property of the Patanjali Associates Law Firm and Corporate Advisors. It is protected under the relevant and applicable copyright law. The information contained in this document is intended solely for the use of those to whom it is addressed and others authorized to receive it. Any unauthorized copying, reproduction, distribution, exhibition and/or commercial use of this work is a violation of the proprietary rights of Patanjali Associates under the relevant and applicable copyright laws. Reprint or modification of the document is permitted.

©2014 Patanjali Associates All rights reserved.

36
7/26/2016