proceedings and those arrived at in the course of conciliation proceedings. A settlement arrived at in the course of conciliation with a recognised majority union will be binding on all workers of the establishment irrespective of any objection.[73]

A settlement comes into operation on such date as is agreed upon by the parties to the dispute. If no date is agreed upon, settlement comes into operation on the date on which the memorandum of the settlement is signed by the parties to the dispute.

Such settlement remains binding for such period as is agreed upon by the parties. Where no such period is agreed upon, it remains binding for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute. It continues to bind the parties after the expiry of the aforesaid period until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to other parties to the settlement.

An award remains in operation for a period of one year from the date on which the award becomes enforceable under section 17A. However, the appropriate Government may reduce the period and fix such other period as it thinks fit.

The appropriate Government may, before the expiry of the period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so. But the total period of operation of any award is not to exceed three years from the date on which it came into operation. These provisions do not apply to any award, which by its nature, terms or other circumstances does not impose any continuing obligation on the parties bound by the award after the award has been given effect to the award continues to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other parties intimating its intention to terminate the award, notwithstanding the expiry of period of operation.[74]

The period of operation of award can also be shortened by the appropriate Government. Where the appropriate Government considers that since the award was made, there has been a material change in the circumstances on which it was based, the Government may refer the award or part of it to a Labour Court or to a Tribunal or to a National Tribunal, if the award was that of a Labour Court, Tribunal or National tribunal respectively, for decision whether the period of operation should not, by reason of such change, be shortened. The decision of the Labour Court, Tribunal or National Tribunal on such reference is the final decision.

No notice given by one party to another party regarding intention to terminate the award or settlement has effect, unless it is given by a party representing the majority of persons bound by the award or settlement.

It was held in a Supreme Court case that a settlement reached between workers and management is binding not only for the agreed period but also even after expiry of the period until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.[75] [s. 19(7)].

It is not the requirement of s. 19(2) of the Act that there should be a formal notice terminating a settlement. A notice can be inferred from the correspondence between the parties.[76]

Explaining the object of these provisions the Supreme Court observed : A settlement once entered into between the parties shall be operative until the same is terminated as provided in S. 19 of the Act. The object of such a provision is to ensure that once a settlement is entered into then industrial peace prevails bringing about cordialities between the parties during the period agreed upon. The same position should continue by extension of the settlement by operation of law.[77]

An award passed by Labour Court or Industrial Tribunal is binding till it is substituted by another award or court order or court compromise indicating such substitution or it is replaced by another settlement or terminated by either party under s. 19(6).[78]

Preclosure Settlement

A preclosure settlement does not have any binding effect upon the company which has taken over the undertaking under a scheme of amalgamation.

Reference during Pendency of Settlement

Where a material change occurs in the circumstances during the subsistence of the settlement, a reference can be justifiably made.

Settlements How Long Binding?

It was held by the Calcutta High Court that where in a settlement arrived at by mutual consent or agreement, a period has been fixed for continuance of the settlement, it is binding until a notice in writing is given terminating the agreement and until two months have expired from the date of notice of termination. However, the Supreme Court held that even after termination of award by one of the parties under this sub-section and even after the expiry of the notice period of two months, a fresh dispute on the same subject-matter can only be canvassed before another tribunal if there are changes in circumstances. This decision was arrived at by applying the principle analogous to *res judicata* and also on the basis that awards are intended to have long-term operation and the giving of notice of termination of award should not be treated as a mere stage in the prosecution of a prolonged struggle. It has also been held that, even after the termination of the award by a notice under the sub-section, such termination has not the effect of extinguishing the rights under the award and that rights and obligations arising out of the award shall continue even after the notice of termination, and will continue to govern the relations of parties till it is substituted by a new contract, settlement or award.

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73 *All India Textile Janta Union v. The Labour Commission,* 1994 LLR 203 (P&H—DB).

74 *Bank of India v. Presiding Officer,* *(2002) 1 Lab LJ 232* (SC), Industrial Dispute (Banking Companies) Decision Act, 1955, s. 4, Sastri Award, Desai Award, which remained in force even after the period stated in S. 19(3) and remained to till the parties intimates the intention to terminate.

75 (1997) II LLJ 631 (SC).

76 *Kannanio Properties Ltd. v. State of W.B.,* (1997) III LLJ 398 (SC).

77 *National Textile Corpn. (APKKM) Ltd. v. Sree Yellamma Cotton, Woollen and Silk Mills Staff Assn.,* (2001) 2 SCC 448 [*LNIND 2001 SC 178*] : AIR 2001 SC 652 [*LNIND 2001 SC 178*].

78 *T. N. Terminated Full time Temporary LIC Employees Assn. v. LIC,* (2015) 9 SCC 62 [*LNIND 2015 SC 179*].

Commencement and Conclusion of Proceedings [Section 20]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

Learning Objectives

In Part I on *Industrial Disputes Act, 1947*, students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
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4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
5. To understand procedure, powers and duties of authorities under the Act;
6. To understand and distinguish between strikes and lock-outs, retrenchments and lay-offs, transfers and closures as well as special provisions relating to them;
7. To know what are unfair labour practices that are prohibited under the Act;
8. To understand the procedure of inquiry and investigation in relation to industrial disputes;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 5 Procedure, Powers and Duties of Authorities

Commencement and Conclusion of Proceedings [Section 20]—

Updated On 08-01-2019

A conciliation proceeding is deemed to have commenced on that date on which a notice of strike or lock-out under

section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board of conciliation, as the case may be.

A conciliation proceeding is deemed to have concluded—

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under section 17, as the case may be; or

(c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal under section 10 during the pendency of conciliation proceedings.

Proceedings before an arbitrator under section 10A or before a Labour Court, Tribunal or National Tribunal are deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be, and such proceedings are to be deemed to have concluded on the date on which the award becomes enforceable under section 17A.

Certain Matters to be kept Confidential [Section 21]

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9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 5 Procedure, Powers and Duties of Authorities

Certain Matters to be kept Confidential [Section 21]— Updated On 08-01-2019

Any information obtained by a conciliation officer, Board, Court, Labour Court, Tribunal or National Tribunal or an

arbitrator in the course of any investigation or inquiry as to a trade union or as to any individual business, cannot be included in any report or award, which is not available otherwise than through the evidence given before such body, if the trade union or person, firm or company engaged in individual business, has made a request in writing, that such information be treated confidential. If the information is such which is given only in evidence before the authorities under the Act, then the party about whom the information is given may request the authorities to keep the information confidential. A conciliation officer or any individual member of the Board or Court or the presiding officer of the Labour Court, Tribunal or National Tribunal or the arbitrator or any person present at the proceeding or concerned in the proceeding cannot disclose such information. The information can be disclosed only after the consent in writing of the secretary of the trade union or the person, firm or company engaged in individual business.

It has been held by the Labour Appellate Tribunal that this section does not prevent a party from getting inspection of any document produced by the opposite party and marked confidential which such opposite party intends to use in the case. However, this section would not permit the authority to refer to any information given in confidence in its award or report.

Prohibition of Strikes and Lock-outs [Section 22]

Avtar Singh: Introduction to Labour and Industrial Law

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CHAPTER 6 Strikes and Lock-Outs

Prohibition of Strikes and Lock-outs [Section 22]— Updated On 08-01-2019

Strikes and lock-outs are prohibited under section 22. The conditions specified in this section are mandatory and factual justifiability of a strike will not render an illegal strike as legal. Any person employed in a public utility service

is not allowed to go on strike in breach of contract—

(a) without giving to the employer notice of strike, 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; or

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

An employer carrying on any public utility service is not allowed to resort to, lock-out any of his workmen—

(a) without giving them notice of lock-out, 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; or

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

The notice of lock-out or strike is not necessary where there is already in existence a strike or lock-out in the public utility service. But the intimation of such lock-out or strike has to be send by the employer on the day on which it is declared, to the authority specified by the appropriate Government. The authority may be specified either generally or for a particular area or for a particular class of public utility services.

The notice of strike has to be given by prescribed number of persons to prescribed number of persons in the prescribed manner. The notice of lock-out also has to be given in the prescribed manner.

If on any day an employer receives from any person employed by him any notice of strike or gives to any person employed by him any notice of lock-out, within five days of it he has to report to the appropriate Government or authority prescribed by the Government the number of such notices given or received on that day.

The requirements of s. 22 are mandatory. The date on which the workmen proposed to go on strike should be specified in the notice. If in the meanwhile the date of strike specified in the notice expires, a fresh notice becomes necessary and other consequences will follow only from the date of fresh notice. A new notice becomes necessary even if it is necessitated by the failure of conciliation proceedings which commenced after the notice.[1]

The object of giving notice of strike is to enable the other party to make amends or to come to terms or redress the

grievance or to approach the authorities to intervene and stop, if it is possible, the threatened action. Commencement of the action, whether strike or lock-out, earlier to expiry of the period of notice does not prevent the other party from responding to the requisitions in the notice during the remaining period of notice. Therefore, illegality attaches only to that period which remained to expire before the commencement of the action. In this case, strike was commenced 11 hours before the expiry of the strike notice. It was illegal only for that period and legal for the remaining period.[2]

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1 *Mineral Miners' Union v. Kudremukh Iron Ore Co. Ltd.*, (1989) 1 Lab LJ 277 (Kant).

2 *Maharashtra General Kamgar Union v. Balkrishna Pen P. Ltd.*, (1989) 1 Lab LJ 319 (Bom).

General Prohibition of Strikes and Lock-outs [Section 23]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 6 Strikes and Lock-Outs

General Prohibition of Strikes and Lock-outs [Section 23]— Updated On 08-01-2019

No workman who is employed in any industrial establishment can go on strike in breach of contract and no employer of any such workman shall declare a lockout—

(a) during the pendency of conciliation proceedings before a Conciliation Board and seven days after the conclusion of such proceedings;[3]

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings; or

(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 sec. 10A(3A); or

(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.

The right to form associations or unions is a fundamental right under *Article 19(1)(c) of the Constitution of India* . *Section 8 of the Trade Unions Act* provides for registration of a trade union if all the requirements of the enactment are fulfilled. The trade unions with sufficient membership strength are able to bargain more effectively with the management.

This bargaining power would be considerably reduced if the union is not permitted to demonstrate its power by means of a strike. A strike is only a form of demonstration. The right to demonstrate and, therefore, the right to strike, is an important weapon in the armoury of workers.[4] This right has been recognised by almost all the democratic countries.[5] Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These are to be found in sections 10(3), 10-4(4A), 22 and 23 of the *Industrial Disputes Act, 1947* . Section 10(3) empowers the appropriate Government to prohibit the continuance of the strike, if it is in connection with a dispute referred to any of the Authorities created under the Act for settlement.

Section 10A(4A) confers similar power on the appropriate Government where the industrial dispute which is the cause of the strike is referred to arbitration under notification issued under section (3A).[6]

Unless the strike is legal and justified, workmen would not be entitled to wages for the period of strike. A strike in public utility concern by workmen without resolving the dispute as per the machinery provided under the Act or under the contract of employment, rulers or regulations is *prima facie* unjustified. While the legality of the strike is based on examining whether there is breach of provisions of *I.D. Act* , the question of justifiability of strike has to be examined by taking into consideration factors such as service conditions, nature of demands, cause which led to the strike, urgency of the cause or the demands of the workmen, reason for not resorting to the dispute resolving machinery under the Act, *etc.* Such examination would be done by industrial adjudicator and not by the High Court under *Article 226 of the Constitution of India* .[7]

If the strike is only legal but not justified or if the strike is illegal though justified, the workmen are entitled to wages for the period of strike. In all cases of illegal strike the employer is entitled is deduct wages for the period of strike and also to take disciplinary action. This is so particularly in public utility concerns. If the strike is legal and justified the workmen would be entitled to wages for the period of strike. The question as to whether the strike is legal and

justified has to be decided by the industrial adjudicator.[8] The Supreme Court further observed in this case that justifiability of strike or lock-out should be examined on the anvil of the interests which such action tends to affect. Strike or lock-out is to be resorted to only in unavoidable circumstances and to compel the other party to see the justness of the demands and is not intended to cause hardship to the society.[9] Workers are under a reciprocal duty not to cause nuisance or physical danger to their employers or others. They must follow the procedure prescribed by s. 22. But there could not be an injunction in an absolute manner preventing the defendants from going on strike. That being a fundamental right, could not be restrained.[10]

It is incorrect to say that unless workmen resort to violence, strike cannot be held to be unjustified. Resort to strike without recourse to negotiation or conciliation is not justified.[11]

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3 Where the employees of a bank went on strike 7 days before the conclusion of conciliation, the strike was held to be illegal. The employees were not entitled to wages for the period of the strike, *ANZ Grindlays Bank v. S.N. Khatri,* *(1995) 2 Lab LJ 877* (Bom), following *Syndicate Bank v. K. Umesh Naik,* *(1994) 2 Lab LJ 836* . Where a lock out was declared in response to an illegal strike, the same was held to be justified and workmen not entitled to wages, *HAL Employees Union v. The Presiding Officer,* *(1996) 2 Lab LJ 930* (SC). Non-resumption of duty by unretrenched workmen was not sufficient to hold the strike to be illegal, *Rajasthan Trade Union Kendra v. J.K. Synthetics Ltd.,* *(1996) 2 Lab LJ 347* .

4 *Audco India Ltd. v. Audco India Employees Union,* *(1989) 2 Lab LJ 200* (Mad). The court pointed out that the right should be exercised peacefully. Workmen have no right to prevent or obstruct other workers, or customers, etc., to have ingress to or egress from the factory and also to prevent the movement of vehicles and raw materials and finished goods from and to the factory for the functioning of its working processes. Gathering and picketing outside premises should be peaceful and lawful and should not violate court orders.

5 See *Amulendu Gupta v. LIC,* (1982) 2 Lab LJ 352 (Cal), where it was observed that strike is a recognised weapon to exert force on the employer. It was also held in this case that a writ court is competent to decide on the basis of the material on record whether the strike was justified or not. *Management of Baldev Soap Factory v. Delhi Admn.,* *(1995) 2 Lab LJ 376* (Del), participation in strike does not result in dismissal by itself. The award of the labour court granting six months pay to each workman in addition to 40% wages from the date of dismissal to the date of award was not illegal. It could not be interfered with. *Ranbaxy Laboratories v. Presiding Officer, Labour Court, Patiala,* *(1996) 2 Lab LJ 403* (Punj), punishment of dismissal or termination of service should be imposed upon only such workers as had not merely participated in the illegal strike but had fomented it and had been guilty of violence or doing acts detrimental to the maintenance of law and order. A distinction has to be drawn between those who were responsible for creating the trouble and those who merely acted as dumb cattle and did not take any active part in fomenting the trouble; *Ranbaxy Laboratories Ltd. v. Presiding Officer, Labour Court, Patiala,* *(1996) 2 Lab LJ 403* (Punj); *Glaxo Laboratories Employees Union v. Glaxo India Ltd.,* (1996) 3 Lab LJ 266 (Guj), finding of the tribunal that the workmen resorted to unjustified strike and management was justified in asking undertaking could not be interfered with in proceedings under Art. 227.

6 *B.R. Singh v. Union of India,* (1989) II LLJ 591 (SC). For an account of the relationship between the right to strike and the Gandhian method of resistance to what one sincerely considers to be wrong or evil, see *Gwalior Rayons Silk Mfg. (Weaving) Co. Ltd. v. Distt. Collector, Alleppey,* *(1982) 1 Lab LJ 356* (Ker).

7 (1994) II LLJ 836 (SC).

8 *Syndicate Bank v. Umesh Nayak,* (1994) II LLJ 836 (SC).

9 *Ibid.*

10 *Standard Chartered Bank v. Chartered Bank Employees Union, (1996) 2 Lab LJ 52* (Del).

11 *Hindustan Cables Ltd. v. Labour Court,* (1997) III Lab LJ (Suppl) 325 (AP).

Illegal Strikes and Lock-outs [Section 24]

Avtar Singh: Introduction to Labour and Industrial Law

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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CHAPTER 6 Strikes and Lock-Outs

Illegal Strikes and Lock-outs [Section 24]— Updated On 08-01-2019

A strike or a lock-out is illegal if—

(i) it is commenced or declared in contravention of section 22 or section 23; or

(ii) it is continued in contravention of an order made under section 10(3) or sec. 10A(4A).

Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal provided that such strike or lock-out was not at its commencement in contravention of the provisions of the *Industrial Disputes Act* or the continuance thereof was not prohibited under section 10(3) or section 10A(4A).

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.

Where a strike is commenced before the expiry of 14 days notice, it will be illegal but only for the unexpired notice period and, thereafter, the strike would be legal.[12]

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12 *Maharashtra General Kamgar Union v. Balkrishna Pen P. Ltd.,* (1989) 1 Lab LJ 319 (Bom). Following the ratio in *Churakulam Tea Estate v. Its Workmen,* (1969) 2 Lab LJ 407, the employees cannot be denied their wages when once it is found that the strike was neither illegal nor unjust. *State Bank's Staff Union v. SBI,* (1991) 1 Lab LJ (Mad—DB).

Prohibition of Financial Aid to Illegal Strikes and Lock-outs [Section 25]

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CHAPTER 6 Strikes and Lock-Outs

Prohibition of Financial Aid to Illegal Strikes and Lock-outs [Section 25]— Updated On 08-01-2019

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

Punishment for Illegal Strikes

Even though the workers have a right to go on strike but it is not their fundamental right. In case of illegal strike the guilty party has to undergo punishment. A distinction has been tried between illegal but justified strikes and illegal and unjustified-strikes. *In Crompton Greaves v. The Workmen,* it was held that the workers will be entitled to wages for the strike period when the strike is legal as well as justified. A strike is legal if it does not violate any provisions of the Act. A strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Where as many as 93 of the workmen were retrenched by the company without informing the Labour Commissioner, before whom the conciliation talks were going on, it was held that the strike cannot be said to be unjustified.

In a case, a question was raised "whether the employer can dismiss a workman for joining a strike which is not illegal but unjustified". It was held that right to strike is recognized by implication. A strike may be unjustified for many reasons, for example, demands may be unreasonable, or they may be made with extraneous motives. The strike does not put an end to the employee-employer relationship and an employer cannot discharge a workman for mere participation in a strike which is not illegal, or in an illegal strike where there was no appropriate provision in the standing orders.

Where the contract, standing orders or service rules are silent about the question of workers' entitlement to wages during the strike period, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and where the absence is not disputed irrespective of the fact whether the strike was legal or illegal.

If the strike is illegal, the workmen are not entitled to wages or compensation and they are also liable to punishment by way of discharge or dismissal. The Supreme Court observed, "It is difficult to understand how a strike in a public utility service, which is clearly illegal could at the same time be justified. These two conclusions cannot in law exist, the law has not made any distinction between an illegal strike which may be said to be justified and one which is not justifiable." The Supreme Court further observed that in case of illegal strike the question of quantum of punishment is very important. To decide the quantum of punishment, a distinction has to be made between violent strikers and peaceful strikers. Violent strikers are to be dealt with more severely and the punishment of discharge, dismissal *etc.* can be imposed upon them.

Where the management was prepared to pay bonus as per the Bonus Act and it had also announced the introduction of a production Bonus Scheme and was actively taking part in the conciliation proceedings, made certain proposals to representatives of workmen but workmen decided to go on strike, it was held that the strike of the workmen for demand of *ex gratia* payment of bonus was not of urgent and serious nature and could not be said to be justified. Therefore, the workmen were not entitled to any wages for the period of strike.

In another case, the same questions was considered whether the workmen who proceed on strike, whether legal or illegal are entitled to wages for the period of strike. The Supreme Court held that the cessation or stoppage of work, whether by the employees or the employer, is detrimental to the production, economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of strike to workmen has tried to regulate it along with the right of the employer to lock-out and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the dispute between them. When there is a machinery for settlement of disputes but employees or employers resort to strike or lock-out without having recourse to the prescribed means strike or lock-out is unjustified and when there is a breach of rules, it would be illegal. Therefore, the strike or lock-out as a weapon has to be used sparingly for redressal of urgent and pressing grievance when either no means are available or the available means have failed. The justness or otherwise of the

action of the employer or employees has, therefore, to be examined on the anvil of the interests of the society which such action tends to affect.

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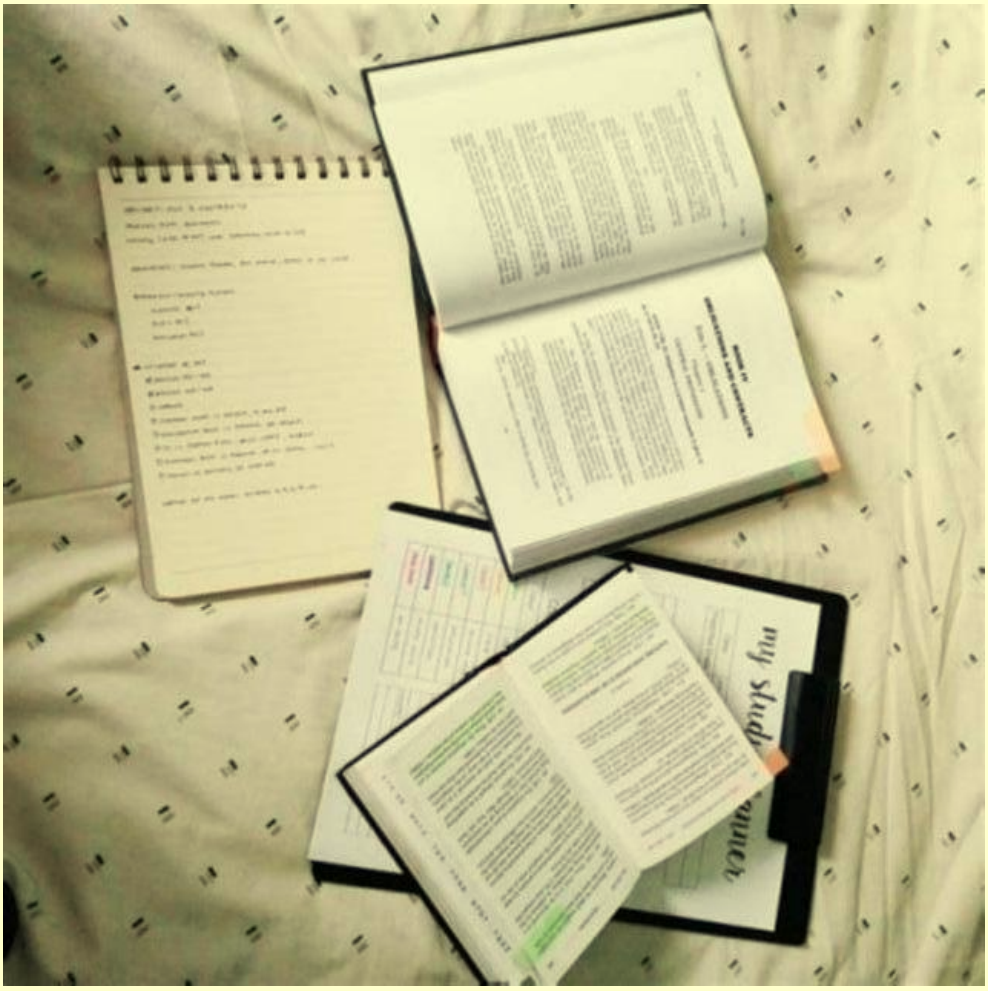

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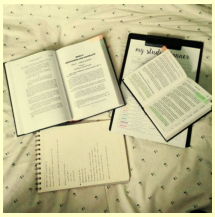

Law College Notes & Stuffs

Application of Sections 25C to 25E

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
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4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
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CHAPTER 7 Lay-Off, Retrenchment, Transfer and Closure

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The Chapters VA and VB provide for lay-off, retrenchment, transfer and closure compensation to the workmen under specified conditions and controls on resort to these measures.

APPLICATION OF SECTIONS 25C TO 25E—

Updated On 08-01-2019

According to sections 25A(1), sections 25C to 25E provisions regarding lay-off and retrenchment do not apply—

(a) to industrial establishments to which Chapter VB applies; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

If a question arises whether an industrial establishment is of a seasonal character or whether work is performed there only intermittently, the decision of the appropriate Government shall be final.

According to the *Explanation* to section 25A "Industrial establishment", for the purposes of these sections, means—

(i) a factory as defined in *section 2(m) of the Factories Act, 1948* ; or

(ii) a mine as defined in section *2(j)* of the *Mines Act, 1952* ; or

(iii) a plantation as defined in section 2*(f)* of the *Plantations Labour Act, 1951* .

Lay off compensation cannot be claimed by workmen in establishments employing less than 50 even under section 10(1) reference.[1]

In the normal course of things, if there is violation of the provisions of Chapter V-A or of the principles of natural justice, the remedies provided under the Act should be pursued. The power under

Article 226 of the Constitution should be sparingly used.[2]

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1 *Castophene Mfg. Co.,* 1972 II LLJ 417 (Bom) : 1973 LIC 510.

2 *Satish Kumar Bhambani v. Union of India,* (1997) 3 Lab LJ (Supp) 442 (Raj).

End of Document

Definition of Continuous Service [Section 25B]

Avtar Singh: Introduction to Labour and Industrial Law

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The Chapters VA and VB provide for lay-off, retrenchment, transfer and closure compensation to the workmen under specified conditions and controls on resort to these measures.

Definition of Continuous Service [Section 25B]— Updated On 08-01-2019

A workman is said to be in continuous service for a period if he is, for that period, in uninterrupted service. The uninterrupted service includes service which may be interrupted on account of—

(a) sickness, or

(b) authorised leave, or

(c) an accident, or

(d) a strike which is not illegal, or

(e) a lock-out, or

(f) a cessation of work which is not due to any fault on the part of the workmen.

Where a workman is not in continuous service, for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if he has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;[3]

(b) for a period of six months, if the workman, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

According to the *Explanation,* the number of days on which a workman has actually worked under an employer are to include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the *Industrial Employment (Standing Orders) Act, 1946* , or under the Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; the total period of such maternity leave not exceeding twelve weeks.[4]

The burden of proof of continuous service lies on the workmen. Where Labour Court and High Court proceeded on the basis as if the burden of proving that the concerned employee (workman) had not worked for 240 days in the year immediately preceding the termination was on the employer it was held untenable by the Supreme Court,[5] Some earlier decisions were referred to by the Supreme Court in this case, "in *Range Forest Officer v. S.T. Hadimani,* [6] the Tribunal come to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year. The Supreme Court observed that the "Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had infact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

The abovestated decision was followed in *Essen Deinki v. Rajiv Kumar,* [7] and in *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan*.[8] In *Municipal Corporation, Faridabad v. Siri Niwas,* [9] it was held by the Supreme Court that the burden was on workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. This decision of the Supreme Court was referred to in the case of *M.P. Electricity Board v. Hariram* [10] citing the following observation of the Supreme Court, "A Court of law even where provisions of the *Indian Evidence Act* apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contention. The matter, however would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken in consideration in the background of the facts involved in the *lis.* The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found justifiable on some reasonable ground."

In *Manager, Reserve Bank of India, Bangalore v. S. Mani,* [11] *Batala Cooperative*

Sugar Mills Ltd. v. Sowaran Singh, [12] and *Surendra Nagar District Panchayat v. Deyabhai Amar Singh,* [13] the same position was reiterated. In a more recent judgement in *R.M. Yellatti v. Asst. Executive Engineer,* [14] it was held that "analysing the above decision of this Court, it is clear that the provisions of the *Evidence Act* in terms do not apply to the proceedings under *section 10 of the Industrial Disputes Act* . However, applying general principles and on reading the abovestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of daily wage earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register *etc.* Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions, however, make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls *per se* without any plea of suppression by the claimant/workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under *Article 226 of the Constitution* will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case". This position was again reiterated in *ONGC Ltd. v. Shyamal Chandra Bhowmik.* [15]

After referring to all the above stated decisions, the Supreme Court held that in the instant case, the Labour Court and the High Court also lost sight of the fact that the xerox copies of the appellant's attendance and salary registers were produced. The respondents had not adduced any evidence except making the oral statement that they had worked for more than 240 days. The decisions of the Labour Court and the High court were held to be untenable.[16]

It has been held by the Supreme Court that for labour related matters, terms "calendar year" and "block of twelve months" are used interchangeably. Therefore, it would be sufficient if it can be established by the worker that he had rendered service for more than 240 days in a block of twelve months.[17]

"Actually Worked"

For the purposes of section 25B, a workman can claim that he has actually worked in the eye of law, even though he may not have worked with hammer, sickle or pen, only if he is paid or is entitled to be paid wages under a contract of employment or under some provision of law. Otherwise he is not entitled to raise such a claim. The words "actually worked" must contemplate all those days during which he was in employment of the employer and for which he had been paid wages either express or implied contract or by compulsion of statute or Standing Orders.

It is thus clear that Sundays and other paid holidays have to be taken into account for the purpose of reckoning the total number of days on which the workman could be said to have actually worked. In the present case, the *Panchayat Samiti* submitted as breaks were Sundays and paid holidays and no other day and accordingly the workman worked for requisite days.

3 A person who has worked for 240 days during a period of 12 months has been held entitled to the benefits of section 25F, even though his work was not continuous but interrupted, *Digwadih Colliery v. Workmen,* (1965) II LLJ 118 (SC); *Gen. Mang. Haryana Roadways v. Rudhan Singh,* 2005 III LLJ 4 (SC), whereas employee putting in only 11 months of service but working for more than 240 days in such period of 11 months is, not held entitled to the benefits of section 25F, *Sur Enamel & Stamping Works v. Workmen,* (1963) II LLJ 367 (SC). Burden of proof to prove continuous service of 240 days lies on the workman, *Ajnal Cooperative Sugar Mills Ltd. v. Sukhraj Singh,* (2009) 17 SCC 326 [LNIND 2007 SC 757].

4 Sundays and other paid holidays should be taken into account for reckoning the number of days on which a workman is said to have actually worked, *Workmen v. American Express International Banking Corpn., (1985) 2 Lab LJ 539* [LNIND 1985 SC 267] (SC). For the purposes of Employees Family Pension Scheme, 1971, reckonable service includes the period of lay off. *Ratnamma v. Regional PF Comm.,* (1992) 2 Lab LJ 882 (Kant).

5 *Surendranagar District Panchayat v. Gangaben Laljibhai,* (2006) III LLJ 320 : (2006) 9 SCC 132 [LNIND 2006 SC 455].

6 (2002) I LLJ 1053 : AIR 2002 SC 1147 [LNIND 2002 SC 124].

7 (2002) III LLJ 1111 : AIR 2003 SC 38 [LNIND 2002 SC 668].

8 (2004) III LLJ 832 : (2004) 8 SCC 161 [LNIND 2004 SC 922].

9 (2004) III LLJ 760 : (2004) 8 SCC 195 [LNIND 2004 SC 899].

10 (2004) III LLJ 1144 : (2004) 8 SCC 246 [LNIND 2004 SC 1003].

11 (2005) II LLJ 258 : AIR 2005 SC 2179 [LNIND 2005 SC 266].

12 (2006) I LLJ 12 (SC).

13 (2006) I LLJ 424 (SC).

14 (2006) I LLJ 442 : AIR 2006 SC 355 .

15 (2006) I LLJ 419 : AIR 2006 SC 392 [LNIND 2005 SC 924].

16 *Surendranagar District Panchayat v. Ganaben Laljibhai,* (2006) III LLJ 320 (SC); *Chief Engineer, Ranjit Sagar Dam v. Sham Lal,* (2006) III LLJ 326 : AIR 2006 SC 2682 [LNIND 2006 SC 454]; *Surendranagar Panchayat v. Jethabhai Pitamberbhai,* (2006) I LLJ 268 (SC).

17 *HS Rajshekara v. State Bank of Mysore,* (2012) 1 SCC 285 [LNINDU 2011 SC 6].

Definition of Lay-Off

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Definition of Lay-Off— Updated On 08-01-2019

Lay-off has been defined by section 2(kkk) as follows:

"Lay-off (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. The failure, refusal or inability of an employer may be on account of, of any of the following:—

(a) shortage of coal, power or raw materials, or

(b) the accumulation of stocks, or

(c) the breakdown of machinery, or

(d) natural calamity, or

(e) for any other connected reason.

The explanation attached to the section says that every workman shall be deemed to have been laid off for that day when following conditions are satisfied:—

(i) his name is borne on the muster rolls of the industrial establishment,

(ii) he presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day, and

(iii) he is not given employment by the employer within two hours of his so presenting himself.

If he is not given any such employment even after so presenting himself, he shall not deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basis wages and dearness allowance for that

part of the day.

Lay-off is a statutory right given under section 25C of the Act. Looking to the whole scheme of Chapter V-A of the *Industrial Disputes Act* the power of the employer to lay-off is implicit. It determines not merely the right of the workman to receive compensation but also the wider rights and liabilities with regard to lay off itself.

Requirements of Lay-off

The essential requirements of a lay-off are:

(a) There must be failure or refusal or inability of the employer to continue employees in his employment.

(b) The employees laid-off must be on the muster-rolls of the establishment on the date of lay-off.

(c) The reasons for deprivation of employment must be shortage of coal, raw material, power or accumulation of stocks or breakdown of machines or some such reason.

(d) It should not be retrenchment.

"Or for any Other Reason"

It is settled law that it is in the managerial discretion of employer to organise his business in the manner he considers best. It is not competent for a workman to challenge the propriety of the same so long as the business is organised in a *bonafide* manner. While reorganising business if surplus employees are asked to quit, no employer can be burdened with carrying on with the economic dead waste. Retrenchment has to be accepted as an inevitable consequence. In this case, all the statutory requirements appeared by overwhelming evidence to be fully satisfied. The court said that lay off can take place on any one or more reasons specified in the definition and it can also be on account of "any other reason" not mentioned in section 2(kkk) of the Act. It may be on account of shortage of coal, power or raw material, or accumulation of stocks or breakdown of machinery or for any other reason. "Any other reasons" need not necessarily be the same as those specified in the definition. These words have to be construed to mean reasons similar or analogous to the reasons specified in the definition.

Periods of Lay-off

According to section 2(kkk), lay-off can be only for a short duration and not for a protracted period. Definition of lay-off contemplates four periods of lay-off:—

(i) Lay-off for a day occurring when work is denied within two hours of his presenting himself for work.

(ii) Lay-off for one-half of day occurring when work is denied in the first half of the shift but the workman is called on the second half of the shift.

(iii) Lay-off for more than a day but not amounting to retrenchment.

Lay-off compensation is not "wages" under *section 2(22) of the Employees State Insurance Act* .

Forms and Methods of Lay-off

Lay-off has been termed as stoppage of work under the standing orders. As soon as the work is stopped it is not necessary that a termination of employment be effected. If the lay-off is for short period and is on account of failure of plant or a temporary curtailment of production, the employment is treated as continued and the period of lay-off is treated as compulsory leave either with or without pay. No formal termination of employment is necessary or can be effected. Where the lay-off is for an indefinitely long period, it may be effected by termination of services after giving the employees due lay-off notice or notice pay in lieu thereof. It does not terminate employment. The employee continues on the muster-roll and has to be reinstated on resumption of work.

Duties Cast on the Employer in Connection with a Lay-off

The following duties cast on the employer in connection with a lay-off:

(a) It must be justified lay-off effected *bona-fide* and not *mala-fide.*

(b) The employer must maintain a muster-roll of workmen.

(c) The stoppage of work if resorted to during working hours must be notified by notice put up on the notice board and must be in accordance with the standing orders.

(d) The period of detention of workmen if stoppage occurs during working hours should not exceed two hours after the commencement of the stoppage.

(e) If the unemployment caused by lay-off is for short period the unemployment should be treated as compulsory leave either with or without wages.

(f) If the lay-off is for an indefinitely long period, the services may be terminated by due notice or payment of notice-pay in lieu of notice.

(g) The employees must be informed of the following things:

(i) whether the employees are to remain on place of work or leave it;

(ii) when work shall be resumed;

(iii) the time when the workers are to present themselves for work during normal working hours. The period of lay-off should not be left indefinite. Where the workers did not suffer any loss, because of an irregularity, it was held that the employer could not be penalised.

Where it is not possible to specify the period of lay-off, the worker should be given three weeks' time to rejoin duty when work is resumed. Where the workers are called back to work in batches the union should be consulted as

otherwise it may be construed by the union as discrimination.

Workmen laid off as a consequence of strike by other workmen are not entitled to lay-off compensation.

The compensation must be paid at the rate and for period specified in *sec. 25-B of the Industrial Disputes Act* .

Law Governing Lay-off

Lay-off provisions are given under Chapters V-A and V-B of the *Industrial Disputes Act, 1947* . By virtue of sec. 25-J, these provision have an overriding effect on other laws like *Industrial Employment (Standing Orders) Act, 1946* or other state industrial relations laws so far as rights and liabilities are concerned. The rights of the employees under the following provisions are not affected by the chapter:

(i) any right which a workman has under the *Minimum Wages Act, 1948* or any order or notification issued thereunder; or

(ii) any right under any operative award; or

(iii) any right under any contract with the employer; or

(iv) any provisions concerning any law for the time being in force in any state for the settlement of industrial disputes.

Quantum of Lay-off Compensation [Section 25(C)]

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QUANTUM OF LAY-OFF COMPENSATION [SECTION 25(C)]— Updated On 08-01-2019

The rules regulating lay-off compensation and payments are as under:

(1) If the lay-off occurs during working hours and results in the detention of the workmen not exceeding one hour the workmen so detained shall not be paid for the period of detention. [Standing Orders 12(2)].

(2) If the period of detention exceeds one hour, the workmen so detained shall be paid wages for the whole of the time during which they are detained as a result of stoppage. [Standing Orders 12(2)].

(3) Where the workman during the period of twelve months is laid-off, he shall be paid by the employer for all days during which he is so-laid-off, except for such weekly holidays as may intervene compensation at the rate of fifty percent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off.

Prior to the amendment there was a lacuna in section 25-C of the Act to the effect that if lay-off was for an unbroken period of a whole year the employees concerned would get compensation for 45 days only but if it was for broken periods they might receive more compensation. Under this section lay-off is payable for a period which may extend to any length of time and is not limited to the period of 45 days mentioned in the proviso. A single lay-off for a period exceeding 45 days cannot be brought within proviso (b) to sec. 25-C. In such a case only proviso (a) to the section will apply and the laid-off workmen will be entitled to compensation only for 45 days. Where there was one continuous lay-off for the entire period, proviso (b) could have no application. But some tribunals have held to the contrary which view, however, does not seem to be not correct.

Section 25-C was re-enacted by *Industrial Disputes Act* , 1965 which can be divided into following points:—

(1) whenever a workman (other than a badli workman or a casual workman),

(2) whose name is borne on the muster rolls of an industrial establishment, and

(3) who has completed not less than one year of continuous service under an employer whether continuously or intermittently, is laid off,

(4) except for such weekly holidays as may intervene,

(5) he shall be paid by the employer for all days during which he is so laid-off, compensation equal to fifty percent of the total of the basic wages and dearness allowance,

(6) that would have been payable to him had he not been so laid off.

If during any period of twelve months, a workman is so laid off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer.

It shall be lawful for the employer in the abovestated case to retrench the workman in accordance with the provisions of section 25F at any time after the expiry of the first forty-five days of the lay-off. When he retrenches the workman, any compensation paid to the workman for having been laid-off during the preceeding 12 months may be set-off against the compensation payable for retrenchment.[30]

When lay-off has been imposed by the management in an establishment or in any department thereof, the entire body of workmen working there may be affected by lay-off. Therefore, their grievance in connection with lay-off compensation pertaining to the period of lay-off would not be necessarily an individual grievance but would be grievance of the class of workmen as a whole affected by such lay-off. If there is a binding settlement embodying an agreement on behalf a class of workmen through their union in connection with lay-off compensation, it would obviously be binding on all the members of the union and if such settlement based on agreement is arrived at during conciliation proceedings it would be binding to the entire class of workmen covered by industrial dispute regarding lay-off compensation. The individual workman can raise his grievance under s. 25-C only if statutory right of lay-off under s. 25-C is not hedged in by any binding effect of an agreement entered into by its own union with the management, whether in or outside conciliation proceedings or even by other unions that may arrive at such settlement during the course of conciliation proceedings. Then only individual workman can have full play under s. 25-C for indicating his right of lay-off compensation.[31]

“Badli Workman”

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 he ceases to be regarded as “badli workman” if he completes one year of the continuous service in the establishment.

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30 Deduction of lay-off compensation from the amount payable under retrenchment compensation is not permissible, *Ramasamuz Narsing Upadhaya v. Vinubhai M. Mitra,* *(1982) 2 Lab LJ 186* (Bom). Lay-off compensation under section 25C must be considered as salary under the Bonus Act, 1965, (1993) 3 Lab LJ (Supp) 118 (Ker). Sweeper on daily wages who did not work for statutory period of 240 days was held not entitled to reinstatement with benefits, *HUDA v. Jagmal Singh,* (2006) III LLJ 152 : (2006) 5 SCC 764 [*LNIND 2006 SC 510*].

31 *P. Virudhachalam v. Lotus Mills,* (1998) I LLJ 389 (SC).

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Retrenchment [Section 2(oo)]

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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In Part I on *Industrial Disputes Act, 1947*, students will be able:

1. To know what is an 'industry' and what are 'industrial disputes' and 'deemed industrial disputes' and explore their meaning through different cases;
2. To understand what are the conditions where notice of change is required to be given by the employer to his workmen;
3. To know about the authorities provided by the Act to settle industrial disputes;
4. To explore about Reference of Disputes to Boards, Courts or Tribunals under the Act;
5. To understand procedure, powers and duties of authorities under the Act;
6. To understand and distinguish between strikes and lock-outs, retrenchments and lay-offs, transfers and closures as well as special provisions relating to them;
7. To know what are unfair labour practices that are prohibited under the Act;
8. To understand the procedure of inquiry and investigation in relation to industrial disputes;
9. To know about different penalties that can be imposed for violation of the provisions of the Act.

CHAPTER 7 Lay-Off, Retrenchment, Transfer and Closure

The *Industrial Disputes Act, 1947* as originally enacted had no provision regarding compensation of payment to the workmen who were laid-off or retrenched. In 1953, due to closure of textile industries, to prevent unrest among the workmen due to retrenchment and laying-off the Industrial Disputes (Amendment) Ordinance, 1953 was promulgated by the President of India. This Ordinance was repealed and replaced by the Industrial Disputes (Amendment) Act, 1953 which added sections 25-A to 25-J to the original Act. In 1961, again there was an amendment and new sections 25-FF and 25-FFF were substituted for old section 25-FF. These two sub-sections

were again amended in 1964 and the employers became liable to pay compensation in cases of lay-off, retrenchment and *bona fide* transfer or closure of the undertaking with these amendments.

The Chapters VA and VB provide for lay-off, retrenchment, transfer and closure compensation to the workmen under specified conditions and controls on resort to these measures.

Retrenchment [Section 2(oo)]— Updated On 08-01-2019

"Retrenchment" means—

(i) the termination by the employer of the service of a workman for any reason whatsoever,

(ii) otherwise than as a punishment inflicted by way of disciplinary action,

(iii) but retrenchment 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

(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 on its expiry or if such contract is terminated under a stipulation in that behalf contained in it; or

(c) termination of the service of a workman on the ground of continued ill-health.[33]

Retrenchment means discharge of surplus labour or staff in a continuing industry. It means the removal of "the dead weight of uneconomic surplus." It is not necessary that removal of surplus must only be when the establishment runs in losses. It may operate at any level of profits. The legislature has used the expression 'for any reason whatsoever' which means: "It does not matter why you are discharging the surplus if the other requirements of the definition are fulfilled, then it is retrenchment."[34] It has been held by the Supreme Court that every termination would amount to retrenchment.[35]

The definition of retrenchment in section 2(oo) does not make any difference between regular and temporary appointment or appointment on daily wage basis or appointment of a person not possessing requisite qualifications.[36]

The expression "retrenchment" is not to be understood in its narrow, natural and contextual meaning but is to be

understood in its wider literal meaning to include termination of service of workmen for any reason whatsoever.[37]

Where the appointment of a workman is made for a fixed period, termination of his services in accordance with the terms of such appointment does not become illegal and the provisions of section 25F will not come into operation.[38]

All terminations are retrenchment, unless they fall within any of the exceptions mentioned in section 2(oo). The termination can be struck down for non-compliance with section 25F of the Act.[39] Section 25F applies to probationers also.

Where a seasonal worker ceases to do work owning to closure of the season, such cessation of work will not amount to retrenchment under the section 25F.[40]

The expression 'retrenchment' connotes terminating the workman's services for any reason whatsoever, other than those expressly excluded in section 2(oo). The work should not be understood in its conventional exposition but in its contemporaneous exposition, giving it a wider meaning so as to include termination for any reason whatsoever.[41]

What does not Amount to Retrenchment

The definition of retrenchment given in section 2(oo) of the *Industrial Disputes Act* makes it clear that retrenchment is a type of termination of service and as such cases which would not amount to termination would be out of the scope of retrenchment. Termination of employment contract by efflux of time or expiry of contracted period would not be retrenchment. Termination on *bona fide* closure of business would also be no retrenchment. Unless excluded, termination for any reason amounts to retrenchment.

The definition specially includes the following cases of terminations:

(a) Termination of service as a punishment inflicted by way of disciplinary action, e.g., discharge for inefficiency, or suspension for dishonesty, or termination for behaviour prejudicial to the concern.

(b) Voluntary retirement of workmen where they left their services on receiving notices of retrenchment and did not attend work during notice period.

(bb) Terminations under expressly stipulated contracts or non-renewal of contracts of employment on expiry of such contract.

(c) Retirement on reaching superannuation age. Two requirements must be complied with in order to bring a case under this clause: (a) there must be a stipulation on the point of retirement in the contract of employment; and (b) the stipulation must be in regard to the age of superannuation.

(d) Termination of service on the ground of continued ill-health, *e.g.,* an employee suffering from incipient cataract and senile debility, physical unfitness, infirmity on account of old age resulting in incapacity for work, or on ground of leprosy for sometime. Non-absorption of workmen going on strike is also not retrenchment.

Where a worker suffers an accident during the course of employment rendering him unfit for job, termination of services on that ground would be illegal and in contravention of section 25F of the Act.

Even where the management terminates the services of a workman, under the terms of the Standing Orders, such termination will be held illegal under section 25F of the Act if the order is passed without conducting a domestic enquiry or giving the workman an opportunity to set out his case.

Where a workman is appointed against leave vacancy, termination of such workman's services after the return of the permanent worker to duty, does not constitute retrenchment under section 25F, unless the temporary worker had completed two hundred and forty days of service during the twelve months period.

Where a project undertaken by an employer is not of perennial nature, and the project is likely to be finished after some time, it cannot be held that giving postings to an employee on a tenure basis amounts to unfair labour practice. Such action of the employer does not fall within the ambit of section 2(oo) (bb) of Act.

Discharge on account of closure of undertaking is not a retrenchment.

Position of Casual Employee

A casual worker employed for a long period of time does not automatically become a permanent employee. Having regard to the long period of employment of a casual employee, he may claim to be treated on a permanent basis on a permanent post. The mere fact that the provisions of section 25F have to be complied with in respect of casual employee does not necessarily mean that such casual employee automatically becomes a permanent employee. The possibility of a casual workman not being given work is implicit in the casual nature of his employment. The concept of lay-off would be inapplicable to the case of a casual workman and this has been recognised under section 25C of the Act, where the casual workman has been excluded specifically from the category of workmen entitled to lay off compensation. Casual employees, apart from being a separate category under the standing orders, even for the purposes of the Act they cannot be treated as if they are permanent employees. In the case of casual workmen there is the possibility of a break in employment and non-provision of work for a given period. There is nothing in definition in section 2(oo) to suggest the exclusion of temporary workers from the definition.

They are included in the definition to attract the provisions of section 25H.

The Supreme Court has been of the view that disengagement of temporary employees working on daily wages could not be construed as retrenchment.

The ordinary principle of grant of reinstatement with full wages when termination is found to be illegal cannot be applied mechanically in all cases. Such a principle may be applied where services of a regular or permanent workmen are terminated illegally and/or mala fide and/or by way of victimization, unfair labour practices etc. Monetary compensation given to daily-wagers when their services were terminated ille5g0 ally for some procedural

defects was held to be sufficient by the Supreme Court.

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33 *Delhi Cloth & General Mills Ltd., (1978) 1 Lab LJ 1* [*LNIND 1977 SC 280*] and *L. Rodert D'Souza v. Executive Engineer, Southern Rly., (1982) 1 Lab LJ 330* (SC). Where the termination of service does not fall in any of the excluded categories, it would be *ipso facto* retrenchment *Gammon India Ltd. v. Niranjan Das, (1984) 1 Lab LJ 233* [*LNIND 1983 SC 361*] (SC). Termination of the service of an employee who overstayed his leave period was held to be retrenchment. *Hemraj v. State Industrial Court, Indore,* (1994) 3 Lab LJ (Suppl) 327 (MP); *MPKKM Panchayat (HMS) v. Western Coal Fields Ltd., (1999) 1 Lab LJ 772* (MP); Termination of probation on the ground of unsuitability is retrenchment, *Management of Karnataka State Road Transport Corpn. v. Boralah, M., (1984) 1 Lab LJ 110* (SC); *Hutchiah v. Karnataka State Road Transport Corpn., (1983) 1 Lab LJ 30* (Kant). A person engaged against leave vacancy for more than 240 days and paid salary on monthly basis, termination of her service was held to be retrenchment, award of reinstatement with full back wages was upheld as valid, *Administrator, MC v. Presiding Officer, Labour Court, (1999) 2 Lab LJ 14* (P&H—DB); Termination of services on ground of medical unfitness is not retrenchment, *Hindustan Industries Ltd. v. Labour Court,* (2002) IV LLJ (Suppl) 837 SC. Defective or sub-normal vision or eye-sight in case of bus drivers would be covered by "ill health" under section 2(oo)(c), *Anand Bihari v. Rajasthan SRTC,* (1998) II LLJ (Suppl) 1209 (SC).

34 *Hari prasad Shiv Shanker v. A.D. Divelkar,* (1957) SCR 57 (SC).

35 *State Bank v. N. Sundaramony,* (1975) I LLJ 453.

36 *Srirangam Cooperative Urban Bank Ltd. v. Presiding Officer, Labour Court, Madurai, (1996) 2 Lab LJ 216* (Mad—DB).

37 *Punjab Development & Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court,* (1990) II LLJ (SC).

38 *State of Rajasthan v. Rameshwar Lal Gahlot,* 1996 I LLJ 888 (SC). Where employment of persons under welfare scheme (Jawahar Rozgar Yojna) on daily wages and temporary basis was co-terminus with the scheme itself, termination was held to be no retrenchment and no relief of reinstatement was granted for non-compliance under section 25-F; *Surendra Kumar Sharma v. Vikash Adhikari,* (2003) II LLJ 1094 (SC).

39 *Rajesh Kumar v. State of* M.P., (1993) III LLJ 249 (MP).

40 *Morinda Co-op. Sugar Mills Ltd. v. Ram Kishan,* (1996) I LLJ 870 (SC).

41 *Punjab Land Development & Reclamation Corpn. Ltd. v. Presiding Officer,* (1990) II LLJ (SC). Termination without complying with the requirements of section 25F is void *ab initio.* The affected employee would be entitled to reinstatement with full back wages and allowances, *Narotam Chopra v. Labour Court,* (1994) 3 Lab LJ (Supp) 252 (SC); *P.R. Ramchandran v. T.N. Water Supply & Drainage Board, (1996) 1 Lab LJ 823* (Mad). See *Municipal Corporation of Delhi v. Prem Chand Gupta,*

(2000) 10 SCC 115 [LNIND 1999 SC 1851] : (2000) 1 Lab LJ 533 , retrenchment before the amendment of 1984 out governed by the present provisions. Where employer was not able to prove conditions rendering termination of service to be not one of retrenchment, termination was held to be retrenchment and workman concerned where held entitled to notice and compensation as per section 25-FFF, as it was one of closing down on account of completion of work, *S.M. Nilajkar v. Telecom District Manager,* (2003) II LLJ 359 : AIR 2003 SC 3553 .

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Termination or Non-Renewal in accordance with Contract [Section 2(oo)]

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were again amended in 1964 and the employers became liable to pay compensation in cases of lay-off, retrenchment and *bona fide* transfer or closure of the undertaking with these amendments.

The Chapters VA and VB provide for lay-off, retrenchment, transfer and closure compensation to the workmen under specified conditions and controls on resort to these measures.

Termination or Non-Renewal in accordance with Contract [Section 2(oo)]— Updated On 08-01-2019

The Supreme Court observed in *State Bank of India v. N. Sundramoney,* [51] that the termination contemplated in section 2(oo) embraces not merely the act of termination by the employer but the fact of termination howsoever produced. In every case the court has to scrutinise all the facts, the nature and terms of employment, duties of employee to see whether there is arbitrariness in the exercise of power, and if it is so, to infer an unfair labour practice.[52]

The abovestated observation of the Supreme Court was relied upon in a case and it was held that the contract of employment should be fair, proper and *bona fide.* The Labour Court has jurisdiction to examine each and every case and protect workmen against exploitation by employers.[53] Where certain persons were appointed for three months till regularly selected candidates joined, termination of their appointment on the expiry of the stipulated time was held to be not illegal.[54] The sub-clause has been held to be constitutionally valid.[55]

Termination of service of workmen appointed for specific purpose and period after the expiry of the period and fulfilment of purpose does not amount to retrenchment.[56] Where service was terminated before expiry of probation period but terms of employment stipulated right to terminate training without assigning reason, it was held that in such circumstances the issue of notice before terminating did not arise.[57]

In a case, a person engaged as Junior Technician on *ad hoc* basis for 89 days was reappointed after gap of one or two days, it was held termination and reappointment on regular basis was not *bonafide* but with a view to defeat her rights under section 25-F, consequently section 2(oo) was not attracted.[58]

The Supreme Court has held that re-employment of retrenched casual labourers is to be considered for appointing on daily wages in preference to others waiving age bar, if necessary.[59]

Retrenchment Distinguished from Other Concepts

In retrenchment the business is continued and only a section or group of workers is discharged but in closure there is a discharge of all the employees. In the former the business or industry continues while in the latter it does not.

Compared with strike and lockout, in retrenchment no employment relationship subsists while in strike and lockout in continues. Retrenchment is distinct from lay-off in as much as in lay-off, the employment relationship is not

terminated but merely suspended. Retrenchment is different from gratuity and other retirement benefits also. Gratuity or pension or provident fund is a retiral benefit given to an employee by reason of length of service.

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51 *(1976) 1 Lab LJ 478* [*LNIND 1976 SC 13*] (SC).

52 *Bhikhu Ram v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak,* (1996) 3 Lab LJ (Supp) 1126 (P&H).

53 *Dilip Hanumant Rao Shirke v. Zilla Parishad, (1990) 1 Lab LJ 445* (Bom).

54 *State of Rajasthan v. Rameshwar Lal Gahlot, (1996) 1 Lab LJ 888* (SC). Termination in terms of stipulation in contract of employment, not retrenchment, *Municipal Council, Samrala v. Raj Kumar,* (2006) II LLJ 553 : (2006) 3 SCC 81 .

55 *Terminated Full Time Temporary LIC Employees Welfare Assn. v. Senior Divisional Manager LIC, (1993) 1 Lab LJ 1030* (Mad—FB).

56 *Haryana State F.C.C.W. Store Ltd. v. Ram Niwas,* (2002) II LLJ 1153 : AIR 2002 SC 2495 [*LNIND 2002 SC 409*].

57 *Kalyani Sharp India Ltd. v. Labour Court,* (2001) I LLJ 1346 : AIR 2002 SC 300 .

58 *Haryana State Electronics Development Corporation Ltd. v. Mamni,* (2006) II LLJ 744 : AIR 2006 SC 2427 [*LNIND 2006 SC 338*].

59 *Municipal Corpn. of Bilaspur v. Veer Singh Rajput, (1998) 2 Lab LJ 627* (SC).

Conditions Precedent to Retrenchment of Workmen [Section 25F]

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Conditions Precedent to Retrenchment of Workmen [Section 25F]— Updated On 08-01-2019

According to section 25F, no workman employed in any industry who has been in continuous service for not less than one year[60] 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;[61] and

(c) notice in the prescribed manner is served on the appropriate Government, or such authority as may be specified by the appropriate Government by notification in the Official Gazette.[62]

Before effecting a retrenchment the employer must comply with the following conditions:

(a) The retrenchment must be by termination of employment.[63]

(b) The employee must be given one months notice in writing indicating the reasons for retrenchment and retrenchment must be effected after expiry of period of notice or the employee should be given wages for the notice period in lieu of such notice [section 25F(a)].[64] The notice must specify a certain date for retrenchment, otherwise a mere writing would not be a notice.[65]

(c) The employee should be paid at the time of retrenchment, compensation equivalent to fifteen days average pay for every completed year of service or any part thereof in excess of six months. Having accepted the notice pay and compensation, the workman cannot recede from the position. It is a question of fact whether the employee accepted the propriety of retrenchment and on that basis accepted the payment. Where the employee, after getting cheque did not encash it and protested immediately, it was held that no estoppel would operate.[66] Notice and tender must be part of the same transaction. Where workman were asked to collect dues on the same day, it was held to be a sufficient compliance.[67]

(d) The employer must serve on the appropriate Government a notice in the prescribed from (From P for Central Government) by registered post in the manner laid down in Rule 76 of the Industrial Disputes

(Central) Rules, 1957. In the *Hospital Mazdoor Sabha,* [68] case it was held that this being a condition precedent retrenchment would be illegal but in *Bombay Union of Journalists v. State of Bombay,* [69] the High Court modified the view and held that it was not a condition precedent as under Rule 80 of the Bombay Industrial Disputes Rules notice to Government may be sent within seven days of retrenchment. Under the Madras Industrial Disputes Rules, the notice of retrenchment to be given by an employer shall be in Form "R" and such notice shall be served on the State Government by registered post and where notice is given to the workman, the notice shall be sent to the State Government not less than twenty-one days before the date of retrenchment and where no notice is given to the workmen and they are paid one month's wages in lieu thereof, the notice shall be sent to the State Government on the date on which such wages are paid. Copies of the notices shall also be sent by registered post to the Conciliation Officer having jurisdiction over the area and to the Commissioner of Labour, Madras. These requirements are of mandatory nature and if the requirements are not complied with, the retrenchment cannot be treated as a valid retrenchment and it has to be held to be invalid, illegal, and inoperative. The workmen will be deemed to be in employment. Notice as required by change in service conditions under section 9A of the Act does not become necessary in the case of retrenchment.[70]

The principle of 26 working days followed in payment of gratuity cannot be imported for determining retrenchment compensation under *section 25-F of I.D. Act* .[71]

An order of retrenchment passed in violation of section 25-F can be set aside but an award of reinstatement cannot be passed for daily wagers. Award of compensation of Rs. 2 lakhs each to daily wagers was found to be appropriate by the Supreme Court and the order of reinstatement was set aside.[72]

Non-compliance of section 25-F and its clauses (a) and (b) will render retrenchment a nullity. The employer is under the burden to provide tangible evidence of compliance with the section. Where the employer could not produce evidence showing that the compensation was offered on the day of retrenchment and also could not explain the delay in sending demand draft after three months of termination of service, it was held by the Supreme Court that the employer had failed to prove the compliance.[73]

It is sufficient if the workman can prove that the employer violated the rule of 'last come and first go' principle without any tangible reason.[74] It is not necessary for him to prove that he worked for 240 days in continuous service.[75]

Employers' Obligations and Duties in Retrenching Employees

(i) ***Maintenance of Muster Roll.***—The employer must maintain a muster- roll as required under *section 25-D of the ID Act* .

(ii) ***Seniority-list.***—Rule 77 of the Industrial Disputes (Central) Rules, 1957 requires that the employer should prepare a list of all workmen in the particular category from which the retrenchment is contemplated arranged according to seniority of their service in the category. A copy of this list should be affixed on a notice board at a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.