Re-employment of Retrenched Workmen [Section 25H]

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;
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The *Industrial Disputes Act, 1947* as originally enacted had no provision regarding compensation of payment to the workmen who were laid-off or retrenched.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 This Ordinance was repealed and replaced by the Industrial Disputes (Amendment) Act, 1953 which added sections 25-A to 25-J to the original Act.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.

Re-employment of Retrenched Workmen [Section 25H]— Updated On 08-01-2019

This section provides for preferential reemployment of retrenched workmen. The section comes into play when there is a proposal to employ any persons after a retrenchment. The employer has to give an opportunity in the prescribed manner to such of the retrenched workers who are the citizens of India. This is to enable them to offer themselves for re-employment. Those who so offer themselves have to be taken in preference to other persons.[78] Rules 77 and 78 of the Central Rules prescribe the mode of re-employment.

At least ten days before the date on which vacancies are to be filled up, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered for the purpose, at the address given by him at the time of retrenchment or at any time thereafter.[79]

Where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the seniormost retrenched workmen in the list referred to in Rule 77, the number of such seniormost workmen being double the number of such vacancies.

Where the vacancy is of duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen.

If a retrenched workmen, without sufficient reason being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under the sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.

Immediately after complying with the provisions of the rule stated above, the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under the sub-rule.

The provisions of the sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under Rule 77.[80]

The interplay of these rules with the rest of the provisions of the Act was the subject matter of comment in the decision of the Supreme Court in *Central Bank of India v. S. Satyam.* [81] The benefit of application of section 25F can be claimed by a workman only if he has been in continuous service for not less than one year as defined in section 25B. Any other retrenched workman cannot avail the benefit of section 25F. Section 25G prescribes the procedure for retrenchment and ordinarily applies the principle of "last come first go." Section 25H then provides for re-employment of retrenched workmen.[82] Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated. The category of workmen to whom section 25F applies is distinct from those to whom it is inapplicable. Rule 78 speaks of the retrenched workmen who are eligible for filling vacancies and here also those falling in the category of section 25F are entitled to be placed higher than those who do not fall in that category. A workman falling in the lower category because of not being covered by section 25F can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available.

The plain language of section 25H speaks only of re-employment of "retrenched workmen". Section 25F does not restrict the meaning of retrenchment as given in section 2(oo) but qualifies the category by prescribing a certain working period. Chapter V-A deals with all retrenchment while section 25F confines itself to a restricted category. Section 25G prescribes the principle of retrenchment of "last come first go" and is not confined only to workmen fulfilling the requirement of section 25F.

Section 25H is couched in a wide language and is capable of application to all retrenched workers and not merely to those covered by section 25F. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of retrenched workmen and there is no reason to restrict the ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

Where fresh agreement was entered into between management and workmen after termination of service on closure of *Dalmia Dadri Cement,* it was held that benefits of increments and high salary could not be claimed as a matter of right, for service rendered in erstwhile employment upon fresh appointment.[83]

Order of reinstatement was held to be not justified after 25 years of retrenchment in case of a worker who was engaged as a daily wa8g4er and worked intermittently for a period of seven years before his retrenchment.[84]

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78 The provision had no retrospective application, *Rai Sahib Ramdayal Ghasiram Oil Mills v. Labour Appellate Tribunal,* AIR 1964 SC 567 [*LNIND 1962 SC 415*]: *(1963) 2 Lab LJ 65* [*LNIND 1962 SC 415*].

79 In *Association of Chemical Workers v. A.T. Alaspur,* (1998) 3 Lab LJ (Suppl) 800 (SC), directions were issued that on the abolition of the contract labour system, workers who possessed qualifications should be absorbed in future vacancies.

80 Rule 78, The Industrial Disputes (Central) Rules, 1957.

81 *(1996) 2 Lab LJ 820* (SC).

82 The contents of the provisions have been stated above.

83 *Cement Corporation of India v. P.O. Industrial Tribunal-cum-Labour Court,* (2001) II LLJ 231 : (2002) 94 FLR 455 .

84 *In-charge Officer v. Shanker Shetty,* (2010) 9 SCC 126 [LNIND 2010 SC 813]; Issue relating to validity of appointment cannot be raised in absence of any pleading or reference, *Durgapur Casual Workers Union v. Food Corporation of India,* (2015) 5 SCC 786 [LNIND 2014 SC 1005].

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Effect of Takeover on Right of Re-employment—

Updated On 08-01-2019

The employees of a colliery were retrenched and paid compensation under section 25F. subsequently the colliery was taken over by a Government company. It was held that the retrenched employees had not become disentitled to claim re-employment under section 25H.[85] In a case, a worker was retrenched as a result of closure of undertaking taken over by Government and he asked for retrenchment compensation and received it. He was also given fresh appointment as clerk from 1981 and was also given additional benefit of grade IV from 1985 to 1986. It was held by the Supreme Court that he is not entitled to claim any advantage for period of service rendered prior to retrenchment.[86]

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85 *Workman v. Employers, Industry Colliery of Bharat Coking Coal Ltd.,* AIR 2001 SC 1994 [LNIND 2001 SC 749] (2001) 4 SCC 55 [LNIND 2001 SC 749] *(2001) 1 LLJ 1400* [LNIND 2001 SC 749].

86 *Cement Corporation of India Ltd. v. Industrial Tribunal cum Labour Court,* (2010) 15 SCC 754.

Compensation to Workmen in Case of Transfer of Undertakings [Section 25FF]

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Compensation to Workmen in Case of Transfer of Undertakings [Section 25FF]— Updated On 08-01-2019

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer becomes entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched.

Nothing in this section applies to a workman in any case where there has been a change of employers by reason of the transfer, if—

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.[87]

Section 25FF of the I.D. Act by itself does not terminate the contract of employment and only provides for compensation if the transfer either by the terms of transfer or by provisions of law results in the termination of contract of employment.[88]

When transfer is fictitious or *benami,* section 25-FF has no application and workmen can claim continuity of service with successor. Where transferor and transferee are a State or State instrumentality, the court can examine and review arrangement under which undertaking is proposed to be transferred and continuity of service can be ordered if there is complete succession to the business or undertakin89g. The court can ensure in such that no injustice results from the change-over.[89]

In a case of transfer of a company as a going concern to another company, workmen unsuccessfully contested the

transfer and failed to avail the benefit of voluntary retirement scheme floated by the transferor company within the stipulated time. After the transfer, they requested for VRS but it was declined. The State Government also refused their application for reference of the dispute on the ground that interest of workmen was in no way affected by the transfer of ownership of the company. In this regard, decision of the High Court in not accepting the challenge to State refusal and directing payment of retrenchment compensation as per normal rules and conditions of service was upheld by the Supreme Court. High Court was held to be rightly observing that workmen cannot be forced to work under different management.[90]

Termination on Expiry of Contract

The section is not applicable to cases of termination of service on the expiry of the period of service which is for a fixed period. Termination of service on expiry of fixed term does not amount to retrenchment. Therefore, such an employee cannot claim compensation under section 25-H. Mere use of the expression 'daily wages' for appointment of service for a fixed period does not make the appointment 'casual'.

Writ Remedy

The proper remedy against a settlement, whether fair or unfair, is by way raising an industrial dispute and not by way of a writ petition.

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87 See *Bhola Nath Mookerjee v. Govt. of W.B., (1997) 2 Lab LJ 59* (SC), take over of a unit by *West Bengal State Electricity Board,* employees accepting jobs offered to them, not entitled to retrenchment benefits. NTC *(South Maharasthra Ltd. v. Rashtriya Mill Mazdoor Sangh, (1993) 1 Lab LJ 954* (SC), takeover of textile mills under statutory provisions, continuity of service maintained. *Gurmail Singh v. State of Punjab, (1991) 2 Lab LJ 76* (SC), takeover, continuity of service.

88 *N.T.C. (S. Maharashtra) Ltd. v. Rashtriya Mill Mazdoor Sangh,* (1993) I LLJ 954 (SC).

89 *Gurmail Singh v. State of Punjab,* (1999) II LLJ 76 (SC).

90 *Sunil Kr Ghosh v. K. Ramchandran,* (2012) 2 SCC (L&S) 921.

Closure and Compensation [Section 25FFF]

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Closure and Compensation [Section 25FFF]— Updated On 08-01-2019

Definition of Closure

The permanent closing down of a place of employment or part thereof is closure. According to the Bombay and Madhya Pradesh Industrial Relations Act, the 'closure' means the closing of any place or part of a place of employment or the total or partial suspension of work by any employer or the total or partial refusal by an employer to continue to employ persons employed by him whether such closing, suspension or refusal is or is not in consequence of an industrial dispute.

Closure and lockout are two different things. In closure the employer does not merely close down the place of business but finally closes the business itself, whereas in a lock-out, the employer closes the place of business only.

Closure is Fundamental Right

Closure is a fundamental right. It is a fundamental right of a citizen to carry on or close down business, industry or work if he chooses and nobody can be compelled to carry on his business against his will.

Closure must be, when effected, permanent. This does not mean that the employer is barred from re-starting the closed business or because the business is restarted, it was not closed with the intention of closing permanently. It would be a question of fact whether the closure, when effected, was intended to be a permanent or temporary closure. Refusal to employ a single worker may be a closure. The right is subject to liability of payment of compensation to the workmen as provided by section 25FFF of the Industrial Disputes Act, 1947 and also to obtain permission in cases covered by Chapter VB of the Act.

Closure implies termination of services, i.e. refusal to employ. It is not correct to say that the definition of closure covers only those cases where the relationship of master and servant continues like that in "lock-outs."

A closure of a section or department or a branch or a part of undertaking is a "closure" and is valid. It is not retrenchment. Closure may also be effected in stages.

Closure and Lock-out

A closure and a lock-out may be distinguished in the following important respects:

Firstly, in closure there is severance of employment relationship while in lockout there is no severance but there is only suspension.

Secondly, lock-out is caused by the existence or apprehension of an industrial dispute. A closure need not be in consequence of an industrial dispute.

Thirdly, a lock-out is intended for the purpose of compelling the employees directly affected by the lock-out, suspension or refusal or any other employees of his or aiding any other employer in compelling person employed by him, to accept any term or conditions of affecting employment. In other words, a lockout is a tactic in bargaining. While a closure is shutting employment and thereby ending bargaining. It is irrelevant what the intention in closing is.

The Supreme Court has explained this distinction in the following words: “The theoretical distinction between a closure and a lock-out is well-settled. In the case of a closure the employer does not merely close down the place of business, but he closes the business itself and so the closure indicates the final and irrevocable termination of the business itself. Lock-out, on the other hand, indicates closure of the place and not the closure of business itself.....Though the destination between the two concepts is thus clear in theory, in actual practice it is not always easy to decide whether the act of closure really amounts to a closure properly so called, or whether it is a disguise for a lockout. In dealing with this question industrial adjudication has to take into account several relevant facts and these facts may be proved before the industrial tribunal either by oral or by documentary evidence, and by evidence of conduct and circumstances. In the instant case, the textile mill was closed by the employers with the object of teaching the workmen a lesson for the incident of assault. It was resorted to as a measure of retaliation. It was illegal as no prior notice as required by the law was given. It was unjustified as it was retaliatory.

Even assuming that it was a closure and not lock-out the industrial tribunal had the jurisdiction to consider as to whether it was justified or not. The closure having been found unjustified by the industrial tribunal, the award granting the relief to the concerned workmen could not be interfered with in the writ petition.

Closure and Discharge

They materially differ. In closure there is severance of status of employment which may be unconnected with the conduct of the employee, but in discharge the severance of employment is connected with the conduct of the employee and is by way of punishment or as a result of disciplinary proceedings.

Sixty Days' Notice to be Given of Intention to Close Down [Section 25FFA]

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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Sixty Days' Notice to be Given of Intention to Close Down [Section 25FFA]— Updated On 08-01-2019

An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:[3]

This requirement does not apply to—

(a) an undertaking in which—

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months.

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

The appropriate Government, may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary to comply with the above requirement, by order direct that provisions regarding notice shall not apply in relation to such undertaking for the specified period.

Provisions of section 25FFA are mandatory which require rigid compliance. Statutory protection is given to workmen with avowed object to protect retrenched workmen since livelihood of workmen and their family members would be adversely affected on account of retrenchment. Non-compliance of s. 25FFA renders actions of retrenching workmen void and *ab initio* as same is inchoate and invalid.[4]

3 Provisions of the section have been held to be constitutionally valid and also reasonable, *Bamwari Lolya v. State of Maharashtra,* (1994) 3 Lab LJ (Suppl) 306 (Bom).

4 *Mackinnon Mackenzie & Co. Ltd. v. Employees Union,* (2015) 4 SCC 544 [*LNIND 2015 SC 120*].

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Compensation to Workmen in Case of Closing Down [Section 25FFF]— Updated On 08-01-2019

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall be entitled to notice and compensation in accordance with the provisions of section 25F, in the same way as if the workman had been retrenched.[5]

A unit or part of undertaking having no functional integrity with other units, if closed, it amounts to a closure under section 25-FFF. A staff nurse in the appellant Society's Maternity Hospital filed a claim petition alleging termination of her service to be illegal for non-compliance of *sections 25-F* and *25-G* of the *Industrial Disputes Act* . The industrial tribunal upheld her claim and directed her reinstatement with back wages which was affirmed by the High Court. In the appeal by the Society, the Supreme Court observed that Maternity Hospital was functioning as a district entity. Due to financial stringency it had to be closed. Other units of the appellant were functioning as separate entities. The mere fact that those units were not closed down could not lead to the inference that termination of respondent's service was illegal for non-compliance of section 25-F.

The Supreme Court further held that in order to attract section 25-FFF it was not necessary that the entire establishment of an employer should be closed. If a unit or part of an undertaking which had no functional integrity with other units was closed it would amount to 'closure' as defined in section 2(cc) read with section 25-FFF of the Industrial Disputes Act, 1947 .

The Supreme Court held the respondent entitled only to compensation as per section 25-FFF and not reinstatement with back wages as per *section 25-F of the I.D. Act, 1947* .[6]

Where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman shall not exceed his average pay for three months.[7]

According to the *Explanation,* an undertaking which is closed down by reason merely of—

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on,

it shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso.

Where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of minerals in the area in which such operations are carried on, workman referred to in that sub-section are not entitled to any notice or compensation in accordance with the provisions of section 25F, if—

(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment [Section 25FFF(1A)].

For the purposes of sub-sections (1) and (1A), the expressions “minerals” and “mining operations” have the same meaning as is respectively assigned to them in section 3(a) and (b) of the Mines and Minerals (Regulation and Development) Act, 1957.

Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking was set up, no workman shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

The industrial tribunal can only consider the question of *bona fides.* It has no power to enquire into the motives of closure in order to find out whether the closure is justified or not when indiscipline is established.[8] The Tribunal cannot go into the motives or has reasons of closure.[9]

When there are two units, out of which one closes, it has to be seen whether the other unit was an independent establishment. Functional integrality between two units of an industrial establishment has to be established by

relevant tests. Nature and character of undertaking have to be looked into; mere unity of ownership, management and control is not of much significance.[10]

It has been held by the Supreme Court that if the workmen had worked for 240 days during the period of 12 months immediately preceding the date of closure, they would be entitled to compensation notwithstanding the legality of strike.[11]

Notice of termination reciting that services were not required because of reduction in business would be conclusive in determining the question whether it was a retrenchment. It was held that on a true construction of the notice, it would appear that the employee had become surplus on account of reduction in the value of work and that constitutes retrenchment.[12]

Usual Industrial unrest leading to demands and refusals, strikes and lockouts cannot be considered to be "unavoidable circumstances beyond the control of the employer."[13]

Where the undertaking is closed down not on account of unavoidable circumstances but due to financial difficulties, it was held that labour court can examine claims under section 25-FFF, if application under section 33-C(2) was made to it.[14]

Control on Retrenchment, Closure and Lay-off

By the Amendment Act of 1976 prior approval of the appropriate Government has been necessary in the case of lay-off, retrenchment and closure in industrial establishments where 300 or more workmen are employed. In the interests of rehabilitation of workmen and for maintenance of supplies and services essential to the life of the community, a provision is also made in the Act for restarting the undertakings which were already closed down otherwise than on account of unavoidable circumstances beyond the control of the employer.

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5 Employer has to prove conditions rendering termination of service to be not one of retrenchment, where no such proof was present, termination was held to be retrenchment and the workmen concerned were held entitled to notice and compensation as per section 25-FFF, as it was one of closing down on account of termination of work, *S.M. Nilajkar v. Telecom District Manager, Karnataka.,* (2003) III LLJ 359 : AIR 2003 SC 3553 : (2003) 4 SCC 27.

6 *District Red Cross Society v. Babita Arora,* (2007) III LLJ 777 : AIR 2007 SC 2879 [*LNIND 2007 SC 956*].

7 *Managing Director, Haryana Seeds Development Corpn. v. Presiding Officer,* *(1997) 2 Lab LJ 823* : AIR 1997 SC 3086 [*LNIND 1997 SC 865*], closure on account of floods, amounted to retrenchment of labour; senior employees were entitled to make representation and claim appointment afresh if juniors were subsequently re-employed. Even if the undertaking is closed for reasons beyond its control, section 25-O is applicable, *Hindalco Industries Ltd. v. Union of India,* (2004) I LLJ 450 :

AIR 2004 SC 989 ; *Management of Standard Motor Products of India Ltd. v. A. Parthasarthy, (1986) 1 Lab LJ 34* (SC), those who completed 240 days before illegal strike, entitled to benefits. *Isha Steel Treatment v. Assn. of Engg. Workers, (1987) 1 Lab LJ 427* [*LNIND 1987 SC 246*] (SC), closing down of one of the factory units held to be justified depsite unity of ownership, supervision, control and some other common features.

8 *Savani Transport (P.) Ltd. v. Savani Transport Employees' Assn.,* (1994) LLR 578 (Ker).

9 *Indian Hume Pipe Co. Ltd.,* (1969) I LLJ 242 (SC).

10 *Hindustan Steel Works Construction Ltd. v. Hindustan Steel Works Construction Ltd. Employees Union,* (1997) III LLJ (Suppl) 1224 : AIR 1995 SC 1163 [*LNIND 1995 SC 233*].

11 *Management of Standard Motor Products of India Ltd. v. A. Parthasarthy,* (1986) I LLJ 34 (SC).

12 *Gammon India Ltd. v. Niranjan Dass,* (1984) I LLJ 233 : AIR 1984 SC 500 [*LNIND 1983 SC 361*].

13 *Rameshwar Dass v. State of Haryana,* (1987) I LLJ 514 : AIR 1987 SC 713 [*LNIND 1987 SC 172*].

14 *Inland Steam Navigation Workers Union v. Union of India,* (2001) I LLJ 730 : (2001) 3 SCC 47 [*LNIND 2001 SC 285*].

Effect of Laws Inconsistent with Chapter v [Section 25J]

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;
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.

Effect of Laws Inconsistent with Chapter v [Section 25J]— Updated On 08-01-2019

The provisions of this Chapter shall have effect notwithstanding anything inconsistent with it contained in any other law including standing orders made under the *Industrial Employment (Standing Orders) Act, 1946* [Section 25J(1)].

Provided that where under the provisions of any other Act or rules, orders or notifications issued under it or under any Standing Order or any Award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under the Act. The workman shall continue to be entitled to the more favourable benefits in respect of that matter notwithstanding that he receives benefits in respect of other matters under the Act.

For the removal of doubts, it has been declared that nothing contained in Chapter VA shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen, insofar as they relate to lay-off and retrenchment, shall be determined in accordance with the provisions of Chapter VA.

The provisions override any other law but not any other part of the Act itself. The Supreme Court pointed out in *P. Virudhachalam v. Management of Lotus Mills,* [15] that the section nowhere provides that Chapter V-A of the Act shall have effect notwithstanding anything inconsistent contained in any other Chapter of the Act as well as any other law.

The use of the word “any other law” would include statutory rules framed under *Article 309 of the Constitution of India* to regulate terms and conditions of Government employment. The word “law” has to be given a general and wide meaning to include Rules framed under Constitutional provisions. The Rules framed under Article 309 are legislative in character and they are laws for all purposes.[16]

Section 25-J provides that the provisions of Chapter V-A would have overriding effect irrespective of any other law including Standing Orders. Chapter V-A deals with lay-offs and retrenchment. The introduction of a retirement age is neither one nor the other. There is no substantive provision in Chapter V-A of the Act which pertains to the period of service of an employee. Consequently, Section 25-J has no application at all to the present case because it involved only termination on completion of the service period.[17]

Effect of Laws Inconsistent with Chapter v [Section 25J]

15 *P. Virudhachalam v. Management of Lotus Mills,* : *(1998) 1 Lab LJ 389* AIR 1998 SC 554 .

16 *Union of India v. Presiding Officer, Central Govt. Industrial Tribunal,* (1998) 1 Lab LJ 994 (MP).

17 *Harmohinder Singh v. Kharga Canteen, Ambala Cantt.,* : (2001) 5 SCC 540 AIR 2001 SC 2681 .

End of Document

Application of Chapter vb [Section 25K]

Avtar Singh: Introduction to Labour and Industrial Law

Avtar Singh: Introduction to Labour and Industrial Law > *Introduction to Labour and Industrial Laws* > *PART I THE INDUSTRIAL DISPUTES ACT, 1947* > **Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments**

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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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 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

Application of Chapter vb [Section 25K]— Updated On 08-01-2019

Application of Chapter vb [Section 25K]

The provisions of this Chapter apply to such an industrial establishment:—

(a) which is not of a seasonal character or in which work is performed only intermittently

(b) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

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[1] [Section 25K].

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1 *Government of India v. Workmen of State Trading Corpn.,* (1998) 2 Lab LJ 40 : AIR 1989 SC 1532 , closure of the unit of the State Trading Corpn., the Government could not be directed to absorb labour because there was no relationship of master and servant between the Government and the workmen. Where the order of State Government declared appellant's establishment as one of seasonal character only on the basis of drastic reduction in sugarcane crushing activity, the order was held to be not sustainable, *Spl. Officer & Joint Registrar, Co-op. Societies v. Workmen of Vanivilas Sugar Factory,* (2001) I LLJ 1381 : (2001) 2 SLT 695 .

Definitions [Section 25L]

Avtar Singh: Introduction to Labour and Industrial Law

Avtar Singh: Introduction to Labour and Industrial Law > *Introduction to Labour and Industrial Laws* > *PART I THE INDUSTRIAL DISPUTES ACT, 1947* > *Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments*

PART I THE INDUSTRIAL DISPUTES ACT, 1947

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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 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

Definitions [Section 25L]— Updated On 08-01-2019

For the purposes of this Chapter— "industrial establishment" means—

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

(ii) a mine as defined in *section 2(1)(j) of the Mines Act, 1952* ; or

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

The Central Government shall be the appropriate Government in relation to—

(i) any company in which not less than fifty one percent, of the paid-up share capital is held by the Central Government, or

(ii) any corporation [not being a corporation referred to in section 2(a)(i)] established by or under any law made by Parliament.

This will be so notwithstanding the provisions in section 2(a)(ii).

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2 The term premises in the definition of factory not only covers buildings but even open lands, *Lal Mohammad v. Indian Rly. Construction Co.,* *(1999) 1 Lab LJ 317* : AIR 1999 SC 355 [*LNIND 1998 SC 1073*]. A contractor running a canteen in factory, his labour is separate from that of factory, bound to apply under section 25-O, *SRF Ltd. v. Govt. of T.N.,* (1996) 3 Lab LJ (Suppl) 370 (Mad).

Prohibition and Prior Permission for Lay-Off [Section 25M]

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;
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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 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

PROHIBITION AND PRIOR PERMISSION FOR LAY-OFF [SECTION 25M]— Updated On 08-01-2019

No workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an

industrial establishment to which Chapter V-B applies shall be laid-off by his employer except with the prior[3] permission of the appropriate Government or authority specified by the appropriate Government by notification in the Public Gazette. Such permission is not necessary where the lay-off is due to shortage of power or to natural calamity, and the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.[4]

An application for permission has to be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application has to be served simultaneously on the workmen concerned in the prescribed manner [sub-section(1)].

Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off for reasons of fire, flood or excess of inflammable gas or explosion, the employer, within a period of thirty days from the date of commencement of such lay-off, has to apply, to the appropriate Government or the specified authority for permission to continue the lay-off in the prescribed-manner [sub-section (3)].

Where an application for permission has been made, the appropriate Government or the specified authority may grant or refuse to grant such permission. An order in this respect will be passed, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off. The Authority has to pay regard to the genuineness and adequacy of the reasons for the lay-off, the interests of the workmen and all other relevant factors. The order has to be in writing with a statement of reasons. A copy of the order has to be communicated to the employer and the workman.

Where an application for permission has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission shall be deemed to have been granted on the expiration of the period of sixty days.

An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, be final and binding on all the parties concerned and shall remain in force for one year from its date. But this is subject to provisions of sub-section(7) which provides for the reference being made to the Tribunal where the Tribunal has to pass its awards within a period of thirty days from the date of reference.

The appropriate Government or the specified authority may review its order granting or refusing to grant permission or refer the matter or cause it to be referred for adjudication to a Tribunal either—

(i) on its own motion, or

(ii) on the application made by the employer or any workman.

Where a reference has been made to a Tribunal, the Tribunal has to pass its award within a period of thirty days from the date of the reference.

The lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off in any of the following cases:—

(i) where an application for permission has been made under sub-section (1), or

(ii) where no application for permission has been made within the period specified in it under sub-section (3), or

(iii) where the permission for any lay-off has been refused.

Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances an accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-s (1), or sub-s (3) shall not apply in relation to the establishment for such period as may be specified in the order [section 25M(9)].

The provisions of section 25C (other than its second proviso) shall apply to cases of lay-off referred to in this section [section 25M(10)].

An *Explanation* appended to the section says that for the purposes of the section, a workman shall not be deemed to be laid-off by an employer if the employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and is, therefore, within the competence of the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance form the establishment to which he belongs, that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

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3 Statutory permission has to be taken before laying off, *Ashok Kumar Jain v. State of Bihar, (1995) 2 Lab LJ 685* : (1995) 1 SCC 320 [*LNIND 1994 SC 1211*].

4 "We have upheld the vires of section 25M in the decision rendered in Civil Appeal No. 807/1982. Therefore, section 25M is not *ultra vires* and prosecution for violation of the section is maintainable, *Ashok Kumar Jain v. State of Bihar,* (1995) 2 Lab LJ 685 : (1995) 1 SCC 320 [*LNIND 1994 SC 1211*].

Conditions Precedent to Retrenchment of Workmen [Section 25N]

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;
3. To know about the authorities provided by the Act to settle industrial disputes;
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CHAPTER 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN [SECTION 25N]—

Updated On 08-01-2019

No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous

service for not less than one year under an employer shall be retrenched by that employer until,—

(a) the workman has been given three months' 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; and

(b) the prior permission of the appropriate Government or the authority specified by that Government by notification in the Official Gazette has been obtained on an application made in this behalf [section 25N(1)].

An application for permission shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner[5] [section 25N(2)].

Where an application for permission has been made, the appropriate Government or the specified authority may refuse to grant it. The Government may make such enquiry as it thinks fit and give a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment. Regard should be had of the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors. Reasons for grant of or refusal to grant permission should be recorded in writing. The order has to be communicated to the employer and workmen.

Where an application for permission has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date of application, the permission applied for shall be deemed to have been granted on the expiration of the period of sixty days.

An order of the appropriate Government or the specified authority granting or refusing to grant permission is final and binding on all the parties concerned and remains in force for one year from its date.

The Government may review its orders or refer the matter or cause it to be referred to a Tribunal for adjudication. The Government or the specified authority may do so either on its own motion or on the application made by the employer or any workman.

Where a reference has been made to a Tribunal it shall pass an award within a period of thirty days from the date of the reference.[6]

Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, the retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman. The workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

The appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary to do so, direct that the provisions of subsection (1) shall not apply in relation to such establishment for such period as may be specified in the order.

Where permission for retrenchment has been granted or is deemed to be granted every workman who is employed in that establishment immediately before the date of application for permission shall be entitled to receive, 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 [section 25N(9)]

By the introduction of section 25-N of the Act prior scrutiny of the reasons for retrenchment has been enacted to prevent avoidable hardship to the employees resulting from retrenchment by protecting existing employment and check the growth of unemployment which would otherwise be the consequence of retrenchments in industrial establishments employing large number of workmen. The section is also intended to maintain higher tempo of production and productivity by preserving industrial peace and harmony. The section gives effect to the mandate contained in the Directive Principles of the *Constitution* . Therefore, the restrictions imposed by the section 25-N on the right of the employer to retrench workmen is in general public interest.

While exercising power under Section 25-N(2), the appropriate Government exercises powers which are guasi-judicial in nature and not purely administrative.[7]

It would be permissible for the appropriate Government to grant permission for retrenchment of only some of the workmen proposed to be retrenched and to refuse permission for the rest of the workmen.

In enacting Chapter VB the intention of the Parliament was to alter the existing law relating to lay-off, retrenchment and closure in relation to large Industrial establishments falling within the ambit of Chapter VB because the existing law enabled large scale lay-offs, retrenchments and closure by large companies and undertakings resulting in all round demoralising effect on workmen.

Though the appropriate Government is required to act judicially while granting or refusing permission for retrenchment of workmen, it is not invested with the judicial power of the Court and it cannot be regarded as a Tribunal within the meaning of *Article 136 of the Constitution* . No appeal would therefore lie to the Supreme Court against an order passed under section 25-N(2).[8]

Absence of a provision for appeal or revision against an order under section 25-N(2) is not of much consequence especially when it is open to an aggrieved party to invoke the jurisdiction of the High Court under *Article 226 of the Constitution of India* . The remedy of judicial review under Article 226 is an adequate protection against-arbitrary action in the matter of exercise of power by the Government under section 25-N(2) of the Act.[9]

Where appellants were drawing regular wages as applicable to permanent workers and reporting regularly for work, the management was not taking any work from them since 2003, most of the workers had already gone on VRS but

neither management nor workers could agree on offers made by either side, the SC invoking Article 142 directed to give Rs. 10 lakhs to appellants taking into consideration the age factor of appellants that interest of justice would be met if they are paid lump sum amount towards settlement of all their dues. However, this amount did not include their claim of provident fund and gratuity.[10]

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5 The scheme of section 25N is Constitutionally valid. The restriction imposed on the right of the employer is in general public interest. The power under the section is quasi-judicial and not purely administrative. The Authority has got the power under the section to grant permission for retrenchment only of some of the workers proposed to be retrenched and refuse permission for the rest. The Authority is not vested with judicial power while functioning under sub-section (2). No appeal lies to the Supreme Court. *Workers of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.,* *(1992) 2 Lab LJ 294* : AIR 1994 SC 2696 [*LNIND 1992 SC 411*]. The Supreme Court further observed that the power has to be exercised on objective consideration of relevant facts after giving an opportunity to all parties. Sufficient guidance is given in the Act on the manner of exercise of the power. Conditions of employment or industry in the State can be taken into account. The power does not infringe the fundamental right under Article 19(1)(g). The duty to pass a speaking order is a sufficient safeguard against arbitrary action. Delegation of power to the appropriate Government to specify authority does not render the provisions of section 25N arbitrary or unreasonable. *J.K. Synthetics v. Rajasthan Trade Union Kendra,* AIR 2001 SC 531 [*LNIND 2000 SC 1855*]: (2001) 2 SCC 87 [*LNIND 2000 SC 1855*] : *(2001) 1 LLJ 561* [*LNIND 2000 SC 1855*], the Supreme Court directed the decision in *Meenakshi* to be followed, the provision having been held to be constitutionally valid.

6 When it was open to the appellants to avail a reference under sub-s. (6) and they did not choose to do so but chose the remedy of writ petition, they could not be heard to make a grievance that the High Court should not have gone into the question of non-compliance of section 9A, (1998) 3 Lab LJ (Suppl) 711 (SC).

7 A reference under section 10(1) cannot be used to circumvent or bypass the statutory scheme provided under section 25-N, *Empire Industries Ltd. v. State of Maharashtra,* (2010) 4 SCC 272 [*LNIND 2010 SC 251*].

8 *Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.,* (1992) II LLJ 294 : AIR 1994 SC 2696 [*LNIND 1992 SC 411*]. The units of a construction company are independent units. Workmen of one unit cannot claim absorption in another unit on completion of work in that unit. *Indian Railways Construction Co. Ltd. v. Lal Mohd.,* *(1998) 2 Lab LJ 214* (All). Where there was no proof that the application was made by the employer or workmen, the permission granted on the basis of such an application was held to be not according to law, while the relief of reinstatement was not granted, Rs. 10,000 were directed to be paid to each workman in addition to retrenchment compensation, *Shiv Kumar v. State of Haryana,* *(1995) 1 Lab LJ 1162* : (1994) 4 SCC 445 [*LNIND 1994 SC 474*]. Compensation to workmen in statutory canteens, who could not be absorbed as they were ineligible according to the criteria, was held to be considered under section 25-N and their reemployment under section 25-H, *Indian Petrochemicals Corporation Ltd. v. Shramik Sena,* (2001) I LLJ 1040 : AIR 2001 SC 857 [*LNIND 2001 SC 241*].

9 *Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.,* [1992] II LLJ 294 : AIR 1994 SC 2696 [*LNIND 1992 SC 411*]. The units of a construction company are independent units. Workmen of one unit cannot claim absorption in another unit on completion of work in that unit. *Indian Railways Construction Co. Ltd. v. Lal Mohd.,* *(1998) 2 Lab LJ 214* (All). Where there was no proof that the application was made by the employer or workmen, the permission granted on the basis of such an application was held to be not according to law, while the relief of reinstatement was not granted, Rs. 10,000 were directed to be paid to each workman in addition to retrenchment compensation, *Shiv Kumar v. State of Haryana, (1995) 1 Lab LJ 1162* : (1994) 4 SCC 445 [*LNIND 1994 SC 474*]. Compensation to workmen in statutory canteens, who could not be absorbed as they were ineligible according to the criteria, was held to be considered under section 25-N and their re-employment under section 25-H. *Indian Petrochemicals Corporation Ltd. v. Shramik Sena,* (2001) I LLJ 1040 : AIR 2001 SC 857 [*LNIND 2001 SC 241*].

10 *Ghanshyam Sukhdeo Gaikwad v. Baja Auto Ltd.*, AIR 2016 SC 2255 .

Procedure for Closing Down an Undertaking [section 25-O]

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

CHAPTER 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

PROCEDURE FOR CLOSING DOWN AN UNDERTAKING [SECTION 25-O]— Updated On 08-01-2019

An employer who intends to close down an undertaking of an industrial establishment to which Chapter VB applies,

has to apply, in the prescribed manner, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government. He has to state clearly the reasons for the intended closure of the undertaking. A copy of the application has also to be served simultaneously on the representatives of the workmen in the prescribed manner.

This sub-section does not apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work [Section 25-0(1)].

Where an application for permission has been made appropriate Government, makes such enquiry as it thinks fit and gives a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure. The Government pays regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors. It has to state its reasons in writing to granting or refusing to grant its permission. A copy of the order has to be communicated to the employer and workmen [Section 25-0(2)].

Where an application has been made and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which the application was made, the permission applied for shall be deemed to have been granted on the expiration of the period of sixty days.

An order of the appropriate Government granting or refusing to grant permission shall be final and binding on all the parties. It remains in force for one year from its date.

The appropriate Government may, either on its own motion or on the application made by the employer or any workmen, review its order granting or refusing to grant permission or refer the matter to a Tribunal for adjudication.

Where a reference has been made to a Tribunal, it has to pass an award within a period of thirty days from the date of reference.

Where no application for permission has been made within the prescribed period, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure. The workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

The appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary to do so, it may direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission, shall be entitled to receive 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.

The Supreme Court observed in a case before it that the bone of contention between the parties concerned centered round the question whether section 25-N of the I.D Act was attracted in the facts of the case. In this case, the workers were aggrieved by the notices of retrenchment of their services on the ground that most of the Rihand Nagar Project in which they employed was over and they were rendered surplus. It was held by the Supreme Court that the proviso to section 250 of the Act could not be transplanted by any judicial interpretation, as the Division Bench in its impugned Judgement, purported to do, to be a proviso of section 25-N which dealt with entirely a different topic of condition precedent to retrenchment of workmen.[11]

In *Vazir Glass Works Ltd. v. Maharashtra General Kamgar Union,* [12] the Supreme Court held that the decision made by the State Government on the question of closure of an industrial unit cannot but bring about serious consequence affecting productivity, employment opportunities, *etc.,* and, therefore, the decision taken on the application for closure has been made operative for one year only, so that after such period, if an employer still desires that the industrial unit should be closed, it may make a fresh application for permission to close the unit. It is quite obvious that in application under the section not only the factors which were indicated in the previous application in justification of closure of the industrial unit but other factors emerging with the passage of time may be placed before the State Government for taking decision on the application for permission to close. In order to avoid any unmerited hardship being meted out to an aggrieved party on account of improper or incorrect decision made by the State Government on the application for permission to close, even during the period of one year when the decision of the State Government remains operative, the review application may be made by the party aggrieved. Even apart from such application, the State Government may also initiate *suo motu* proceeding to review its decision. If the State Government passes any order on such review application, such order will supersede the initial order made on the application for permission to close.

Since the decision made on an application for permission for closure is to remain operative only for a year, the Supreme Court said, it will be only proper to hold that an order by way of review either on the aggrieved party's application or on own motion of the State Government, must be made within the period of one year. 0 therwise, the right to make fresh application for permission to close after expiry of one year form the date of rejection of permission for closure will lose its relevance. It also appears, the Supreme Court said, that anomalous situation may arise if the application for review, when presented within the time frame of one year is allowed to be decided even after the expiry of that time frame of one year when the order passed by the State Government has also already ceased to be operative.

Although it has not been expressly indicated within what period a review application validly made is to be disposed of, but the provision that an order on an application for closure would remain in force for one year and in the absence of any embargo to make fresh application for such permission after expiry of one year even when a review application remains pending, makes it clear that in the scheme of section 25-0, the review application is to be made before expiry of the time frame of one year and such application is to be disposed of within such time frame otherwise such review application would become infructuous.

The principle of retaining jurisdiction for the purpose of disposing of a review application validly made or the principle that an authority if clothed with power of review will not become *functus officio* after expiry of the time frame of one year but it will retain its authority to dispose of the pending review application will arise in the context of the scheme of section 25-0.

Reference of the Industrial Tribunal for adjudication of the application for permission to close an industrial unit is made under

section 25-0(5) of the Industrial Disputes Act and not under section 10(1) of the Act.

The State Government would cease to have jurisdiction to review its order on the application for closure of an industrial unit after expiry of one year form the date of the rejection of the application for permission to close.

The Proviso to section 25-N deals with conditions precedent to retrenchment, section 25-0 deals with closing down of undertaking. Hence, proviso to Section 25-0 cannot be transplanted by judicial interpretation to be proviso to section 25-N, as it deals with entirely different topic.[13]

Government Undertaking

Where the undertaking to be closed down is state-owned, the state has first to take an administrative decision and then a quasi-judicial decision under section 25-0.

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11 *Lal Mohammed v. Indian Railway Construction Co. Ltd.,* (1999) I LLJ 317 : AIR 1999 SC 2265 . *Orissa Textile & Steel Ltd. v. State of Orissa,* AIR 2002 SC 708 [LNIND 2002 SC 42]: *(2002) 1 LLJ 858* [LNIND 2002 SC 42]. Section 25(o) is constitutionally valid because the words "appropriate Govt. after making such inquiry as it thinks fit" do not confer discretion on the Govt. to dispense with inquiry, though it can exercise discretion as to the nature of inquiry. The order of the Govt. has to be in writing and contain reasons. The State Amendment permitted the employer to apply for permission again after 12 months. This is also constitutionally valid.

12 (1996) I LLJ 962 : AIR 1996 SC 1285 . *Orissa Textile & Steel Ltd. v. State of Orissa,* AIR 2002 SC 708 [LNIND 2002 SC 42]: *(2002) 1 LLJ 858* [LNIND 2002 SC 42], on Govt. power of review; the employer has not to give three month's notice after permission, he has only to pay the statutory compensation.

13 (1999) I LLJ 317 : AIR 1999 SC 2265 .

Special Provision for Restart of Units Closed before Amendment of 1976 [Section 25P]

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;
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 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

Special Provision for Restart of Units Closed before Amendment of 1976 [Section 25P]— Updated On 08-01-2019

Special Provision for Restart of Units Closed before Amendment of 1976 [Section 25P]

If the appropriate Government is of opinion in respect of any undertaking or an industrial establishment to which this chapter applies and which closed down before the commencement of the Industrial Disputes (Amendment) Act, 1976—

(a) that such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;

(b) that there are possibilities of restarting the undertaking;

(c) that it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and

(d) that the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking,

it may direct that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order. Before passing such an order, the employer and workman should be given an opportunity to be heard. The order has to be published in the Official Gazette.

Penalty for Lay-off and Retrenchment without Previous Permission [Section 25Q]

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;
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 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

Penalty for Lay-off and Retrenchment without Previous Permission [Section 25Q]— Updated On 08-01-2019

Penalty for Lay-off and Retrenchment without Previous Permission [Section 25Q]

Any employer who contravenes the provisions of section 25M or of section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.[15]

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15 See, *Ashok Kumar Jain v. State of Bihar,* *(1995) 2 Lab LJ 685* : (1995) 1 SCC 516 [*LNIND 1994 SC 1161*], prosecution of chairman, managing director, and officers of the company for offences under section 25M read with section 25Q.

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Penalty for Closure [Section 25R]

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;
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 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

PENALTY FOR CLOSURE [SECTION 25R]— Updated On 08-01-2019

Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-0 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may

extend to five thousand rupees, or with both.

Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-0 or a direction given under section 25P, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

Application of Certain Provisions to Certain Establishments [Section 25-S]

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;
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 8 Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments

APPLICATION OF CERTAIN PROVISIONS TO CERTAIN ESTABLISHMENTS [SECTION 25-S]— Updated On 08-01-2019

The provisions of sections 25B, 25D, 25FF, 25G, 25H and 25J in Chapter VA shall, so far as may be, apply also in

relation to an industrial establishment to which the provisions of this Chapter apply.

Overriding Effect of Provisions

The provisions of Chapters VA & VB shall have effect notwithstanding anything inconsistent contained in any other law [including Standing Orders made under the *Industrial Employment (Standing Orders) Act, 1946* .

Where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any Standing Orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matter under this Act.

For the removal of doubts, the section also declares that nothing contained in the chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as the law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of the Chapter [25J and 25S].

Prohibition of Unfair Labour Practice

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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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 9 Unfair Labour Practices

An unfair labour practice has been defined as any of the practices specified in 5th Schedule. In India, the State of Maharashtra enacted the M.R.T.U. & P.U.L.P. Act, 1971, which deals exhaustively with unfair labour practices. Gaining by a decade's experience of Maharashtra, the Amendment Act, 1982 identified unfair practices in Fifth Schedule and declared them illegal and criminal offences by Sections 25T and 25U. Unlike the Maharashtra Act, the Central law does not provide for effective prevention or stoppage or rectification of unfair practices. The innovative feature of this law is prohibition of unfair labour practices by "workmen" also. Where the employer, engaging agricultural labour seasonally, issued a circular disallowing fresh persons for continuing in service for more than 240 days, such circular instruction would not amount to unfair labour practice having regard to the seasonal temporary operations. Labourers other than those engaged in agricultural operations cannot be

terminated from service so as to prevent them form completing 240 days. Such termination of such labourers would amount to unfair labour practice.

In the changed economic scenario, the concept of unfair labour practice is also required to be understood in changed context. Today every State, which has to do the mantle of a welfare State, must keep in mind the twin objectives of industrial peace and economic justice and the courts and statutory bodies which decide what an unfair labour practice is must also be cognizant of the aforesaid two objects. Any unfair labour practice within its very concept must have some elements of arbitrariness and unreasonableness and if unreasonableness is established the same would bring about violation of fundamental right guaranteed under *Article 14 of the Constitution* . Anyone who alleges unfair labour practice must plead it specifically and such allegations must be established properly before any forum can pronounce on the same.

Any Government undertaking cannot justify illegal action including unfair labour practice nor can ask for different treatment on ground that public undertaking is guided by *Articles 14* and *16* of *Constitution of India* .

Where commission of unfair labour practice is *ex facie* clear from facts pleaded by both the parties, it was held that even without pleading courts have the power to adjudicate the same to resolve disputes. The Supreme Court held that it is necessary to achieve industrial peace and harmony and promote the cause of social justice in the larger public interest.

In a case, 154 workers applied for 89 vacancies on their own when their employer introduced a scheme of promotion. They did not make any complain either to the union or the management in respect of introduction of the scheme. In the absence of any allegation of victimization it was difficult to find out a case of unfair labour practice against the management. In these circumstances, the Supreme Court held that it cannot be said that the management was indulging in unfair labour practices. Employing workmen and temporary, badli and part-time employees doing perennial nature of work against permanent posts and continuing them for number of years has been held to be unfair labour practice.

Fine balancing of rights of employers and employees are required in a dispute. It would depend upon facts of each case whether order of regularization is necessitated to advance justice or it has to be denied if giving such a direction infringes upon the employer's rights. The law laid down in U.P. Power Corporation and Maharashtra SRTC was held to be not contradictory to each other by the SC. It was held by the SC that on harmonious reading of the two judgments, even where there are two posts available, an absence of any unfair labour practice the Labour Court cannot give any direction for regularization only because a worker has continued as a daily-wage worker or ad hoc worker or a temporary worker for a number of years.

PROHIBITION OF UNFAIR LABOUR PRACTICE— Updated On 08-01-2019

No employer or workman or a trade union, whether registered under the Trade Union Act, 1926, or not, shall commit any unfair labour practice [section 25T].

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