RESOURCE INPUTS LIMITED
SV Ramachandra Rao

SECTION 2 A – INDIVIDUAL DISPUTE → INDUSTRIAL DISPUTE

Discharge, Dismissal & Termination

Termination of non-workman

- The termination of a ‘non-workman’ is covered under The Indian Contract Act. That is to say, the termination can be made in accordance with the terms of the contract.
- The appointment order is nothing but a contract
- For non fulfillment of the conditions of the contract by an employer, the employee can claim only compensation / damages and not re-instatement and back wages.

Termination of non-workman

APPRENTICE:

- The termination of an apprentice registered under the Apprentices Act will be governed by the registered agreement between the company and the apprenticeship advisor.

TRAINEE:

- A trainee is a learner and not a workman hence I D Act is not applicable.

Termination of workman

- Any Termination of workman is covered under Industrial Disputes Act and it falls under ***'Retrenchment'***

But

It has exceptions

Let us understand those exceptions.

What is Retrenchment

- Retrenchment means the termination by the employer the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include
- Voluntary retirement of the workman
- 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 service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- Termination of the service of a workman on the ground of continued ill-health.

Retrenchment

Supreme Court – Punjab Land Development Corporation Vs Labour Court 1990 (II) LLJ 70 SC

- 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 mean termination of service of workman for any reason whatsoever.

Supreme Court – Santosh Gupta Vs State Bank of Patiala AIR 1980 SC 1219

- The expression retrenchment must include every termination of the services of a workman by an act of the employer. Thus the discharge of a workman on the ground that she did not pass the test which would have enabled her to be confirmed is retrenchment.

Retrenchment

- Termination for unauthorized absence, without enquiry, not justified [2014 LLR 1075 SC]

- Termination by one month's wages without compliance of applicable law is illegal retrenchment. [2015 LLR 603 SC]

Mohd Abdul Razzak Vs. The EE, Irrigation & Power G H Q Division AP HC (unreported 7.4.1982.

- Termination of a workman on the ground of unauthorised absence from duty (which is a misconduct under the Standing Orders) without complying the procedure to establish the misconduct committed by the workman is retrenchment.

Bhola Ram Vs. Presiding Officer Labour Court Ambala 2012 LLR 136 P&H HC

- Termination of daily wager, who completed 240 days service will be illegal.

Termination – The employer can use

- (bb) termination of the service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- [2017 Uttr HC LLR 469] – Termination of employee engaged for fixed term will not be illegal.

- [2016 Guj HC LLR 1193] – Termination is automatic when appointment is for fixed term,
- [2013 Del HC LLR 687] – Termination of fixed term employee will not be illegal

&

many more similar case laws are there

Not Retrenchment

Supreme Court – SM Nilajkar V Telecom Dist. Manager 2003 (II) LLJ 359 SC

The termination of a workman engaged in a scheme or project may not amount to retrenchment subject to the following conditions being satisfied:

- That the workman was employed in a project or scheme of temporary duration;
- The employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- The employment came to an end simultaneously with termination of the scheme or project and consistently with the terms of the contract;
- The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of the employment.

Not Retrenchment

Supreme Court – State of Rajasthan V Sarjeet Singh 2007 (I) LLJ 236 SC

- Workman appointed as Pump Operator by Gram Panchayat pursuant to joint scheme with State of Rajasthan for supply of water, initially for six months and extended thereafter till the scheme is ended. The workman, having been appointed for a fixed period, it was a case which attracted section 2 (oo) (bb) and hence does not fall under retrenchment.

Supreme Court – Bhogpur Co-op Sugar Mills Ltd V Haremesh Kumar AIR 2007 SC 288

- Termination due to non-renewal of the contract of employment is not '***retrenchment***'.

Industrial Disputes Act, 1947 – Not Retrenchment

- **Termination of a workman falls under retrenchment only when the workman has put in –**

✓ Continuous Service of one year with the employer.

✓ During the 12 preceding calendar months the workman worked for 240 days it will be continuous service.

✓ Termination justified if 240 working days are not proved. [2013 LLR 184 Del HC]

✓ Termination of a sweeper would not be illegal when she fails to prove 240 days working [2014 LLR 608 Del HC]

Not Retrenchment

Haryana State Vs Presiding Officer, 1995(2) LLJ 1054 (P&H HC)

- Termination of employee employed in leave vacancy- not retrenchment

JB Kumar Vs Brijesh Sethi 2007 LLR 303 Dec HC

- Termination for continued ill health of an employee is excluded from retrenchment.

Not Retrenchment

Probationer

RSRTC Vs. R Sharma, 1998 (I) LLJ 973 Raj HC DB.

- Termination of a probationer during probationary period was termination simpliciter and since the termination was as per the Standing Orders, it did not amount to retrenchment.

Divisional Manager LIC Vs Venu Gopal, 1993 LLR 317 AP HC

- Where the services of a probationer was terminated by giving one month's salary in lieu of notice in accordance with terms of employment, it does not amount to retrenchment.

Termination As a Punishment - Not Retrenchment

- Punishment of termination from services can be imposed after conducting an enquiry following the principles of natural justice.

"Then it will not fall under '***retrenchment***'"

- Dismissal of a sleeping chowkidar on duty is justified [2017 LLR 1150 Gau HC]
- Misrepresenting for obtaining a job amounts to moral turpitude and dismissal justified. [2017 LLR 816 All HC]
- Frequent and Long unauthorized absence amounts to serious misconduct. [2017 LLR 666 Kar HC]

Principles of Natural Justice

- Objective is to secure justice or to put it negatively, to prevent miscarriage of justice. These principles can operate only in areas not covered by any law.
- No man shall be judge in his own case.
- A person cannot decide a case to which he is a party or in the outcome of which he is interested.
- Hear the other side.
- Before proceeding against a person, he should have a reasonable and adequate notice of the case he has to meet so as to enable him to prepare his defense and to make his appearance in the proceedings.
- He would further have to be given fair and reasonable opportunity of adducing all evidence on which he relies and to cross examine the witnesses produced by the management to substantiate charges.

Termination – The employer can use

Loss of Confidence

- Loss of confidence in an employee would justify his dismissal from service [2016 LLR 113 SC]…
- An employee committing theft looses confidence of employer [2017 LLR 1032 Chhat HC]
- Employee guilty of embezzlement loses confidence of employer.[2016 LLR 463 P&H HC]
- Loss of confidence by workman will be presumed when he trespassed and made unauthorized search of the record in the room of the supervisor. [2066 LLR 1199 Mad HC]

Termination – The employer can use

- Management can also resort to Service Conditions to terminate the services of an employee for loss of confidence. [2007 LLR 435 Del HC]

However

- Loss of confidence, without supporting material, will not be sufficient for termination. {2009 LLR 110 (SN) Del HC]

Misconduct

- Non performance is not a misconduct
- So placing an employee in the Performance Improvement Plan and terminating thereafter is not valid.

- The Supreme Court in the matter of KS Ravindran V B.M. New India Assurance Co [2015 LLR 790] held that Termination for failure to achieve targets, without enquiry, not valid.

Termination through VRS – Not Retrenchment

Voluntary Retirement Scheme

- Company can introduce VRS Scheme and employees with 10 years of service or 40 years of age will be eligible for income tax exemption up to five lakhs.
- If the above criteria is not fulfilled, the VRS amount received by the employee is taxable.
- The period of the scheme operation is the discretion of the Management.
- The vacancies arisen out of VRS Scheme should not be filled again.

Voluntary Retirement Scheme

- A resignation is distinct from voluntary retirement since an employee can resign at any point of time, even on the second day of his appointment but in case of retirement, he retires only when opts for voluntary retirement and his option has been accepted. [Prabhakar V Canara Bank 2013 LLR (SN) 110 Supreme Court]

- VRS aims at weeding out the deadwood[Francis V Union of India 2013 LLR 785 SC]

Termination through VRS – Not Retrenchment

- After accepting the dues, VRS cannot be challenged[2011 LLR 1009 Supreme Court]

- After having received VRS dues in full and final besides provident fund dues without any protest, raising of any claim later on by the employee is not tenable.[2012LLR 446 Cal HC]

Restrictions on Termination

ESI Act

- Employer shall not dismiss, discharge or reduce or otherwise punish an employee during the period when he or she is in sickness benefit or maternity benefit or temporary disablement benefit under section 73 of ESI Act.

- If any employer contravenes section 73, it would not only render the dismissal or discharge invalid but also expose the management to prosecution under section 85.

- Dismissal of an employee, as covered under ESI Act during receipt of his sickness benefit, would be void and the employee will be entitled to reinstatement with other benefits. *Maharastra State RTC Vs Sherkhan Chhotekhan[2004 LLR 600 Bom HC]*

Restrictions on Termination

ESI Act

- Where notice of dismissal or discharge or reduction is given during the specified period of illness, the same shall remain in abeyance because the same is not valid nor the same can be made operative during that period.

  Ramachandra Sitara Kale Vs Maharastra State RTC [2009 FLR 100 Bom HC]

- The Act only requires the employer not to dismiss or terminate during the period of sickness benefit period. However, in the case of voluntary abandonment, this will not be applicable.

  Guest Keen Williams Ltd Vs P O Labour Court {Kar HC}

Restrictions on Termination

Maternity Benefit Act

- No employer shall dismiss or discharge a women employee who is absent from duties under the provisions of this Act and also any time during pregnancy.
- Women employees engaged directly or through any agency are covered under the Act.
- Any employee worked for 80 days or more is eligible for benefits under the Act.
- An employee while on probation applied for maternity leave. LIC of India discharged her from the services. Supreme Court held in the case of Neera Mathur Vs LIC of India ruled in favour of the women employee and ordered reinstatement.

Restrictions on Termination

Misconduct connected with the dispute

Supreme Court Lord Krishna Textile Mills Vs its workman [1961 AIR 860]

Held that in case of misconduct connected with pending dispute the discharge or dismissal shall take effect only on approval granted by the concerned Industrial Court.

Supreme Court Ram Lakhan Vs Presiding Officer [2001(I) LLJ 449]

Held that during the pendency of management's application for permission to dismiss the workman, the company shall pay the subsistence allowance, if placed under suspension.

Restrictions on Termination

Misconduct **not** connected with the dispute

- Employer can alter the conditions of service not connected with the dispute or Discharge / dismiss or punish Provided One month wages paid and Make an application for approval
- Employer is required to do all the three things simultaneously ie *Discharge or Dismissal; Making payment of one month wages and Making application for approval*
- *The Supreme Court held that employer shall ensure that all the three actions shall be simultaneous, failing which the application runs the risk of being rejected. …*

Industrial Disputes Act - Chapter V-A & V-B

Chapter V-A & V-B deals with

- Layoff - Procedure
- Retrenchment - Procedure
- Closure - Procedure
- Transfer of undertaking

✓ Defines continuous service

✓ Procedure for Lay Off, Retrenchment, closure and transfer of undertakings

✓ Compensation payable

✓ Approvals from government etc.,

Industrial Disputes Act - Retrenchment

To which industrial establishments the Retrenchment provisions apply (Chapter V-A & V-B)

Industrial Establishments employing below 100 workmen

- One month notice or wages in lieu of notice.
- Compensation of Fifteen days average pay for every completed year of service. 6 months and above to be treated as one year
- Notice to the appropriate Government

Industrial Disputes Act - Retrenchment

Industrial Establishments employing 100 and above workmen (will not apply to Shops and Establishments – Section 25 L)

- Three months notice or wages in lieu of notice
- Compensation of fifteen days average pay for every completed year of service. 6 months and above treated as one year.
- Prior permission from the appropriate

Industrial Disputes Act - Retrenchment

Section 25L

- For the purpose of this Chapter

Industrial Establishment means

(a) Factory

(b) Mine

(c) Plantation

Note : Thus Chapter V-B is not applicable to shops and establishments

Industrial Disputes Act - Retrenchment

Shops and Establishments

- A Hotel will not be an 'Industrial Establishment' under Section 25L to attract the provisions of Section 25N under Chapter V-B of the ID Act. (25N is conditions precedent to retrenchment)

Welcomgroup Searock v Searock Hotel Employees' Union (2005) (Bom HC)

- Consumer Co-operative wholesale stores will not be treated as 'Industrial Establishment' under the Section 25L of I D Act and as such the closure of such stores will not attract section 25N of the I D Act providing for prior permission for retrenchment of workmen.

Rajinder Singh Chauhan V State of Haryana (2005) SC

Industrial Disputes Act - Retrenchment

- No prior permission for closing a hotel is required since it is not an 'Industrial Establishment' under Section 25L of the ID Act.

Lal Bavta Hotel Aur Bakery Mazdoor Union v. Ritz Private Ltd., 2007(Bom HC)

Conditions Of Service

Industrial Disputes Act – Notice of Change

- Section 9A – No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in fourth schedule, shall effect such change

  (a) without giving to the workmen

  (b) within 42 days of giving such notice.

No such notice is required, if the change is effected pursuance of any settlement or award.

Industrial Disputes Act – Notice of Change

Section 9A – Fourth Schedule

Conditions of Service for change of which notice to be given

- Wages, including the period and mode of payment
- Contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force
- Compensatory and other allowances
- Hours of work and rest intervals;
- Leave with Wages and holidays
- Starting, alterations or discontinuance of shift working otherwise than in accordance with the standing orders
- Classification by grades
- Withdrawal of any customary concession or privilege or change in usage

Industrial Disputes Act – Notice of Change

Section 9A – Fourth Schedule

Conditions of Service for change of which notice to be given

- Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders
- Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;
- Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department of shift [not occasioned by circumstances over which the employer has no control]

Conditions of Service

- The Apex Court in the case of State of Punjab Vs. Kailash Nath (1989-I CLR 60) has observed that the expression of 'conditions of service' means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters of pension etc.,

- Change in service conditions not permissible without workmen's consent.

  CS Saran Kumar V Union of India 2017 LLR 193 Madras HC

Conditions of Service – Increase in Hours of Work

- Increase in Hours of Work by half-an-hour on a particular day of the week when **total working remained intact**, will not amount to change in conditions of services of the employees to attract Section 9A of the Act

  Rajya Pariwahan Yantrik Kamgar Sangathana V Maharashtra SRTC 1991LLR 246 Bom HC

- Increase in prevalent working hours will amount to change of conditions of service attracting section 9A of the Act.

  NTC Ltd Vs Labour Court Jaipur1996 LLR 31 Raj HC

Manpower Rationalization - Conditions of Service

- A notice of change must precede to the introduction of manpower rationalization of an industry resulting into retrenchment of workmen.

  Lokmat Newspapers Pvt Ltd Vs Shankaraprasad (1999) 6 SCC 275 (Supreme Court)

Industrial Disputes Act – Conditions of Service

Reduction of Wage / Allowances - Conditions of Service

- Unilateral reduction of wages of an employee will be contrary of section 9A of the I D Act.

  SN Kedare Vs Ceat Tyres of India Ltd (2001) 91 FLR 922

- Reduction of wages not stipulated in the settlement without notice under section 9A of ID Act, not legal.

  T Rajamanickam Vs Binny Ltd 2009 LLR 323 (SN) Mad HC

Industrial Disputes Act – Conditions of Service

- Reduction of project allowance from 10% to 8%, without giving 21 days notice as prescribed by section 9A of the I D Act, will not be sustainable.

State Farms Corporation of India Ltd Vs Industrial Tribunal Bikaner (2003) 97 FLR 1110 Raj HC

Reduction in leave - Conditions of Service

- Reduction of earned leave from 32 to 18 is not valid in the absence of 'notice of change' as prescribed under section 9Aof the ID Act.

  Mgt of Salem Dist Coop Milk Producers Union Ltd Vs PO Industrial Tribunal 2010 LLR 435 Mad HC

Industrial Disputes Act – Conditions of Service

New Enactment or Amendments to Law – Change in Service Conditions

- When there is change in the service conditions by virtue of an amendment to the applicable law or through a introduction of new legislation the provisions of Section 9A of ID Act are not applicable. In a decided case, the ESI scheme has come into force by operation of law and the management is only informing that fact to the employees. Hence provisions of section 9A are not applicable.

All India TDC Employees' Union Bangalore Vs. Hotel Ashok Bangalore 1984 –I LLN 659 Kar HC

Industrial Disputes Act – Notice of Change

Existing Enactment (EPF) and Change in Conditions of Service

- Employer contributing provident fund contributions over and above limits prescribed under the enactment and the employer discontinued PF contribution paid in excess of limits. The High Court of Kerala (DB) (Vijayan Vs Secretary to Government 2006 (3) LLJ 337) held that the Provident Fund contributions made by the employer in excess of the statutory limits are only gratuitous concession and its withdrawal required no notice and this cannot be challenged.
- Employers EPF contribution can be reduced to maximum ceiling when notice was not given.

  Mgt of Marathawada Gramin Bank Vs Union of India 2011 LLR 1130 SC

Industrial Disputes Act – Notice of Change

Whether Transfer amount to change in Conditions of Service

- In a point of fact the transfer of an employee has no concern whatsoever with the pending dispute relating to fixation of wages which will not amount to altering service condition much less to his prejudice. In another case Bombay High Court has also held that transfer of an employee during pendency of the proceedings will not amount to change in conditions of service.

  Dainik Naveen Duniya Vs Labour Court 1991 – I LLN 745 (Madras HC)

  Wimco Ltd Vs Wimco Employees Union 2002 LLR 30 (Bombay HC)

- Transfer is not a change in service conditions.

  Sh Mohd Azim V Saro Up Gramin Bank 2015 LLR 464 Delhi HC

Industrial Disputes Act – Notice of Change

Whether increase in prices in canteen amounts to change in Conditions of Service

- The Management is well within the right to increase the prices of eatables etc., without giving notice under section 9A of the ID Act. The Bombay High Court (Blue Star Workers Union Vs Blue Star and others, 1990 LLR 543) held that the canteen facility, given to the workmen at confessional rates for over several years were merely a welfare facility and could not demand to be a **condition of service** of the workmen. The management may revise the rate of food items unilaterally when the prices of the food items have risen rapidly.

- Again in the year [2001 [LLJ 1261 Voltas Switchgear Plant Employees' Union V Voltas Switchgear Ltd] Bombay High Court held that – Fixation of new rates for canteen items cannot be treated as change in conditions of service.

Industrial Disputes Act – Notice of Change

Whether change of Weekly Off day amounts to change in Conditions of Service

- Where the company has changed the weekly rest day from Sunday to Monday due to partial load shedding, it has been held that where notice was given for the change of weekly rest day under section 65 of Factories Act to the authority concerned, such change of weekly rest day will not come within the purview of section 9 A of I D Act.

  Sommuggar Jute Factory Company Ltd Vs. Workmen and ors 1982-II LLN 88 Cal HC

Unfair Labour Practice

Industrial Disputes Act – Unfair Labour Practices

On the part of the employers

- To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining.
- Threatening workmen with discharge or dismissal, if they join union;
- Discharging or punishing workman because he urged other workmen to join or organize trade union.
- Discharging or dismissing a workman for taking part in any legal strike
- Threatening a lock-out or closure, if a trade union is organized
- Granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.
- Employer taking active interest in organizing a trade union

Industrial Disputes Act – Unfair Labour Practices

On the part of the employers

- Employer showing partiality or granting favour to one of several trade unions
- Giving unmerited promotion to certain workman with a view create discard among the workmen.
- Transfer a workman malafide from one place to another, under the guise of management policy.
- To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status of permanent workmen.
- To recruit workmen during a strike which is not an illegal strike
- To indulge in acts of force or violence
- To refuse to bargain collectively
- To abolish the work of a regular nature being done by workmen, and to give such work to contractors

Industrial Disputes Act – Unfair Labour Practices

On the part of workmen and trade unions

- To advice or actively support or instigate any strike deemed to be illegal
- To coerce workmen to join a trade union or refrain from joining a trade union
- To stage, encourage or instigate such forms of coercive actions as wilful “go slow”, squatting on the work premises after working hours or “gherao” of any of the members of the managerial or other staff.
- To stage demonstration at the residence of the employer
- To incite or instigate wilful damage to employer’s property
- To indulge in acts of force or violence or hold out threats of intimidation against any workman with a view to prevent him from attending work.

Industrial Disputes Act – Unfair Labour Practices

- Unfair labour practice if proved, against the Management, is a punishable offence.
  PK Naik Vs State of Orissa 2013 LLR(SN) 671 Ori HC

- Denial maternity benefits and termination is unfair labour practice
  Zee News Ltd Vs Sonika Tiwari, 2017 LLR 912 Bom HC

- Obtaining resignation under pressure and coercion amounts to ‘unfair labour practice’
  Choksi Heracus Ltd Vs State of Rajasthan, 2015 LLR 658 Raj HC

Industrial Disputes Act – Unfair Labour Practices

- Paying lesser wages or delayed wages amount to unfair labour practice.

  Urmila Gram Panchayat Vs Municipal Employees Union 2015 LLR 449 SC

- If domestic enquiry is conducted without following the principles of natural justice, such an act of the employer can be characterized as unfair labour practice.

  G Vinayagam Vs GM Metropolitan Transport Corporation 2014 LLR(SN) 222 Mad HC

- Successive appointments for fixed-term employment will be unfair labour practice.

  Sunder Singh Vs PO Industrial Tribunal 2013 LLR 420 Del HC

Industrial Disputes Act – Unfair Labour Practices

- Engaging casual and temporary workers for years together and denying permanency will amount to unfair labour practice.

  Gujarat SRTC Vs Workmen STC 2000 LLR 182 Guj HC

- Engaging labour through contractor who could be employed directly by an undertaking will be unfair labour practice

  Gujarat Electricity Board Vs HMS 1995-II LLJ 790 SC

- Even a threat of discharge or dismissal of a workman for joining union may amount to unfair labour practice.

  Hindustan Lever Ltd Vs Ashok Vishnu Kate, AIR 1996 SC 285

Industrial Disputes Act – Unfair Labour Practices

- Engagement of trainees and apprentices within the permissible limits will not amount to unfair labour practice.

  Mahesh Chand V Mgt of M/s Le Meridien 2013 LLR 899 Del HC

- Complaint for unfair labour practice will not lie for continuation of contract labour system

  Cipla Vs Maharastra General Karmgar Union AIR 1999 SC 1635

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