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ON

LABOUR LAW-I

LAY-OFF

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INDEX

CHP	TOPIC	PAGE NO.
1.	Introduction, Historical background of lay-off compensation	3
2.	Old concept of “lay-off” , New Concept of Lay-off:	4
3.	Importance of Industrial Disputes Act.	5
4.	Objectives of Industrial disputes Act, 1947	6
5.	The Salient features of the Industrial Disputes Act,1947	8
6.	Importance of Industrial Law In India	9
7.	Lay-off and Retrenchment in India.	10
8.	Lay-off differs from Lock-outs, Distinction Between Lay-off and Retrenchment.	14
9.	Right of workmen laid off for compensation	15
10.	Badli workmen, Continuous service	17
11.	Participation in illegal strike	18
12.	Amount of compensation, Period of lay off compensation	20
13.	Payment of compensation is not a condition precedent to lay-off	21
14.	Whether the employer has a right to lay-off	23
15.	Can lay-off be declared to victimize workers	24
16.	Global concept of Layoff	25
17.	Common abbreviations for reduction in force	26
18.	Cases on Lay-off	27
19.	Conclusion and Suggestions	28
20.	Bibliography	33

LAY-OFF

INDRODUCTION

The freedom of contract theory, emerged out of the *laissez-faire* principle, authorised the employer to discharge his workmen due to breakdown of machinery or such other reasons beyond the control of the employer. This invariably exposed the workmen to frequent risk of involuntary unemployment. This absolute power of the employer to discharge his workmen gradually began to disappear with the erosion of the *laissez-faire* philosophy and the introduction of more State interventions in industrial relations. Consequently, the employer lost his privilege to sever the contract of service and that he can utmost only lay-off temporarily the workers on the occurrence of such eventualities. This means that there will be only a suspension of employer-employee relationship and does not involve any complete severance of such relationship.

Historical Background of Lay-off Compensation:-

All disputes relating to lay-off prior to the incorporation of its definition in the Act were decided in accordance with the judicial pronouncements as there existed no definition of term "lay-off" formerly in the Act.

After independence , due to modernization in textiles mills, often there was retrenchment and lay-off of Workmen without any compensation payment in majority of the managements, although few of them paid compensation, thus there was no uniformity norms for compensation in such circumstances which resulted in the deteriorating economic conditions of the labour class and the stake of National economic development and social security of the society necessitated for the enactment of the social/beneficial legislation like the present Act.

Old concept of ‘lay-off’

Old concept of lay-off did not exist formerly in the Industrial Disputes Act, 1947. All disputes relating to ‘lay-off’ prior to the incorporation of its definition in the Act were decided in accordance with the judicial pronouncement as there existed no definition of term ‘lay-off’ formerly in the Act.

After independence due to modernization in textile mills, often there was lay-off and retrenchment of workmen without any compensation payment in majority of the managements, although few of them paid compensation, thus there was no uniformity norm for compensation in such circumstances which resulted in the deteriorating economic conditions of the labour class, consequently, the stake of National economic development and social security of the society necessitated for the enactment of the social/beneficial legislation like the present Act¹.

New Concept of Lay-off:-

The Industrial Disputes (Amendment) Act, 1953 inserted the definition of Lay-off by section 2 and this definition is analogous to the definition of Lay-off as contained in Section 2(kkk) of the industrial Disputes Act. 1947. The definition of term ‘Lay-Off’ did not exist formerly in the industrial Disputes Act, 1947.

The consequences of lay-off are dealt in Chapter V-A of the Act. The provisions contained in this chapter provide for payment of compensation to the laid –off workers. Section (kkk) prescribes Lay-off as the failure ,refusal or inability to provide employment to the workmen by the employer on account of shortage of coal ,power or raw material, or the accumulation of stock, or the breakdown of machinery, or natural calamity, or any other connected reasons.

¹ www.google/lay-off visited on 2/10/2013

Although the employer is willing to provide employment to the workmen, but is unable to do so because of unavoidable circumstances which are beyond the control of the employer. The section provides that a workman who is so deprived of employment must be such whose name is borne on the muster rolls of his industrial establishment and the workman must not have been retrenched.

Importance of Industrial Disputes Act.

Labour legislation is one of the most progressive and dynamic instrument for achieving socio-economic progress. There is no other branch of law which embraces such a wide and effective role in social engineering and social action. It is here that the Industrial law distinguishes itself from other branches of Law. The progress of a country being dependent upon the development of industry, the Industrial Laws play an important role in the national economy of a country. The Industrial Law keeps a check upon the industrial operations and makes it mandatory for the compliance of all the statutory provisions provided under the law.²

The Industrial law was enacted as labour problems constituted a serious menace to the society, and needed solution, if not to eradicate then atleast to mitigate them in the very beginning. In a country like India, where the bulk population of Indian society constitutes poor and illiterate labour class and therefore unconscious of their rights. The socio – economic status of the worker was far below the status of their employer. As such they could not exercise their free will in negotiating with the employer for employment. The workers were left with no choice but to accept such terms and conditions of employment to their utter deterioration with their sole means of earning their livelihood. The employer

² Industrial law- P. L. Malik

taking undue advantage of these dominantly prevailing circumstances in the Indian society exploited the workers for their own benefit. In absence of social security, the pathetic conditions of the workers were worsening drastically day to day affecting the National economy.

It was then, that the Government of India intervened with some socially beneficial labour enactments like the Workmen's Compensation Act, The Payment of Wages Act, The Minimum Wages Act, The Industrial Disputes Act, with a view to provide social security and protect the workers from the clutches of the mighty employers.

The importance of the labour laws is evident from the fact that our Constitution guarantees social justice to the people of India, "Social Justice" means achievement of socio-economic objectives.

Objectives of Industrial disputes Act, 1947³

The Industrial Disputes Act is a progressive measure of social legislation aiming at the improvements of the conditions of the workmen in industry.

The object of the industrial relation legislation in general is industrial peace and economic justice. The prosperity of any industry depends upon its growing production. The production is possible only when the industry functions smoothly without any interruptions. The factors which influence the production are absence of disputes and harmonious relationship between the labour and the management. Therefore, every industrial relations legislation necessarily aims at providing conditions congenial to the industrial peace.

³ Dr Avtar Singh – Introduction to Labour and Industrial laws 2nd Edition 2008

Economic justice is another objective aimed at by such legislations. Almost all interruptions in production are due to industrial disputes. Dissatisfaction with the existing conditions is the root cause of industrial dispute. The country being the custodian of public interest intervenes by “State Legislation” with a view to provide economic justice by ensuring fair returns to the labour.

The Industrial Disputes Act, 1947 came into operation on the 1st day of April, 1947. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected in *Banaras Ice Factory Ltd. v Its Workmen*.

In *Workmen of Dimakuchi Tea Estate v/s Management of Dimakuchi Tea Estate*, Supreme Court has analyzed the following :

- (1) The Promotion of measures for securing amity and good relations between the employer and workmen;
- (2) An Investigation and settlement of industrial disputes between employers and employees, employers and workmen or workmen and workmen with a right of representation by a registered Trade Union or Federation of Trade Unions or Association of employers or a federation of association of employers;
- (3) The prevention of illegal strikes and lock-outs;
- (4) Relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking;
- (5) Collective bargaining.

The Salient features of the Industrial Disputes Act, 1947

- 1) Any Industrial disputes may be referred to an industrial tribunal by an agreement of parties to the dispute or by the State Government if it deems it expedient to do so.
- 2) An award shall be binding on both the parties to the disputes for the specified period not exceeding one year. It shall be normally enforced by the Government.
- 3) Strikes and Lock-outs are prohibited:

During the pendency of conciliation and adjudication proceedings;

During the pendency of settlement reached in the course of conciliation proceeding;

During the pendency of awards of Industrial Tribunal declared binding by the appropriate Government.
- 4) In public interest or emergency, the appropriate Government has power to declare the transport (other than railways), coal, cotton textiles, foodstuffs and iron and steel industries to be a public of six months.
- 5) In case of lay-off or retrenchment of workmen the employer is required to pay compensation to them.
- 6) Provision has also been made for payment of compensation to workmen in case of transfer or closure of an undertaking.
- 7) A number of authorities such as Works Committee, Conciliation Officers, Board of Conciliation, Court of Inquiry, Labour Courts, Tribunal and National Tribunal are provided for settlement of Industrial disputes. The nature of powers, functions and duties of these authorities differ from each other but each one of them plays an important role in ensuring industrial peace.

Importance of Industrial Law In India

The Industrial law in pre-independence India was in a rudimentary form. But during post-independence era there was a development of a new jurisprudence, “Industrial Law” and with the development of industry, there was simultaneous development of Industrial Law. Evidently the steady growth and importance of this law can be judged from the bulk of cases before the Supreme Court on Industrial law matters. The economic growth of a country being dependent upon the development of industry, the industrial Laws play an important role in the national economy of a country. The object of the industrial relation legislation in general is industrial peace and economic justice. The prosperity of any industry depends upon its growing production, which is possible when the industry functions smoothly without any interruptions. The most vital ingredient which is essential for the growth of economic production is harmonious and peaceful relationship between the labour and the, management along with the economic justice. Industrial Disputes is the root cause arising due to the dissatisfaction with the exiting economic conditions. History has proved that the labour struggle is a result of a continuous demand for fair return to labour in various forms with a view to maintain economic equilibrium and social security at par .Hence with same view, economic justice has been ensured to people of India by our Constitution. The object of all labour legislations is to ensure fair wages and to prevent disputes and maintain cordial, harmonious and peaceful relationship between the labour and management and enhance National Economy with socio-economic justice environment.

The Industrial Disputes Act is progressive measure of social legislation aiming at the improvement of the conditions of workmen in the industry. The act includes the provisions for reference of industrial disputes to Industrial Tribunal, binding award enforceable by the Government.

Lay-off and Retrenchment in India. –

Originally the Industrial Dispute Act did not provide for lay-off and retrenchment. The explosive situations due to enormous accumulation of stocks, particularly in the textile mills, with the consequence of probable closure, large scale lay-off and retrenchment in many mills provoked to introduce some effective measures to prevent large scale industrial unrest in the country. The ordinance promulgated for this purpose in 1953 was replaced by the Industrial Disputes (Amendment) Act, 1953 which commenced retrospectively from 24th October, 1953. Thus, Chapter VA was introduced into the Act to regulate lay-off, retrenchment, transfer and closure of undertakings. The provisions under this Chapter have much impact on some of the rights and privileges of the employers who are subjected to certain new liabilities and restrictions in the event of lay-off, retrenchment, transfer or closure of undertakings. In 1976, a new Chapter VB, was added to the Industrial Disputes Act incorporating more stringent conditions against lay-off, retrenchment and closure of certain establishments.

Application of Chapter VA.- Section 25-A makes it clear that the provisions of Sections 25-C to 25-E shall not apply to:

- (i) Industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or
- (ii) Industrial establishments which are of a seasonal character or in which work is performed only intermittently.

Hence, the provisions relating to lay-off will not be applicable to industrial establishments with less than 50 workers in the preceding calendar month⁴ or in case of seasonal

⁴ K.N. Joglekar v Barsi Light Railway (1955) 1 LLJ 371 (Bom)

character or with intermittent works, industrial establishment for this purpose is defined to mean:

- (i) A factory as defined in the Factories Act, 1948; or
- (ii) A “mine” as defined in the Mines Act, 1952; or
- (iii) A “plantation” as defined in the Plantation Labour Act, 1951.

“Seasonal Character, intermittently”.-The above expressions are not to mean the same. They are distinct to mean seasonal or otherwise intermittent. The term intermittent⁵ denotes no continuity. Seasonal character are when there are breaks or when the work is not regular in nature. “Seasonal” implies dependence on season or nature and hence neither the employer nor the employee in the particular industrial establishment has any control.

Government decides “Seasonal Character” intermittence- Clause 2 of Section 25-A empowers the appropriate Government to decide the “Seasonal Character” or the “intermittent” nature of work in the industrial establishment, it that becomes a point of dispute. The decision of the Government on this will be final.

The legislature has given exclusive jurisdiction to the appropriate Government in this matter and hence when such an issue becomes a point of dispute the Tribunal instead of deciding that, should refer that question to the appropriate Government or direct the parties to move the appropriate Government to give its decision. Till the Government had given its decision the Tribunal should postpone its proceedings on the matter referred to it. In *Tata Oil Mills Co. v The Workmen of the Kanitta Establishment*,⁶ the question referred to the Tribunal related to the seasonal closure of copra purchasing depot of the

⁵ Kohinoor Saw Mills Co v Industrial Tribunal (1974) II LLJ 210 (Mad)

⁶ 1980 Lab IC 355 (Ker)

petitioner at Alleppey. However, the pleadings of the parties raised the question as to whether the industrial establishment at Alleppey was of a seasonal character or not. The tribunal found that it is not of a seasonal character and on that basis it gave the award directing the petitioner to give continuity of service to the workmen from the date of their entry to the petitioner's service holding that the intermittent closure every year by the management of their depot at Alleppey was unjust and unreasonable. This was struck down on the ground that the Tribunal had no such jurisdiction and that "the appropriate Government and that Government alone has jurisdiction to decide the question" of the "Seasonal Character" of the industrial establishment or the intermittent nature of the work thereon.

Quasi-judicial function:

The power endowed with the appropriate Government is quasi-judicial in nature as there are two contending parties and a point of dispute. Therefore, the Government is bound to give opportunity to both the contending parties to make their representation and further that all relevant factors must be taken into consideration and that the decision should not be based on irrelevant factors⁷.

Definition of Lay-off: Section 2(KKK) defines lay-off to mean the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials, or the accumulation of stock or the breakdown of machinery or for any other reasons to give employment to a workman, whose name is borne in the muster roll of his industrial establishment and who has not been retrenched. The definition makes it clear that lay off is occasioned by the employer's failure or inability on account of economic reasons to give employment to the workman. The words "any other reason" used in the definition

⁷ Associated Cement Co v Workmen (1960) 1 LLJ (SC)

mean reasons analogous to those enumerated in the definition. The relation between the employer and employed during lay-off is only suspended and employees continue to be on the muster roll of the employer and they have to be reinstated as soon as normal work is resumed.

Further analysis of the definition:- If the failure to give employment is due to any reasons not specified in the definition or analogues to them then it will not be comprehended by the definition. For instance if the layoff was necessitated in one section as a result of strike, go-slow or absenteeism of workers in other sections of the same establishment, then such lay-off does not come within the definition⁸.

“For any other reasons”.- The words ‘for any other reasons’ in Section 2(KKK) do not mean for any reason whatsoever, or for whatever be the reason. They convey to mean for some reason analogous to the reasons specified in the section, and not for any other reason of whatever character. The words “for any other reason in section 2(KKK)” must be considered *ejusdem generis* with the words that precede them, and the circumstances which would justify a lay-off must be integrally connected with production. A lay-off merely on ground of financial depression of the employer is not comprehended by the definition⁹.

If the employer has deliberately and maliciously brought about a situation culminating in the declaration of lay-off then it will not be covered by the definition as it is mala fide lay-off. For the same reasons a lay-off declared to victimise the workmen or for some other ulterior purpose would not come within the definition.

⁸ Central India Spinning Weaving and Mfg Co v Industrial Court (1959) 1 LLJ 468 (Bom)

⁹ Tatanagar Foundry v Workmen (1962) 1 LLJ 382 (SC)

Lay-off differs from Lock-outs.- The Supreme Court in *Kairbetta Estate v Rajamanickam*,¹⁰ discussed the concept of lay-off and lock-out and observed that both are different. The main points of difference between them are:-

- i) That lay-off generally occurs in a continuing business whereas lock-out is a closure of the business even though temporarily.
- ii) In case of lay-off the employer is unable to give employment due to the reasons specified such as shortage of coal, power, raw materials, or accumulation of stock or break down of machinery, etc. In lock-out the employer deliberately closes the place of business and lock/-outs the whole body of workmen for reasons which have no relevance to the causes applicable to lay-off
- iii) In the case of lay-off employer is liable to pay compensation whereas in lock-out no such liability is imposed upon the employer if the lock-out is justified and legal.
- iv) Lock-out is resorted to by the employer as a weapon of collective bargaining whereas lay-off is invariably caused by economic and trade reasons.
- v) The Act imposes certain prohibition and penalties against lock-out whereas lay-off does not have such thing.

Distinction Between Lay-off and Retrenchment.

Term lay-off has been defined in Section 2(kkk) and the term retrenchment' in Section(oo).

In case of lay-off there is failure, refusal or inability of the employer to give employment to a workmen for a temporary period while in retrenchment the workman is deprived of his employment permanently.

¹⁰ (1960) 11 LLJ 275(SC)

Lay-off is on account of one or more reasons mentioned in Section 2(kkk) while in retrenchment the termination is on the ground of service of labour.

The reasons of lay-off are entirely different as compared to reasons of retrenchment.

In lay-off the labour force is not surplus but in retrenchment it is surplus which has to be retrenched.

In lay-off the relationship of employment is not terminated while in retrenchment it is terminated.

In lay-off relationship of employment is only suspended while in retrenchment it is terminated.

Consequences of both are different to each other and are governed by different norms.

Lay-off is for trade reasons beyond the control of the employer i.e it is not intentional act while retrenchment is permanent with the intention to dispense with surplus labour.

In lay-off there is no severance of relationship of employer and employee while in retrenchment, the relationship of employer and employee is severed at the instance of the employer.

The right to receive lay-off compensation is subject to certain more stringent restrictions while the right to receive compensation is absolute in retrenchment.

The right to receive lay-off compensation is subject to certain more stringent restrictions while the right to receive retrenchment compensation is subject to less stringent restrictions.

Right of workmen laid off for compensation.-Section 25-C of the Industrial Dispute Act lays down the conditions and extent of compensation to workers who are laid off. The provision which was introduced in 1953 underwent a recast in 1956 and in 1965. After the 1965 amendment to Section 25-C the conditions for lay-off compensation are the following:

- i) The establishment must have employed fifty or more workmen in an average during the calendar month preceding the lay-off;
- ii) The industrial establishment in question must not be of a seasonal character or in which work is performed intermittently;
- iii) The claimant should come within the definition of workman;
- iv) He should not be badli workman; or casual workman;
- v) His name must be borne on the muster roll and he should not have been retrenched;
- vi) He must have completed not less than one year of continuous service;
- vii) Each one year continuous service must be under the same employer;
- viii) Lay-off compensation must be half of basic wages and dearness allowance;
- ix) Maximum period for entitlement of lay-off compensation is forty-five days during any period of twelve months;
- x) No right to lay off compensation for more than forty-five days during 12 months if there is an agreement to that effect;
- xi) In the absence of a contrary agreement, lay-off compensation is payable for subsequent periods beyond 45 days during the same 12 months; if such subsequent period is/are not less than one week or more at a time;
- xii) Beyond 45 days the employer can escape liability of resorting to retrenchment after payment of retrenchment compensation;
- xiii) Finally, the lay off in question should not be by way of mala fide or victimization or with other ulterior motives¹¹

¹¹ Tatanagar Foundry v Workmen (1962) ILLJ 382 (SC)

Badli workmen.– ‘Badli workmen’ as stated in the explanation to Section 25C is a substituted workman. He is employed in the place of another whose name is borne in the muster roll. The badli workman’s name should not find a place in the muster roll. Such a workman ceases to be a badli workman for the purpose of section 25-C on his completion of one year’s continuous service in the establishment. Consequently, a badli workman who has completed one year continuous service is entitled to get work from the employer. If the employer fails to give him work, the badli workman would be entitled to get lay-off compensation, if he has completed one year’s continuous service with that employer.

Continuous service- A workman who has completed a minimum of one year’s continuous service with the same employer alone is entitled to lay-off compensation under Section 25C. In 1964 section 25B was amended to its present form. Section 25C(I) defines continuous service and Section 25B(2) defines ‘continuous service of one year’ while sub-clause (b) of section 28B(2) defines ‘continuous service of six months’.

Continuous service means uninterrupted service. However, interruption on account of any of the following reasons will still deem such service to be uninterrupted. Such instances are:

- a) Sickness;
- b) Authorized leave;
- c) Accident;
- d) Strike which is not illegal;
- e) Lock-out; and
- f) Cessation of work which is not due to any fault on the part of the workman.

Participation in illegal strike: A workman taking part in illegal strike *ipso facto* does not affect his continuity in service, unless that workman is actually dismissed from service on this score¹².

Continuous service of one year.-Under Section 25B(2)(a) of the Act a person can be said to be in continuous service for a period of one year if that worker:-

- i) Has been in employment for twelve calendar months; and
- ii) He has actually worked for not less than:
 - a) 190 days in the case of employment below ground in a mine;
 - b) 240 days in any other case.

Both the conditions in (i) and (ii) must be simultaneously complied with. Hence, employment for 12 calendar months but with less than 190 or 240, as the case may be, actual days of work by a workman will not be satisfying this provision. Similarly, a workman who has put in more than 190 or 240 days actual work but that in less than 12 calendar months will not be in conformity with the provision. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a periods of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where the workman has not at all been employed for a period of 12 calendar months, it becomes unnecessary to examine whether the actual days of work numbered 240 days or more.

Days “actually worked.”-The words “actually worked” would not include even holidays much less Saturdays and Sundays, for which full wages are paid. Since legislature has added the word “actually” the intention is manifest that only those days actually worked

¹² *Jairam Sonu Shogala v New India Rayons Mills I LJJ 20 (Bom)*

and those deemed actual working days mentioned in the explanation to Section 25-C(2) can alone be counted in calculating the 240 or 190 days of continuous service¹³.

Explanation to section 25-C(2) enumerates certain categories which are deemed to be actual days of work for the purpose of section 25-C. They are:-

- i) Those days the workman has been laid off under an agreement or as permitted by the standing orders framed under the Industrial Employment(Standing Orders) Act, 1946,or under the Industrial Disputes Act 1947 or under any applicable law to the establishment;
- ii) Those days he has been on leave with wages, earned in the previous years;
- iii) Those days he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- iv) Those days a female worker has availed of as maternity leave subject to a maximum of 12 weeks.

Continuous service of six months. -Under Section 25-B(2)(B) a worker must:

- i) Have been in employment for a period of six calendar months; and
- ii) Have actually worked for not less than 95 days in the case of his employment in underground mine or 120 days in any other case to constitute continuous service for a period of six months.

Burden of proof

Burden of proof is on claimant workman to show that he had worked for 240 or 120 days, as the case may be, in a year. For this the general principles of Evidence Act can apply¹⁴.

¹³ Parthasarathi v Management of Standard Motors Products (1964) II LLJ 546

Daily wager cannot claim regularity retrospectively- In *APSRTC v. LakshmojiRao*,¹⁵ employees were selected on daily wages basis. Later they were selected as regular employees. The Supreme Court held that they do not become regular employees automatically from day one even though they perform same duties as daily wagers.

Amount of compensation- A workman with one year's continuous service is entitled to lay-off compensation for all days of lay-off except weekly holidays. The amount of compensation payable to each workman shall be half the total of basic wages and dearness allowance. Lay-off compensation payable under Section 25C is not wages within the meaning of the term 'wages' in the Payment of Wages Act, 1936. This is by way of temporary relief to a workman who is forced to undergo involuntary unemployment, of course for reasons stated in the definition clause of "lay-off". The employer, for reasons beyond his control, is unable to provide work and hence as a social security measure and in the general social interest a duty is imposed upon the employer to give compensation to the workman who is deprived of his opportunity to work and hence forced to lose wages¹⁶.

Period of lay off compensation- Lay-off compensation is payable for all days of lay-off. However, the maximum period for which compensation payable is 45 days during any period of 12 calendar months. In the absence of a contrary agreement, if the lay-off exceeds 45 days during a period of 12 months, then the workman is entitled to the same rate of compensation for such period beyond the 45 days, whether in continuation of it or subsequently, on other occasions. However, such period lay-off

¹⁴ R.M.Yellatti v A.E. Engineer AIR 2006 SC 355

¹⁵ 2004 AIR SCW 565

¹⁶ Zandu Pharmaceuticals Works v Kulkarni & Co (1966) 1 LLJ 560 (Bom)

beyond the 45 days should be for minimum of one week or more to entitle the compensation thereof. But in such situations the employer may either:

- i) Go on paying on lay-off compensation for such subsequent periods; Or
- ii) Retrench the workmen after the expiry of 45 days of lay-off on paying the retrenchment compensation as in Section 25F.

Payment of compensation is not a condition precedent to lay-off.-The Act only says that a workman under the stated conditions when laid-off is entitled to compensation. A workman is given the right to recover compensation on being laid-off. This shows that payment of compensation on should not precede the declaration of lay-off. On the contrary, declaration of lay-off may be effected first and this will impose a liability on the employer to pay and a right on the workmen to recover lay-off compensation. The employer's rights to declare lay-off can be exercised independently of his liability to pay compensation¹⁷. It has been held that compensation for lay-off cannot be awarded in advance of actual lay-off and on grounds of social justice.

Muster rolls.-Section 25D imposes a duty on the employer to maintain muster roll so as to enable the laid-off workmen to mark their presence at the appointed time on each working day. This requirement of making presence has relevance without which the workman laid-off may forgo his right to compensation under Section 25(E)(ii).

Denial of compensation - Justification.- Under Section 25(E) no compensation is payable to a workman who has been laid-off under the following eventualities:-

- (i) If he refused to accept any alternative employment in the same establishment or in another belonging to the same employer situated nearby which does not

¹⁷ Central India Spg Wvg Mfg Co v Industrial Court (1959) ILLJ 468 (Bom)

require any special skill and that the workman is given similar wages as he getting previously;

- (ii) If he does not report to work at the establishment everyday at the appointed time;
- (iii) If his laying-off has been due to strike or slow down in any other part of the same establishment.

In *Associated Cement Co v Workmen*¹⁸, the Supreme Court had occasion to interpret the term “part of the same establishment” used in Section 25(E)(ii). The companies owned cement works and limestone quarry, both in Bihar. The cement works depend solely on the quarry for its limestone. The quarry workers struck work. Therefore, some parts of the cement works were closed down by the company. Subsequently, the strike in the quarry was withdrawn. Therefore, the closed down parts of the cement works started functioning. However, the workers in the closed down parts claimed lay-off compensation. On reference the tribunal held that quarry is not part of the cement works. On appeal Supreme Court reversed it. The court said that the Industrial Disputes Act is silent regarding the test to decide “what is one establishment.” Geographical proximity, unity of ownership, functional integrity, general unity of purpose, can be the tests. The real purpose of these tests is to find out the true relation between the parts, branches of units. If in their true relations they constitute one integrated whole then they can be said to be one establishment.

In the instant case the quarry and cement factory constituted one establishment within the meaning of Section 25(E)(iii). The lay-off in the factory was due to non-supply of limestone by reason of the strike in the limestone quarry and the strike was decided by the same union which consisted of workmen of the cement factory and the quarry. Thus,

¹⁸ AIR 1960 SC 56

section 25(E)(iii) clearly applied and the workmen of the closed down cement factory are not entitled to claim lay-off compensation.

The tests laid down above are not to be applied mechanically and by way of syllogism¹⁹. The significance and importance of those several factors will not be the same in each case. To find out whether there is sufficient functional integrity between the concerns, which may be separate entities, it is necessary to take an overall picture of their activities and the interest, if any, which they have in common.

Whether the employer has a right to lay-off.-The question was discussed by the Bombay High Court in *Veiyre v Fernandes*²⁰. In this case the company laid-off some employees. Subsequently, the company retrenched some of them after paying the lay-off compensation and retrenchment compensation. But the workman claimed full wages for the one year lay-off period. It was rejected by the payment of wages authority. Hence, this petition arose. The workmen argued that Section 25(C) merely confers a right to workmen to receive lay-off compensation and that it does not give a right to the employer to lay-off a workman. This was not accepted by the Court for the following reasons. Chapter VA of the Act imposes certain obligations upon the employer such as given the conditions of lay-off the employer was bound to continue the service of the employee and pay lay-off compensation or retrenchment by giving retrenchment compensation. This constituted a serious encroachment upon the employer's rights under the common law. Looking at the scheme of Chapter VA it is implicit that legislature has conferred the power upon the employer to lay-off his employees. Thus, it is admitted that the employer has the right to lay-off his employees.

¹⁹ *Western India Match Co Ltd v Workman* (1963) 11LLJ 459 (SC)

²⁰ 195647 1 LLJ 547 (Bom)

Can lay-off be declared to victimize workers.-In *Tatanagar Foundry Co v. Their Workmen*²¹, the Supreme Court held that a lay-off declared mala fide by the employer or to victimize the workmen or for some other ulterior purpose is not lay-off contemplated by Section 2(KKK) of the Act. The device of lay-off cannot be invoked to victimize workers.

1976 and 1982 amendment, to lay-off provisions.-To mitigate the hardship caused by the large scale lay-off, retrenchment, etc. especially in big establishments provoked the Parliament to introduce a new Chapter VB to Industrial Disputes Act. The provisions of this new chapter are applicable only to lay-off referred in the chapter. Under Section 25-K, the provisions of this new chapter shall apply to an industrial establishment in which not less than 100 workmen were employed on an average per working day for the preceding 12 months. Under section 25-M, no workman whose name is borne on the muster roll of an industrial establishment to which this chapter applies shall be laid off by the employer except with the previous permission of the authority appointed by the appropriate Government, unless such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

In the case of every application for permission, the authority to whom the application is made, after making inquiry, grant or refuse permission for recording reasons for the same. Contravention of section 25-M is 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. Supreme Court upheld the validity of Section 25-M and Section 25-Q in *Ashok Kumar Jain and others v State of Bihar*²². In another decision, the Court reiterated that Section

²¹ 1962 I LLJ 382 (SC)

²² 1995 SCC 516

25-M is *intra vires* Article 19(1)(f) and (g) of the Constitution reversing the Madras High Court decision in *Gurumurthy v Simpson and Co*²³.

Section 25M was redrafted and reshaped by the 1984 amendment. After the 1984 amendment, the concerned authority is obliged to afford an opportunity of being heard to the persons concerned with the lay-off and to examine the genuineness and adequacy of the reasons given by the employer. The authority's orders are made reviewable in certain cases. After the judgment in *Papanasam Labour Union case*²⁴, all controversies and vires of the amended section 25-M are settled at rest.

Global concept of Layoff

In British and American English it is called as redundancy, it is the temporary suspension or permanent termination of employment of an employee or (more commonly) a group of employees for business reasons, such as when certain positions are no longer necessary or when a business slow-down occurs.

Originally the term layoff referred exclusively to a temporary interruption in work, as when factory work cyclically falls off. The term however nowadays usually means the permanent elimination of a position, requiring the addition of "temporary" to specify the original meaning.

Many synonyms such as downsizing exist, most of which are euphemisms or doublespeak and more abstract descriptions of the process, most of which can also be used for more inclusive processes than that of reducing the number of employees. Downsizing is defined as the "conscious use of permanent personnel reductions in an attempt to improve efficiency and/or effectiveness". Since the 1980s, downsizing has become increasingly

²³ (1981) II ILJ 360 pg 549

²⁴ 1995 Lab IC 735 SC

common. Indeed, recent research on downsizing in the U.S., UK, and Japan suggests that downsizing is being regarded by management as one of the preferred routes to turning around declining organisations, cutting costs, and improving organisational performance, most often as a cost-cutting measure.

Common abbreviations for reduction in force²⁵

RIF - A generic reduction in force, of undetermined method. Often pronounced like the word riff rather than spelled out. Sometimes used as a verb, as in "the employees were pretty heavily riffed".

- **eRIF** – Layoff notice by email.
- **IRIF** - Involuntary reduction in force - The employee(s) did not voluntarily choose to leave the company. This usually implies that the method of reduction involved either layoffs, firings, or both, but would not usually imply resignations or retirements. If the employee is fired rather than laid off, the term "with cause" may be appended to indicate that the separation was due to this employee's performance and/or behavior, rather than being financially motivated.
- **VRIF** - Voluntary reduction in force - The employee(s) did play a role in choosing to leave the company, most likely through resignation or retirement. In some instances, a company may exert pressure on an employee to make this choice, perhaps by implying that a layoff or termination would otherwise be imminent, or by offering an attractive severance or early retirement package.
- **WFR** - Work force reduction.

²⁵ www.google.com

Cases on Lay-Off

K.T. Rolling Mills (Private), vs Meher M.R. And Ors. : (1962) IILLJ 667 Bom

The tribunal held that the workmen were not entitled to lay-off compensation under Chap. VA of the Industrial Disputes Act, where the order to pay compensation by the labour court was declared illegal as in that establishment there were less than 50 workmen.

Workmen Of The Straw Board v M/S. Straw Board Manufacturing (1974) I LLJ 499 (SC)

The Tribunal Court held in favour of the Company and stated that the closure was legitimate and it was not a case of lay-off, retrenchment or lock-out. The Tribunal further held that since it was a legitimate closure, the question of compensation could not be determined by it and the workmen were not entitled to any relief.

Workmen Of M/S Firestone Tyre & . vs Firestone Tyre & Rubber Company 1973 Lab IC 851 (SC)

If, however, the terms of r employment confer a right of lay-off on the management, then, in case of an industrial establishment which is governed by Chapter VA. Compensation will be payable in accordance with the provisions contained therein. The sections dealing with the matters of lay-off in chapter VA is however applicable to certain type of industrial establishment. Where, the number of workmen was only 30, there were no standing orders certified under the industrial employment “standing orders” Act, 1946 nor was there any term of contract of service conferring any right of lay-off, the workmen must be held to be laid off without any authority of law or power in the management under the contract of service. Such a case goes out of chapter V A.

Sae Mazdoor Union, Jabalpur vs The Labour Commissioner, Indore 2001 (3) MPHT 200

The fact that the situation of accumulation of stock would become inevitable if workers were not laid-off, would be within the scope of reasons of sec 25M read with sec 2(KKK) of Industrial Dispute Act 1947. Under the circumstances, the application for permission to lay off reflect a ground on the basis of which the labour commissioner could objectively consider the case for granting the said permission. Therefore the permissions for lay-off granted by the Labour commissioner was not assailable.

Conclusion

Industry must find due emphasis, for a country to develop/prosper and be modern. It is non-refutable that the development of industry is correlated to labour contentment. Therefore, to achieve this, our country aims to create a welfare State on a socialistic pattern of society as expressly embodied in our Constitution of India. The need for exclusive and independent legislation was felt the need of the hour especially in country like ours whose bulk population consists of the labour class and there is every possibility of them being exploited due to their illiteracy/ignorance, ready to accept any sort of jobs for their livelihood for mere existence and ultimately dominated by the employers/capitalists for their selfish motive to exploit the labour class. By then it was well accept fact that the growth of national economy and development depends upon the industrial growth which is in turn dependent upon the peaceful/harmonious relationship between the employer and employee. With this view various socially beneficial legislations like the Industrial Disputes Act, Workmen's Compensation Act, Payment of Wages Act, etc have been enacted from time to time along with the amendments which would suit with the day to day changing trend. As a consequence, the common law right

of an employer to discharge and dismiss an employee, popularly known as the right to 'hire and fire' has been subject to various statutory limitations and conditions.

The growth of industrialization, especially the renaissance in the industrial technology has increased the demand for labour manifold. The general awakening amongst the people has brought about a greater awareness of rights and personal importance.

The labour consciousness has resulted in organizing itself manifesting in unions and societies. The conscious tendency in some of the capitalist class towards their exploitation, the rising costs of living and increase in the standard of life, have found echo in greater demands for better wages and amenities.

The Industrial Disputes Act, 1947 and the timely amendments in the Act, especially the provisions relating to the retrenchment, lay-off compensation has proved to be of great advantage to the workmen, in a country like India, wherein the bulk population is constituted of the labour class. These workmen are solely dependent upon their wages for their livelihood. So taking into consideration the essence of wage earnings to the workmen for their livelihood, the legislature has amended the principal Act and inserted provisions relating to retrenchment, lay-off compensation, definition, procedure to be followed in such cases, conditions precedent for retrenchment, lay-off, right of workmen to claim compensation, exceptions to compensation, reinstatement of a retrenched workman, relief in unjustified circumstances. The insertion of chapter V-B in the year 1976 by an amendment, special provisions relating to lay-off, retrenchment has been incorporated.

Employers used these weapons (Retrenchment and layoff) commonly known as the "Downsizing Policy", to lessen their workforce due to heavy expenses, company defaulter, downs in business etc. In both techniques employees are terminated from" first

come last go and last come first go method” But the difference between these two is that retrenched employees are promised legally that they will be recalled on job (last go first come method) when the conditions of business gets better but in layoff employees are terminated without any such promise after paying all their legal dues.

The employees should be informed well in advance about the layoffs. Prior warning or informing about the layoffs creates a chance for the employees to revolt against the Management, cause damage or sabotage to the machinery and valuable assets of the company. This impact can be reduced by providing the employees with retraining and offering them adequate compensation and benefits.

Although the Industrial Disputes Act is a piece of social beneficial legislation enacted for providing social security to the workmen, which constitutes the bulk population of the society, it is seen that the workmen are rather targets of victimization at the hands of the mighty Management/Employer. The workmen are retrenched, laid-off and paid petty amount as compensation on the pretext of economic conditions or settlement compensation. The workmen due to sudden loss of earnings are left in the deteriorating economic conditions since their sole source of wage earnings is lost. They are victims either of the highly advanced technology, unjustified discrimination, illegal termination, etc. Although, due to retrenchment, lay-off compensation, they are compensated to some extent, but that amount is meager compare to their earnings from actual service.

Most of the cases of retrenchment, lay-off are due to illiteracy, ignorance, victimization, unjustified discrimination, illegal termination at the hands of the mighty Management, flimsy role of Trade Union Officials. The Workmen are retrenched, laid-off by the Management on various pretexts of economic conditions, inability, no confidence, non-renewal of service contract, without complying with the provisions of the retrenchment

and lay-off compensation as per the provisions of the Industrial Disputes Act. In such cases, only those who are vigilant of their rights and in search of justice approach the concerned authorities whereas others are ignorant of their rights and mutely sustain the injustices meted to them. Some workmen withdraw their demands and goes for petty settlement at some middle stage of the disputes, especially when they realize that they cannot succeed the mighty management.

Suggestions:-

1. Bringing more awareness/awakening amongst the worker class regarding the socially beneficial legislations like the Industrial Disputes Act, Workmen's Compensation Act, etc. Emphasizing, on the various benefits available to them like that of the of retrenchment lay-off provisions, the retrenchment, lay-off compensation, right of claiming compensation in cases of retrenchment, lay-off.
2. No doubt, almost every Industry has their own Human Resources Department/ Personnel which undertake the matters relating to legal aspect of the Unit. But more stress must be given on solving the grievances/disputes of the workmen on justified reasons in cases relating to retrenchment, lay-off compensation.
3. Usually, the workmen hesitate to discuss about their grievances/problems, victimization due to some sort of fear in their minds against the Management/ Employer, hence the workmen must be encouraged to approach to the competitive authority with their grievances/disputes in such cases and bring amicable solution between the parties which is beneficial to both, i.e. the Management and the workmen.

4. Sometimes the workmen do approach the competitive authorities for the redressal of their grievances/disputes of retrenchment, lay-off compensation, but take back at some stage for one or the other reasons like settlement, compensation, or victimization.
5. The Trade Union has a vital role to play in solving the disputes relating to retrenchment, lay-off compensation at the root level and bring amicable solution between the parties under justified reasons, beneficial to the management and the workmen.
6. The hierarchy of Authorities under the Act must be more vigilant, supportive, co-operative with the workmen grievances and make them realize that they shall be compensated for their grievances on justified reasons and will not fall prey to victimization of retrenchment and lay-off.
7. We have very few instances on retrenchment, lay-off compensation compared to other States in India, so the procedure of disposal of cases must be speedy based upon the circumstances of the case and simultaneously compensated in cases of retrenchment and lay-off.
8. The implication of highly advanced technology in the Industries must be a boon to the workmen and sought more benefits and not result to the detriment of the workmen leading to retrenchment, lay-off of the workmen.
9. Some beneficial schemes must be encouraged for the benefit of the retrenched and laid-off workmen, so that the pains of sudden loss of earnings does not affect the livelihood of the workmen and their dependents and they did not feel neglected or in secured in the society.

Bibliography

Books Referred: -

1. P. L. Malik – Industrial Law – 22nd Edition
2. Prof K.M. Pillai – Labour and Industrial Laws 11th Edition 2007
3. S. M Chaturvedi – Labour and Industrial laws- 13th Edition Central Law Agency
4. Dr Avtar Singh – Introduction to Labour and Industrial laws 2nd Edition 2008
5. S.N. Mishra- Labour and Industrial Laws 24th Edition Central Law Publication
6. O.P.Malhotra- Labour and Industrial Law – vol 2

www.google.com