

**SEMINAR
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RETRENCHMENT

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RETRENCHMENT

Retrenchment is a permanent measure to remove surplus staff because of some basic change in the nature of the business. It results in a complete severance of employer-employee relationship. It is a case of involuntary unemployment to the workman. Until 1953 there was no statutory provision in India to give immunity or protection from the risk of such involuntary unemployment. In 1953 some provisions were incorporated in the Industrial Disputes Act and in 1976 some more amendments were introduced.

Definition-section 2(OO) of the Act defines retrenchment as termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action. But it does not include (a) voluntary retirement of the workman; (b) retirement on reaching the age of superannuation; (bb)¹ termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on the expiry of the contract being terminated under a stipulation contained therein; or (c) termination of services on ground of continued ill health².

“For any reasons whatsoever”: In **Sundarmany’s case**³ the bank, employed respondent as a temporary employee because the permanent cashier was away. When the permanent cashier joined duty, Sundarmany’s services were dispensed with. The High Court held this was nothing but discharge of Sundarmany as surplus employee. The bank appealed before the Supreme Court and Justice Krishna Iyer gave a very wide content to the definition of retrenchment. The words “for any reason whatsoever” was interpreted to mean whatsoever be the reason every termination spells retrenchment. The Court

¹ Added by the 1984 amendment.

² K.M. Pillai – Labour and Industrial Laws 11th Edition 2007 pg 164

³ State Bank of India v Sundarmany AIR 1976 SC III;

observed that had the bank known the laws, half a month's pay would have concluded the story and the bank was ordered to reinstate the employee.

In **Hindustan Steel case**, the workmen were timekeepers for a number of years on the fixed term. Their services have been extended from time to time. Later, consistent with the economic policy, the employer chose not to renew the contract. The Supreme Court held that such termination is retrenchment falling within Sundarmany's case. The Court discussed the impact of a composite order which implied the single order covering an appointment and termination of services. In cases of composite order the absence of an independent order terminating the services will not affect the coverage of retrenchment.

Above decisions were reiterated in **Delhi Cloth & General Mills v Sambu Nath**⁴, which held that striking off the name of a workman from the rolls amounted to retrenchment.

In **Santosh Gupta v State Bank of India 1980**⁵, the appointment of an employee of the Bank in 1973 was terminated after a year in 1974 on the ground that she did not pass the test which would have enabled her to be confirmed in the service. The Supreme Court held this as retrenchment under section 25-F. The management contended that the termination was not due to discharge of surplus labour and therefore, section 25-F and section 2(OO) would not attract. Rejecting this argument the court observed that section 2(OO) is so comprehensive to cover termination for any reason whatsoever except those not expressly included in section 25-F or not expressly approved for by other provisions of the Act such as section 25-FFF. The object of the above provisions is to compensate the workman for loss of employment, until he finds alternate employment⁶.

⁴ AIR 1978 SC 8

⁵ Santosh Gupta v State Bank of India 1980, Lab IC 87 (SC)

⁶ Indian Hume Pipe Co v Workmen, AIR 1960 SC 251

Impact of 1984 amendment : However, after the insertion of section 2(OO) (bb) in 1984, the above position substantially changed. Hence, when the employment was for a stipulated time period under a contract then the non-renewal of the contract of employment on the expiry of the stipulated period would not amount to retrenchment.

Probationer entitled to benefit- In **Karnataka S.R.T Corpn. V. Sheikh Abdul Khaddar**⁷, the Supreme Court held that discharge from employment or termination of service of a probationer also amount to retrenchment. As such while discharging a probationer if the requirements of section 25-F had not been complied with, the same is void. Workers engaged only during crushing season in a sugar factory were ceased to work subsequent to closure of the season will not attract retrenchment.

Termination of casual worker's service is not retrenchment -Termination of casual worker engaged for particular urgent work on completion of such work will not amount to retrenchment. Where the workman was engaged on casual basis without a written service contract or letter of appointment, for doing a particular urgent work, his service automatically came to an end when the work was over and there was no retrenchment. Therefore, the question of complying with the procedure for retrenchment does not arise in such case. Further, in such a case merely because the workman was required repeatedly for doing the urgent work and thus had to work for considerable time, the termination of service would not amount to retrenchment⁸. Unlike in *Sundarmany's* case or in the *Hindustan Steel Ltd* case where the contract of employment was for a specific period that came to an end by efflux of time in terms of the agreement between the parties, the context and facts in the instant case are quite different.

⁷ AIR 1983 SC 1320

⁸ Marinda Cooperative Sugar Mills v Ramkishan AIR 1996 SC 332

Retrenchment can be only in a live industry - Since the termination of the services of a workman who is employed in an industry constitutes retrenchment, it clearly indicates, that there must be an “industry” which must be running or in existence. It required an industry which is alive and not closed. As in the case of strike, lock-out or lay-off there cannot be a retrenchment in a closed or dead industry⁹.

Closure should be real- Closure should not be mere pretence or cloak to avoid the liability of a retrenchment. “If there is no real closure, but a mere pretence of a closure or it is a mala fide one there is no closure in the eye of law and the workmen can raise an industrial dispute”. Where there has been closure or not is a question of fact and once it is proved that there is real and factual closure the bona fide or mala fides behind it is immaterial to the fact of closure.

Termination not as punishment- Termination of the services of a workman as punishment inflicted by way of disciplinary action will not be a retrenchment. The facts of the case are to be considered whether a particular termination is a retrenchment or by way of disciplinary action. Hence, the termination of services on ground of misconduct¹⁰, ill health and inefficiency of the workmen are declared to be not retrenchment.

Exclusion from the definition of retrenchment-

- a) **Voluntary retirement-** Being an act of the employee in terminating the services by abandoning or resigning from the service such as voluntary retirement will not be covered by the definition.
- b) **Superannuation-**To attract termination of service on superannuation it is necessary that:-

⁹ Union of India v Pitu Kishu (1977) I Lab IC 1236 (Cal)

¹⁰ Imperial Tobacco Co. v Ethiraj (1954) II LLJ 637 (Lat)

- i) There must be stipulation on the point of retrenchment in the contract of employment between the employer and employee; and
- ii) The stipulation must be with regard to the age of superannuation.

Termination of service on satisfaction of these two conditions will not constitute retrenchment. But if such age of superannuation is not mentioned either in the contract of employment or invalid standing orders, it will not be treated as termination on superannuation under this clause¹¹.

- c) **Termination on non-renewal of service contract or on expiry of fixed term contract-** When the employment was for a stipulated time period under a contract then the non-renewal of the contract of employment on the expiry of the stipulated period would not amount to retrenchment¹².
- d) **Continued ill health**¹³-Termination owing to the continued ill health of the workman is not covered in retrenchment. Ill health contemplated not only physical but mental ill health as well. 'Continued ill health' includes any physical defect or infirmity incapacitating a workman for future work for an indefinite period. The question whether a workman is suffering continued ill health is a question of fact which may be proved or disproved on either side.

Condition for valid retrenchment- of a workman in an industry having continuous service of not less than one year

- i) He is given one month's notice of it with reasons, or one month wages in lieu of such notice. Provided no such notice is necessary if it is under an agreement specifying the date of termination of service;

¹¹ J.K.Cotton Spinning Mills & Co v State of UP AIR 1990 SC 1808

¹² Harmohinder Singh v Kharga Canteen (2001) 5 SCC 540

¹³ Anand Bihari v Rajasthan St Rd Corpn 1991 Lab IC 494 (SC)

- ii) He is paid compensation equivalent to 15 days average pay for every completed year of company's service or any part of it exceeding six months; and
- iii) Notice is served on the appropriate government or on such notified authority.

In **Vishwamitra Press v Workmen**¹⁴, it was held that mere receipt of notice or wages in lieu of notice period does not mean that the workers voluntarily gave up their service and so cannot be precluded from questioning the propriety of their discharge.

Notice Mandatory- Notice or wages in lieu of notice under section 25(a) is mandatory. Failure to give notice or wages in lieu of notice will vitiate the retrenchment.

Retrenchment Compensation - Under Section 25-F(b), payment of compensation is a mandatory condition precedent for the validity and operative effect of the retrenchment. If the compensation under Section 25-F(b) is not offered within the notice period under Sec 25-F(a), such notice though initially valid would become inoperative and void and no effect could be given to the notice. Notice or wages in lieu of notice under clause (a) of Sec 25-F and payment of retrenchment compensation calculated in the manner set out in clause (b) of Section 25-F are conditions precedent for retrenchment. Hence, these clauses operate as a prohibition against retrenchment until those conditions are fulfilled.

In **Pramod Jha v. Bihar**¹⁵, the Supreme Court highlighted two fold object to Sec 25-F-

- (1) a retrenched employee must have one month time to search for alternate job;
- (2) the workman must be paid retrenchment compensation at the time of retrenchment so that once he is retrenched there is no need for him to go to his employer demanding retrenchment compensation.

In order to be entitled to the compensation, the workmen should have put in minimum of one year continuous service during a period of twelve calendar months; 190 days work in the underground mine or 240 days work in other cases.

¹⁴ (1952) 1 LLJ 181

¹⁵ (2003) 3 ACE 167

Rate of compensation. - Under Section 25-F (b), the workman is entitled to 15 days average pay for every completed year of continuous service, or any part thereof in excess of six months continuous service. Under the second proviso to Section 25-C the employer has right to set off any amount paid to be workman as lay-off compensation during the preceding twelve months as against the compensation payable for retrenchment. In case of death of the workman, his legal heirs are entitled to the retrenchment compensation.

Compensation by Money Order- Sending the retrenchment compensation by Money Order when the workman refused to accept the payment of compensation is sufficient compliance of Sec 25-B¹⁶.

Payment of Cheque- Payment of compensation by cheque will be sufficient provided the cheque could be cashed before the retrenchment is effected. But when the cheque towards the retrenchment compensation was given after the banking hours and thus the cheque would be cashed only on the next day, it was held that the retrenchment order issued on the day when the cheque was given cannot be valid.

Notice to the appropriate Government- Sec 25-F (c) lays down the third condition namely, to give notice of the retrenchment to the Government. However, previous notice to the government under section 25-F(C) is only directory and not mandatory. In **Bombay Union of Journalists v State of Bombay**¹⁷, the Supreme Court held that sec 27-F(a) and (b) are mandatory whereas under section 25-F(e) previous notice to the government will not render the retrenchment invalid. Notice under Section 25-F(e) was only to give information to the Government so as to keep informed about the conditions of employment of different industries within its region.

¹⁶ Management of India Compressors Makers Corpn v D D Gupta (1997) Lab IC 694 (Delhi)

¹⁷ 1964 I LLJ 351 (SC)

Remedy against violation of Section 25-F: As the right or obligation dispute pertaining to Section 25-F cannot be raised straight away in writ proceedings. The Supreme Court laid down that the remedy provided by way of making a reference under Section 10 of the Industrial Disputes Act is the exclusive remedy which should be availed of in respect of rights and obligations which are the creation of the Industrial Disputes Act itself.

Retrenchment compensation differs from Gratuity- The device of gratuity is a retirement benefit to an employee for his long, continuous service. But retrenchment compensation is intended to give relief for the sudden and unexpected termination of employment. Since the contexts and purposes of both of them are not the same, a workman can claim both gratuity benefit and retrenchment compensation, provided the gratuity scheme framed in the establishment concerned does not prevent him for such double benefit¹⁸. On termination of the services of a temporary employee on ground of surplusage it was held that he is entitled to both gratuity and retrenchment compensation.

The Impact of 1976 and 1984 amendment on Retrenchment- Under Section 25-N inserted by the 1976 amendment the following conditions are required for valid retrenchment, an establishment employing 100 or more workers on an average per working day in the preceding 12 months.

- (i) No workman employed in such establishment shall be retrenched who has been in the company's continuous service for not less than one year until:-
 - (a) The workman has been given three months notice in writing stating reasons for retrenchment and the period of notice has expired or the workman has been paid wages for that notice period;
 - (b) No such notice is required if the retrenchment is under an agreement which specifies the date of termination of service;

¹⁸ Indian Hume Pipe Co Ltd v Workmen AIR 1960 SC 251

- (c) The workman has been paid compensation equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months; and
- (d) Notice in the prescribed manner has been served on the appropriate Government
- (ii) The appropriate Government on receipt of notice should hold an enquiry after which it may grant or refuse in writing the permission for retrenchment¹⁹.

In case the appropriate Government does not communicate the permission or the refusal within three months from the date of service of notice seeking permission, the workman is deemed to be validly retrenched after expiry of three months.

Section 25-N(7) further empowers the appropriate Government to withdraw by order of a dispute involving questions of retrenchment as well in an establishment covered by Chapter VB pending before a Conciliate officer or the Central or State Government, if the appropriate Government is of opinion that such retrenchment is not in the interest of industrial peace or that such retrenchment is by way of victimization. The Government has to transfer such dispute to an authority specified by that Government by notification in the official Gazette. The order passed by such authority is final and binding on the employer and the workman. Sec 25N(b) being mandatory, if the compensation is found to be insufficient, the retrenchment would be void *ab initio* in the absence of bona fide action of the employer or waiver of the workman.

Penalty.²⁰ - Sec 25-Q provides punishment of imprisonment to an extent of one month, or fine up to Rs. 1,000/-, or with both for violation of the requirement of giving notice to Government and the permission thereafter under Section 25N (1)(c) or for the violation of sub-section (4) of Section 25-N of the Act.

¹⁹ P.L. Malik- Industrial Law

²⁰ S.M. Chaturvedi- Labour and Industrial laws 13th Edition

RETRENCHMENT PROCEDURE -

Section 25-G incorporates the well recognised principle of retrenchment in industrial law, namely, the “last come first go” or “first come last go.” The Section becomes applicable only if all the conditions laid down herein are fully and cumulatively satisfied they are:-

- (i) The person claiming protection should be a workman as defined in section 2(s);
- (ii) He should be a citizen of India;
- (iii) The “industrial establishment” employing such workman must be an “industry” under sec 2(j)
- (iv) He should belong to a particular category of workmen in that establishment; and
- (v) There should not be an agreement between the employer and the workman contrary to the procedure of “last come first go.”

Given all the above conditions, the employer shall “ordinarily” retrench the workman who was the last person in that category. However, the employer can deviate from this procedure on justifiable reasons which should be recorded.

Last come first go- The principle of “last come first go” is statutorily incorporated in Section 25-G. If a case for retrenchment is made out, it would normally be for the employer to decide which of the employees should be retrenched. However, this rule is not intended to deny the freedom of the employer to depart from it for sufficient and valid reasons. The rule “last come first go” is intended to afford a very healthy safeguard discrimination of workmen in regard to retrenchment. The departure from the ordinary industrial rule of retrenchment without any justification, may itself, in a proper case, lead to the inference that the impugned retrenchment is the result of ulterior consideration and hence it is mala fide and may amount to unfair labour practice and victimization. The rule of ‘last come first go’ has to be complied with for the validity of the retrenchment.

Departure from the rule “last come first go”.-The rule is that the employers shall retrench the workman who came last, first, popularly as ‘last come first go’. It is not inflexible rule and extraordinary situations may justify variations. For instance, a junior recruit who has a special qualification needed by the employer may be retained even though another who is one up is retrenched. But there must be valid reason for this deviation. The burden is on the management to substantiate the special ground for departure from the rule. Section 25-G insists on the rule “last come first go” being applied category wise. This is to say, those who fall in the same category shall suffer retrenchment only in accordance with the principle of ‘last come first go’. Where the seniority list of particular workmen is the same, there is a telling circumstance to show that they fall in the same category. Grading for purposes of scales of pay and like considerations will not create new categorisation. If grades for scales of pay, based on length of service, etc. are evolved, that process amounts to creation of separate categories.

In the 1980 Supreme Court **Jorehaut Tea Co. case**, out of 23 workmen 16 were retrenched in accordance with Section 25-G, but the remaining 7 workmen’s retrenchment deviated from Section 25-G. Supreme Court observed that grading for the purposes of scales of pay and like considerations will not create new categorisation²¹. However, it is incumbent upon the employer to record the relevant circumstances and the reasons for deviation from the rule like the efficiency, unreliability, or habitual irregularity of the workmen who is retrenched, so that the tribunal to which the dispute is taken will be able to ascertain whether the departure is justified by sound and valid reasons. Therefore, employer’s order of retrenchment deviating the ‘last come first go’ rule must be a ‘speaking order’ otherwise it will be treated as mala fide or amounting to unfair labour practice and victimization.

²¹ Om Oil & Oil Seeds Exchange Ltd v Workmen (1966) 1 LLJ 324 SC

Effect of departure from ‘last come first go’ rule²²- A retrenchment violating the ‘last come first go’ rule will be declared invalid unless such deviation is supported by valid and justifiable reasons. Normally the workman so improperly and illegally detained is entitled to reinstatement and also for payment of remuneration for the period during which the workman remained unemployed.

Re-employment of retrenched workman-Section 25-H- The rule under section 25-H provides that after effecting retrenchment, if the employer proposes to take into his employment any person.

- i) He shall give an opportunity to the retrenched workmen who offer themselves for re-employment; and
- ii) These retrenched workmen have preference over the new applicants. Thus, Section 25-H imposes a statutory obligation on the employer to give preference to retrenched workmen when he subsequently employs any person.

Conditions to apply Section 25-H The preferential right of employment secured by Section 25-H to a retrenched workman will be available only if the following conditions are satisfied:-

- (i) The workman should have been ‘retrenched’ prior to the re-employment in question. In other words, if that workman’s termination of employment was not due to retrenchment, but due to some other eventualities like dismissal, discharge or superannuation, etc., he cannot claim the preferential right of re-employment under this section.
- (ii) He should be a citizen of India.
- (iii) He should offer himself for re-employment failing which he will forfeit the right. The offer is made in response to the notice given by the employer under Rule 76 of the Industrial Disputes (Central) Rules, 1957 or corresponding State Rules.

²² Dr Avtar Singh – Introduction to labour and Industrial laws 2nd editon

(iv) The workman should have been retrenched from the same category of service in the industrial establishment in which the re-employment is proposed.

It is not the designation, but the nature of the work that will decide the category of the post. Thus, a workman who was designated as assistant storekeeper, but who was substantially doing clerical work was retrenched. Subsequently, the management employed three persons as clerks in that establishment. It was held that Section 25-H is violated as the retrenched workman is not given preferential re-employment.

Section 25-H only prospective in effect- not retrospective in application.

Section 25-H not applicable - if closure or transfer of undertaking- Section 25-H when it gives preference to retrenched workmen indicates that the preference will be available to those workmen who were retrenched individually. It will not apply to a case where either because of transfer of business or closure, the services of all workmen are terminated. This can be only possible view because the definition of retrenchment under Section 2(00) of the Act does not specifically include the case either of transfer of business or of a closure of an industry.

Terms and conditions of service when re-employed.- There is difference of opinion by the various courts as to whether re-employment connotes taking back into employment or service on the same terms and conditions to which the employee was entitled previously. The Bombay High Court holding that there is nothing in the section or any other provision in the Act which gives the workman a right to secure re-employment on his previous terms and conditions of service.

Back Wages : Retrenched employees later reinstated in service pursuant to the orders of a tribunal or courts are not entitled to back wages as a matter of right for the period when they were out of employment.

RETRENCHMENT COMPENSATION ON TRANSFER OF UNDERTAKING

Section 25-FF-Scope of - Under Section 25-FF of the Industrial Disputes Act, 1947, where the ownership or management of an undertaking is transferred by agreement or by operation of law to a new employer, the workmen are entitled to notice and compensation as contemplated in Section 25-F, as if they had been retrenched. But this is not applicable to such transfer if:-

- (a) The service of the workmen has not been interrupted by such transfer;
- (b) The terms and conditions of services of the workmen after such transfer are not less favourable than those before the transfer;
- (c) The new employer is legally liable to pay compensation in case of retrenchment on the basis of continuous service as if there was no break in service by the transfer.

Legislative background.- Section 25-FF was originally introduced in Chapter VA by Industrial Dispute (Amendment) Act, 1956. The Supreme Court in **Hari Prasad Shivashankar Shukla v. A.P. Divelkar**²³, and **Barsi Light Railway Co.Ltd. v. K.N. Jogalkar**²⁴, held that no retrenchment compensation under Section 25-F was payable to workmen whose services were terminated by the employer on a real and bona fide closure of business or when termination occurred as a result to transfer of ownership from one employer to another. The original Section 25-FF was negative in nature. The above decision of the Supreme Court demanded amendment to Section 25-FF hence, Section 25-FF was recast to its present form by the Industrial Disputes (Amendment) Act, 1957. The amended Section has made it clear that the employer is liable to give notice and pay compensation in case of transfer of undertaking to workmen.

²³ AIR 1957 SC 121

²⁴ (1957) 1 LLJ 243 (SC)

Conditions to be fulfilled to be entitled for compensation- the notice and compensation as in retrenchment are available only on satisfaction of the following conditions: -

- (i) There should be a transfer of ownership or management of an undertaking from employment to another by agreement or by operation law; and
- (ii) Such undertaking must be an 'industry' within the meaning of Section 2(j); and
- (iii) The workmen claiming the rights should be one coming within the definition of 'workmen' under Section 2(s); and
- (iv) Such workmen should have put in a minimum one year's continuous service immediately before the transfer of management or ownership.

Transfer of Management or ownership - the primary condition to attract Section 25-FF is that the ownership or management of an undertaking is transferred from the employer in relation to that undertaking to a new employer. If the transfer is fictitious or benami, the section has no application. The transfer of the ownership or management of the entire undertaking must take place. Any partial transfer like transferring a branch or department of an undertaking will not attract Section 25-FF.

In **R.S Madho Ram & Sons Agencies v. Workmen**²⁵, a partnership firm dealing in varied allied lines of business transferred one of its businesses, namely, retail business to a newly incorporated private company. The Supreme Court held that this transfer was not covered by Section 25-FF for the following reasons. There was a common muster roll for all the employees, the same set of conditions governed them, they were subject to inter-department transfers, they were treated as one unit for the purpose of bonus and they were not employed for any particular branch or line of business. Further, it was manifest that the retail business department could not be considered to be a separate undertaking or

²⁵ (1964) 1 LLJ 366 (SC)

establishment for the purpose of Section 25-FF of the Act. The transfer of the undertaking under Section 25-FF does not necessarily include the transfer of employees as well.

In **Ambala Cantonment Electrical Supply Corporation v. Workmen**²⁶, the Corporation was taken over by the Punjab State Electricity Board as per the provisions of the Indian Electricity Act, 1910. Some of the old corporation workers were recruited to the new Board as fresh entrants. Consequently, the workers claimed retrenchment compensation under Section 25-FF from the company. It was held that the compulsory purchase of the Corporation by the Board amounted to a transfer of the management of the undertaking from one employer to another employer even though it did not involve the transfer of the employees. Hence, the workmen were entitled to compensation under Section 25-FF in such transfer, court can review and issue appropriate directions as to service, benefits, re-employment of employee, etc. Similarly, when a government undertaking is taken over by the Company along with the employees for the continued working of the undertaking, it was held that the employees ceased to be employees of the government but became employees of the Company.

The Obligation to pay Compensation: becomes definite only when : (a) there is retrenchment to the employee, or (b) the ownership or management of the undertaking is except in cases mentioned in the proviso to Section 25-FF, transferring to a new employer. Hence, the right under Section 25-FF does not arise either before the determination of employment or before the transfer of the undertaking²⁷.

²⁶ AIR 1971 Punj & Har 274

²⁷ Comm of Income Tax, Kerala v Gemini Cashew Sales Corporation , Quilon AIR 1967 SC 1559

When Section 25-FF right are not available.-

- (i) The service of the workmen has not been interrupted by such transfer;
- (ii) The terms and conditions of service applicable to the workmen after such transfer are not in any way less favourable to the workmen than those applicable to him immediately before the transfer; and
- (iii) The new employer is, under the term 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 de has not been interrupted by the transfer.

Retrenchment by transferee attracts Section 25-F and not Section 25-FF. --- In Workmen of Subong Tea Estate v. Subong Tea Estate²⁸, the estate was transferred to Hindustan Tea Company and possession was handed over. All its employees got instructions about their work and received their salaries from the Hindustan Tea Company on 17-2-1959. The manager of the vendor with permission of the vendee retrenched 8 workers after payment of retrenchment compensation on 31-8-1959. The workers challenged the validity of the retrenchment on the ground that it contravened Section 25-F and 25-G. the Supreme Court found that the facts in this case proved that the vendee took charge of the estate on 17-2-1959 and so became the employer of the employees who were working in the estate. Therefore, Section 25-FF is not applicable to the impugned retrenchment. It is retrenchment effected by the transferee and who in the meanwhile had become the employer of the retrenched workmen. In that case Section 25-F and 25-G will be applicable. Since Section 25-F and 25-G are not complied with, the retrenched so declared is invalid and the workmen are entitled to reinstatement with full back wages.

²⁸ SC (1964) 1 LLJ 33

Closure Notice.- Section 25-FFA inserted by the 1972 amendment requires an employer who intends to close down an undertaking to give at least sixty days advance notice in the prescribe manner to the appropriate Government. The notice shall clearly state the reason for the intends closure of the undertaking. The following establishments are exempted from this requirement:

- (i) Undertaking in which less than fifty workmen are employed ;
- (ii) Undertaking in which less than fifty workmen were employed on an average per working day in the preceding 12 months ;
- (iii) Undertaking set up for the construction of building, bridges, roads, canals, dams or for other construction work or project. The appropriate Government is invested with the power to give exemption from this provision to any undertaking for such specified period, if the Government is satisfied that owing to such exceptional circumstances as accident to the undertaking or death of the employer or the like it is necessary to do so.

Compensation in case of Closure of undertaking--Section 25-FFF: Scope of the Section²⁹-Section 25-FFF was substitute in 1957 by the Industrial Disputes (Amendment) Act, 1957 to override the decision of the Supreme Court. The Section is focused to provide some relief to the workmen whose services stand terminated consequent to the closing down of an undertaking except on certain situations. Under the section, where an undertaking is closed down, every workman, who has not less than one year's continuous service in that undertaking before the closure, is entitled to notice and compensation as provided in Section 25-F. however, the proviso to Section 25-FFF(i) says that if the closing down of the undertaking is on account of unavoidable circumstances beyond the

²⁹ S.N. Mishra- Labour and Industrial Laws 24th Edition Central law Publication

control of the employer, then the compensation under Section 25-F (2) shall not exceed the workmen's average pay for three months.

Explanation to the above proviso says that a closure of the undertaking due to any of the following reasons shall not be deemed to be closure on account of unavoidable circumstances beyond the control of the employer. The reasons are:

- (i) Financial difficulties or financial losses of the employer ; or
- (ii) Accumulation of indisposed stocks ;or
- (iii) Expiry of the period of lease or licence.

Sub-section (2) of section 25-FFF exempted the employer from the liability to give notice and pay compensation on the closing down of an undertaking in the following situation:-

- (a) The undertaking is set up for the construction of buildings, bridges, roads, canals, dams or other construction work, and
- (b) The undertaking is closed down within two years from the date on which it was set up ;
- (c) The closure is due to the completing of the work.

Hence, Section 26-FFF envisages to secure the following objects:-

- (i) To provide relief in the event of any involuntary unemployment in case of closure of an undertaking;
- (ii) To infuse a sense of security in the worker in relation to his job from the absolute will and pleasure of the employer ;
- (iii) To raise the position and status of labour and to standardizes its rights in relation to industry.³⁰

³⁰ O.P.Malhotra- Labour and Industrial Law

Whether Section 25-FFF infringes Articles 14 and 19 (i)(g) of the Constitution.- the Supreme Court in many cases had held that Section 25-FFF does not violate the equal protection clause of Article 14 as the impugned Section 25-FFF applied to all the industrial which fall within a certain group and that the classification made therein is reasonable because it is not arbitrary and that it is related with the object sought to be achieved by the Act. Similarly, the fundamental right under Article 19(i)(g) to carry on trade or occupation which included to close down the business is also not violated by Section 25-FFF in view of the reasonable restrictions attached to the right.

Closure differs from Retrenchment-

- (i) In the case of closure the undertaking is closed or permanently discontinued, whereas in retrenchment the business continues its operation even though the services of some of the workers are terminated due to surplusage or due to any other reason.
- (ii) Notice or wages in lieu of notice and payment of compensation under section 25-F (a) and (b) are conditions precedent for a valid retrenchment. Retrenchment is prohibited without first satisfying those requirements. Any retrenchment before complying with those conditions will be invalid and inoperative. But such notice or wages in lieu of notice and compensation are only the resultant rights of the workmen whose services are terminated consequent to the closure of the undertaking.
- (iii) The 'last come first go' rule under section 25-G and the duty to give preference to the retrenched workman in case of re-employment under section 25-H which are strictly applicable in case of closure. Section 25-H is never attracted to cases of transfer of business or of closure of an industry.

Distinction between lay-off and Retrenchment

- a) Term lay off has been defined in Sec 2(kkk) and the term retrenchment in Sec 2 (oo)
- b) 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.
- c) Lay-off is on account of one or more reasons mentioned in Sec 2(kkk) while in retrenchment the termination is on the ground of service of labour.
- d) The reasons of lay-off are entirely different as compared to reasons of retrenchment.
- e) In lay-off the labour force is not surplus but in retrenchment it is surplus which has to be retrenched.
- f) In lay-off the relationship of employment is not terminated while in retrenchment it is terminated.
- g) In lay-off the relationship of employment is only suspended while in retrenchment it is terminated.
- h) Consequences of both are different to each other and are governed by different norms.

Conclusion

Industry must be given due emphasis, it is a fact 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. Employers often use the weapon of retrenchment in Downsizing Policy to lessen their workforce due to heavy expenses. Downsizing literally means to reduce the size of the organization by cutting down the number of employees presently working in the company. The major techniques of adopting downsizing strategy are retrenchment, lay-off, closure and voluntary retirement.

Suggestions

1. Bringing awareness amongst the workers regarding the various benefits available to them with regard to retrenchment compensation
2. Workmen must be encouraged to approach competitive authority to bring about amicable solution between the management and the workmen.
3. The Charter of Demands system, which is more prevalent in recent times, must be beneficial to both workmen and management, it shall mention the terms of retrenchment compensation.
4. Downsizing is also aimed at increasing profitability by reducing the costs as well as enhancing and improving the productivity of the retained employees, but the fear arises that the performance of the retained employees might be reduced because of job stress they experience due to additional workload on them. In order to ensure performance the retained workers should be motivated.
5. While following the process of retrenchment the workmen must be provided with other employment opportunities in other industries and compensated for the period of unemployment.

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