

3.2 INDUSTRIAL DISPUTES ACT, 1947

Introduction

The object of Industrial Disputes Act, 1947 is to make provisions for investigation and settlement of industrial disputes. The purpose is to bring the conflict between the employer and the employees to an amicable settlement. The Act also provides machinery for settlement of disputes, if dispute cannot be resolved through collective bargaining. In addition to above, the Act also makes other provision in respect of lay – off, retrenchment, strike, lock – out, etc.

Extent of the Act

The act extends to the whole of the India [Sec. 1 (2)]. It applies to all industries whether they are carried on by private owners or by the Government [Western India automobile Assn. v. Industrial Tribunal, Bombay, A.I.R. (1949) F.C.111].

The act has been amended from time to time. The latest amendment to the Act was made in August, 1984.

OBJECTS OF THE ACT

The main objects of the Act are:

To secure industrial peace—

- (a) by preventing and settling industrial disputes between the employers and workmen,
- (b) by securing and preserving amity and good relations between the employers and workmen through an internal Works committee and
- (c) by promoting good relations through an external machinery of conciliation, Courts of inquiry, Labour Courts, Industrial Tribunals and National Tribunals.

(1) To ameliorate the condition of work men in industry—

- (a) by redressal of grievances of workmen through a statutory machinery; and
- (b) by providing job security [S.N.Rai v. Vishwanath Lal, A.I.R. (1960) Pat. 10.]

What is included in the term ‘Industry’? ‘Industry’ includes—

- (a) Any activity of the Dock Labour board established under Sec. 5-A of the Dock workers (regulation of Employment) Act, 1948;
- (b) Any activity relating to the promotion of sales or business or both carried on by and establishment.

What is not included in the term ‘industry’? ‘Industry’ does not include—

- (1) Any agriculture operation except where such agricultural operation is carried on in an integrated manner with any other systematic activity and such other activity is the predominant one; or

‘Agricultural operation’ does not include any activity carried on in a plantation as defined in Sec. 2 (f) of the Plantations Labour Act, 1951.

- (2) Hospitals or dispensaries; or
- (3) Educational, scientific, research or training institutions; or
- (4) Institutions owned or managed by organizations wholly or sub-stancially engaged in any charitable, social or philanthropic service; or
- (5) Khadi or village industries; or

According to new clause (kka) as introduced in Sec.2 by the amendment Act of 1982, ‘khadi’ has the meaning assigned to it in Sec. 2(d0) of the Khadi and Village industries commission Act, 1956.

- (6) Any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defense research, atomic energy and space; or
- (7) Any domestic service; or
- (8) Any activity, being a profession practiced by an individual or body of individuals. If the number of persons employed in relation to such profession is less than 10; or
- (9) Any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed in relation to such activity is less than 10.

Employees covered under the Industrial Dispute Act

Every person employed in an establishment for hire or reward, to do any manual, clerical skilled unskilled technical operational or supervisory work is covered under the Act.

- 1) Persons employed mainly in a managerial or administrative capacity.
- 2) Person employed in a supervisory capacity and drawing wages exceeding Rs.1,600/- p.m. or exercising functions mainly of managerial nature:
- 3) Persons subject to Army Act, Air force Act, Navy Act or those employed in the police service or as an officer or employee of a prison.

The Act provides for constitution of Works Committee in factories employing 100 or more workers. First of all, the works Committee will try to settle the dispute. If the dispute is not settled it will be referred to the Conciliation Officer. The Conciliation Officer will try to arrive at fair and amicable settlement acceptable to both the parties. If he is unable to do so, he will send the report to the Central Government. The Government may then refer the industrial dispute to the Board of Conciliation. It may be noted that here the employer and the employees can voluntarily refer the matter to arbitration. If no settlement is arrived at then there is arrived that three – tier system of adjudication i.e., Labour Court, Industrial Tribunal and National Tribunal.

Award means an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal, or National Tribunal. The term award also includes arbitration award. The award is required to be published by the Central Government or State Government within 30 days from the date it is made. The award becomes effective only after 30 days of its publication. Generally the validity period of its publication. Generally the validity period of an award is 1 year.

Settlement means a settlement arrived at in the course of conciliation proceedings. It includes a written agreement between the employer and workman arrived at otherwise than in the course of conciliation proceedings.

The settlement arrived in the course of conciliation and arbitration award and Labour Court award or the Industrial or National Tribunal Award binds all parties to industrial dispute, including present and future workman and all parties who are summoned to appear in the proceedings. If settlement is arrived at otherwise in the course of conciliation proceeding, it binds only those who are actually parties to the agreement; generally, the settlement is valid for 6 months.

Lay off means failure refusal or inability of the employer to give employment to a workman because of any of the following reasons:

- 1) Shortage of coal, power or raw materials,

- 2) Accumulation of stock;
- 3) Breakdown of machinery
- 4) Natural calamity:
- 5) Any other similar or analogous reason.

Lay off means not giving employment within 2 hours after reporting to work.. Lay off can be for half day also wherein the worker shall be asked to come in the second half of the shift.

A factory employing 50 or more but less than 100 employees can lay off its workman who have completed 1 year of service by paying compensation equal to 50% of the salary / wages. A factory employing more than 100 employees can lay off its workman with the previous approval of Central Govt, However the approval of Central Govt. is not required in case lay off is done on account of shortage of power or due to natural calamity. Employer can offer him alternate employment if alternate employment does not call for any special skill or previous experience. In such a case lay off compensation will not be payable if the employee refuses to accept the alternate employment.

Retrenchment means the termination of service of a workman by the employer for any reason other than as a punishment inflicted by a disciplinary action. In addition, retrenchment does not include voluntary retirement or retirement on reaching the age of superannuation or termination on account of non – renewal of contract or termination of contract itself or termination due to continued ill – health of workman.

Retrenchment means discharge of surplus labour or staff of the employer. It is not be way of punishment. The retrenchment shall be done on LIFO basis in respect of each category.

A workman who has completed one year of service can be retrenched by giving one month's notice or one month's salary and retrenchment compensation.

Retrenchment compensation is calculated at the rate of 15 days' average wages for every completed year of service or any part thereof in excess of 6 months. Average Wages means average of the wages payable for the proceeding 3 complete calendar months. For the purpose of retrenchment compensation, one day wage shall be calculated by dividing monthly wage by 30.

Strike means a cessation of work by a body of persons, employed in any industry, acting in combination or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

- 1) During pendency of conciliation proceedings and 7 days thereafter;
- 2) During pendency of proceedings before Labour court or Industrial Tribunal or National Tribunal :
- 3) During period of arbitration proceedings:
- 4) During period when settlement or award is in operation in respect of the matters covered by the award or settlement.

In case of public utility services (hospital, railways, ports, docks, telephone, transport etc.), employees have to give at least 14 days' notice for strike. The notice is valid only if strike commences within 6 weeks otherwise fresh notice is required. If such notice is received by any employer, Government authorities should be informed within 5 days of the receipt of notice.

Wages during strike period are payable only if strike is both legal and justified. [Syndicate Bank v. Umesh Naik]

Strike in violation of above provisions is illegal. In Such a case, the workman shall be punishable with fine, which may extend to Rs.50/- per day and with imprisonment, which may extend to 1 month.

Important Points

1) Principals governing Domestic Enquiry

In all such cases, the workmen after taking their seats, refuse to do work.

Go slow does not amount to strike, but it is a serious case of misconduct.

Cessation of work in the support of the demands of workmen belonging to other employer.

Some workers may resort to fast on or near the place of work or residence of the employer.

Since there is no cessation of work, it does not constitute a strike.

Lock out means temporary closing of a place of employment or the suspensions of work or the refusal by the employer to continue to employ any number of persons employed by him.

Employer cannot go for lock – out in the following cases:

- 1) During pendency of conciliation proceedings and 7 days thereafter.
- 2) During pendency of proceeding before Labour Court or Industrial Tribunal or National Tribunal:
- 3) During period of arbitration proceedings:
- 4) During period when settlement or award is in operation in respect of the matters covered by the award or settlement.

In HAL. Employees Union v. Presiding Officer. It was held that when lock out by employer is legal and justified, workmen are not entitled to compensation and wages for the period during which lock out continue. In case of illegal lock out, the employer can be punished with fine may extend to Rs.1,000/- and with imprisonment, which may extend to 1 month.

- 1)
 1. The enquiry should be conducted by an unbiased person.
 2. The enquiry officer should conduct the enquiry in an objective and fair manner.
 3. The employee should be given a fair opportunity to defend himself.
 4. proper procedure, rules, regulations etc. should be followed while conducting enquiry.
- 2) It has been held that if on the death of a fellow worker, the workmen acting in combination refuse to resume work, it amounts to strike. [National Textiles Workers Union v. Meenakshi Mills]
- 3) Certain gardeners were appointed to look after the bungalow provided to the MD of the Company. The gardeners were supposed to mark their attendance in the Company Register and their salaries were being paid directly by the company. It was held that since the gardeners are working directly under the control of the company, they are workmen under the Industrial Dispute Act. [J.K. Cotton Spinning v. Weaving Mills Co. Ltd.]
- 4) The Supreme Court held that the teachers employed by the Educational Institutions cannot be considered as workmen within the Industrial Dispute Act, as imparting of

- education which is the main function of the teacher cannot be considered as skilled or unskilled manual work or supervisory work or technical work. [Sunderambal v. Government of Goa]
- 5) Unfair Labour Practices means any of the practices specified in the Vth Schedule to the industrial Disputes Act. This Schedule declares certain labour practices as unfair on the part of the employees and their trade unions and on the part of the workmen and their trade unions. Industrial Disputes Act prohibits commission of any unfair labour practice by Employers & Workmen.
 - 6) The Supreme Court held that termination of services of a bus driver on the ground of weak eyesight does not amount to retrenchment under the Industrial Disputes Act because here the employees is being terminated on the ground of continued ill health and not because of surplus labour. [Anand Bihari v. Rajasthan State Road Transport]
 - 7) It was held that a car driver engaged by area manager of a bank for which allowance was given to him was not a workman of the bank under Industrial Dispute Act, eventhough the car was maintained at the bank's expenses, as the control of the driver was not into the hands of the bank. [PNB v. Ghulam Dastagi]
 - 8) An Industrial Dispute exists only when the same has been raised by the workman with the employer. A mere demand to the appropriate government without a dispute being raised by the workman with their employer, cannot become an industrial dispute. [Sindhu Resettlement Corporation ltd. v. Industrial Tribunal]
 - 9) A workmen's case sponsored by a body of workmen either acting through their union or otherwise, would amount to an Industrial Dispute. [Newspaper Ltd., Allahabad v. Industrial Tribunal]
 - 10) The term 'employment or non – employment' is concerned with the employees' failure or refusal to employ a workman. [Western India Automobile Association v. Industrial]
 - 11) A Salesman, whose duties included manual as well as clerical work such as to attend to the customer, prepare cash memos, to assist manager in daily routine is a workman. [Carona Sahu Co. Ltd. v. Labour Court]
 - 12) Refusal to do work which the employer has no right to ask for performance, such a refusal does not constitute a strike. [Northbrooke Jute Co. Ltd. v. Their Workman]
 - 13) Where in pursuance of a common understanding the employees entered the premises of the Bank and refused to take their pens in their hands, it was held to be strike. [Punjab National Bank Ltd. v. all India Punjab National Bank Employees' Federation]
 - 14) Go – slow does not amount to strike. [Bharat Sugar Mills Ltd. v. Jai Singh]
 - 15) Where the strike was resorted to by using violence or acts of sabotage or for any ulterior purpose, then the strike will be illegal. [Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha]
 - 16) When the workmen and the management are equally to be blamed for the strike, the Court normally awards half of the wages. [India Marine Service Pvt. Ltd. v. their Workmen]
 - 17) A closure of a place of business for a short duration of 30 days in retaliation to certain acts of workmen was held to be a lockout. [Lord Krishna Sugar Mills Ltd. v. State of U.P]
 - 18) Retrenchment does not include disengagement from service of persons employed for working on daily wages. [U.P. v. Labour court, Haldwani]
 - 19) if the termination of an employees' service is a punishment inflicted by way of disciplinary action, such termination would not amount to retrenchment. [SBI v. Employees of SB]
 - 20) Termination of service of casual workers after their work is over, is not a retrenchment. [Tapan Kumar Jana, v. The General Manager, Calcutta Telephones]
 - 21) Where the services of an employee irregularly appointed were terminated, it was held to be a case of retrenchment. [Prabhudayal Jat v. Alwar Sehkari Bhumi Vikas Bank Ltd]

- 22) The use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period. [Crompton Greaves Ltd. v. Workmen, Syndicate Bank v. Umesh Naik]
- 23) The Government employees have to fundamental right to resort to strike and they cannot take the society at ransom by going on strike, even if there is injustice to some extent. [T.K. Rangarajan v. Govt. of Tamil Nadu & Others]

Under Difference between lock-out and lay-off.

lock-out the employer refuses to give employment because of closing of a place of employment or suspension of work. Under lay-off the employer refuses to give employment because of shortage of coal, power or raw material or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other reason to give employment.

- (2) Lock-out is resorted to by the employer to coerce or pressurize the workmen to accept his demands; lay-off is for trade reason beyond the control of the employer.
- (3) Lock-out is due to an industrial dispute and continues during the period of dispute; lay-off is not concerned with a dispute with the workmen.

Difference between lock-out and closure. Lock-out and closure of a business are often confused. This is because cessation of work is common to both.

Closure is a fundamental right and if it is not a lock-out, the workers cannot grudge [*J.K. Hosiery Factory v. Labour Appellate Tribunal*, A.I.R. (1956) All. 498]. The State cannot compel an employer to carry on his business because several employees may be thrown out of employment if it is closed. The grounds for closure of a business may be actual loss or apprehended loss. It may also be disinclination to run the risk of running the business [*Indian Metal & Metallurgical Corpn. V. Industrial Tribunal, Madras*, 3 F. J.R. 420 High Court, Madras].

The points of difference between a lock-out and closure are as follows:

- (1) In the case of lock-out it is only the place of business which is closed (and not the business itself), while in the case of closure of a business not only the place of business but the business itself is closed [*Express Newspapers (Pvt.) Ltd. V. Their Workmen*, A.I.R. (1963) S.C. 569]. The closure of a business indicates the final and irrevocable termination of the business itself. Lock-out, on the other hand, indicates the closure of the place of business or the place of employment and not the closure of the business itself.
- (2) Lock-out is a weapon of coercion in the hands of employer; closure is generally for trade reasons.
- (3) In closure there is severance of employment relationship whereas in lock-out there is no severance but only suspension of such relationship.
- (4) A lock-out is caused by the existence or apprehension of an industrial dispute whereas a closure need not be in consequence of an industrial dispute.

National Tribunal [Sec. 2 (n)]. It means—
any railway a National Industrial Tribunal constituted under Sec. 7-B.

Public utility service [Sec.2 (n)]. **It means—**

- (i) Any railway service or any transport service for the carriage of passengers or goods by air;
- (ii) Any service in , or in connection with the working of , any major port or dock;
- (iii) Any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- (iv) Any postal, telegraph, or telephone service;

- (v) Any industry which supplies power, light or water to the public;
- (vi) Any system of public conservancy or sanitation;
- (vii) Any industry specified in the First Schedule.

The appropriate Government may, if satisfied that public emergency or interest so requires, by notification in the Official gazette, declare any industry specified in the First Schedule to be public utility service for the purposes of the Industrial disputes Act for such period as may be specified in the notification. The period so specified shall not, in the first instance, exceed 6 month. But it may, by a like notification, be extended from time to time by any period not exceeding 6 month at any time if in the opinion of the appropriate government, public emergency or public interest requires such extension. The first schedule is reproduced below.

Difference between ‘retrenchment’ and ‘closure’. The important points of difference between ‘retrenchment’ and ‘closure’ may be enumerated as follows;

- (1) Retrenchment is the termination by the employer of the service of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action. It affects only some of the workmen. Closure, on the other hand, means closing down of the business of trade reasons and it affects all the workmen.
- (2) In case of retrenchment the services of workmen are terminated on account of surplus labour; while in case of closure it is on account of total closure of work by an employer.
- (3) In retrenchment the trade or business remains uninterrupted as it continues; while in closure the business itself is discontinued.
- (4) The compensation payable to a workman on retrenchment either on account of surplus labour or closure, shall be equivalent to 15 days’ average pay for every completed year of continuous service or any part thereof in excess of 6 months. Retrenchment as a result of bona fide closure of business does not entail any compensation beyond average pay for 3 months.

Difference between lock-out and retrenchment.

- (1) Lock-out is temporary; retrenchment is permanent. Retrenchment results in complete severance of industrial relationship between an employer and an employee while lock-out keeps this relationship alive even during the cessation of work. The former results in severance of relationship between the employer and employee while the latter amounts to only suspension of the relationship.
- (2) Lock-out is with a motive to coerce the workmen to accept the demands of the employer retrenchment is resorted to dispense with surplus labour.
- (3) Lock-out is due to and during an industrial dispute; there is no such dispute in case of retrenchment.