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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A BRIEF ANALYSIS ON RETRENCHMENT

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ABSTRACT:

Retrenchments, industry sector closures, and the Voluntary Retirement Scheme have resulted in the loss of numerous jobs for employees during the past several years. Employees are primarily affected negatively by layoffs. Closure-related loss of service is identical from retrenchment-related loss of service since, in both situations, the worker is let go suddenly and without cause. Many employees' jobs will be terminated as part of an endeavor's closure. Not only does the worried employee face extreme difficulty due to his unexpected unemployment, but his entire family also faces it. The article displays an aggregation of literature and endeavour to look at the legal provisions of retrenchment in the industrial sector of India and the basic hypothetical concepts in the light of accessible legal structure with respect to conclusion and retrenchment. The article portrays all parts of laws identified with retrenchment and furthermore legal protection of employees.

Keywords: retrenchment, forced retirement, termination, dismissal.

INTRODUCTION

Retrenchment under the Industrial Dispute Act refers to the termination of employment by an employer for reasons other than misconduct. The Act provides certain protections and procedures to safeguard the interests of workers and ensure fair treatment during retrenchment. It outlines conditions under which retrenchment is permissible, such as providing notice, compensation, and adhering to certain criteria like seniority or last in, first out (LIFO) principle. The sections that deal with retrenchment are section 2(oo), 25-F, 25-G, 25-H, 25-N, 25-Q of Industrial Disputes Act, 1947.

DEFINITION:

Retrenchment is defined in Section 2(oo) of the Industrial Dispute Act, 1947. According to the definition, retrenchment means the termination of the service of a workman by an employer for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action'.

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There are certain factors that do not fall under the definition of retrenchment, which are as follows:

- If the workman or employee voluntarily retires.
- If the workman or employee retires after reaching the age of superannuation because of a provision of an agreement relating to superannuation that was made between the employer and the employee at the time of his employment.
- If the termination of employment of the workman or employee took place due to the non-renewal of the employment agreement.
- If the termination of employment occurs due to the continuous ill-health of the workman or employee.

Therefore, retrenchment is considered an employee's end of service due to financial or business constraints, restructuring of the company, advancements of technologies, downsizing, discontinuation of a specific unit, and so on.

MEANING OF RETRENCHMENT:

In simple words retrenchment means due to surplus labour or staff if an industry terminates a labour in continuing and not closed industry.

In the case of *New haven steel ball corporation ltd V. Ram narayan kera yadav*², the court held well settled principle in industrial law that, it is within the employer's managerial discretion to organize and rearrange his business in its best but it should be done in bona fide and no one can question their propriety.

In *Hari Prasad V A D Divaker*³, every termination is not a retrenchment, but the termination should be because of surplus labour or staff in an continuing and not closed industry is retrenchment.

In *Naresh Chandra das V Seventh Industrial tribunal*⁴, the Calcutta High Court held that the services of the workmen were terminated in accordance with standing orders of the company for continued absence without leave was retrenchment because the case is not covered in any of the ground stipulated in section 2 (oo) for exemption.

² [1998 Lab 1C3141(Bom)]

³ [(1957) LLJ 233]

⁴ (1982) II LLJ 64

ESSENTIALS OF RETRENCHMENT:

1. Employer must terminate the services of a workmen
2. Such terminated service must be capable of being continued
3. The reason for termination of service can be surplus labour or any other reason but it should not fall under exclusion clause of the definition 2(oo) of Industrial Disputes Act, 1947.

EXCLUSION FROM RETRENCHMENT:

PUNISHMENT INFLICTED BY WAY OF DISCIPLINARY ACTION:

If the termination of service of a workman is due to the punishment inflicted by the way of disciplinary action such as discharge of efficiency, suspension for dishonest or termination on the ground of misconduct is excluded in section 2(oo) of the Act.

In *State Bank of India V The workmen of the State Bank of India*⁵, it has been observed that the termination of the service of the employee under para 521(10)(c) of the Shastry Award in the result of the disciplinary proceedings and is punitive and hence, it is not retrenchment within the meaning of Section 2(oo) of the Act.

In *State of Punjab v. Jagir Singh*⁶, it has been held by the Supreme Court that when the services of workman are terminated on the ground of misconduct question of payment of an retrenchment compensation or service of any statutory notice would not arise.

VOLUNTARY RETIREMENT OF THE WORKMEN

According to Section 2(oo)(a) of the Act, voluntary retirement is not retrenchment. 'Voluntary retirement' means the termination of the service is done voluntarily by the employee himself. If the employee submits his resignation by the compulsion of the employer to leave the establishment doesn't come under voluntary retirement.

In *Baba Saheb Devgonda Patil v. Managing Director, Shri Panchgonda Sahkari Sankhar Karkhana Ltd.*,⁷ it has been observed that long and continuous absence for years together without any reason or justification whatever and without anything more can give rise to an inference of abandonment as drawn by the authorities and deletion of name from the muster rolls cannot come under retrenchment and cannot attract Section 25-F of the Act.

⁵ [AIR 1990 SC 2084]

⁶ [2004 LIC 3740 SC]

⁷ [(1998) 2 LLJ 413 Bom]

RETIREMENT ON REACHING SUPERANNUATION AGE

To attract termination of service on the superannuation it must follow two conditions:

- 1) There must be the condition between the employer and the employee in the contract of employment.
- 2) That condition must be with regard to the age of superannuation.

If the termination of service satisfies the above two conditions it will not constitute retrenchment. If the age of superannuation is not mentioned in the contract of the employment or in valid standing orders, then it will not be treated as termination on superannuation under section 2(oo)(b) of the Act.

TERMINATION ON NON RENEWAL OF SERVICE CONTRACT OR ON THE EXPIRY OF FIXED TERMS CONTRACT.

It is discussed under the Section 2(oo)(bb) of the Act.

In *Haryana Agricultural Marketing Board v.S. Chand*⁸, it has been observed that 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.

If the termination happens on completion of scheme or project or on contract it will not come under retrenchment under Section 2(oo)(bb) of the Act.

If the termination of the services is as stipulated under the contract of employment it will not come under retrenchment under Section 2(oo)(bb) of the Act.

CONTINUED ILL HEALTH

Termination due to the employee's continuing bad health is not covered under the concept of retrenchment. The ill-health of the employee would include his physical and mental health. The question of whether the employee is suffering from a continuous illness is based on the facts and circumstances of the case and can be shown or refuted on either side.

In *Burrakur Coal Company Ltd., v. Azimudin Ashray*⁹, it has been held that the mere absence of any organic disease doesn't necessarily refer to the state of health, but any infirmity in the body or mind, disease, physical defect etc., would amount to ill-health and if such ill health continued for a long period it is treated as continued ill-health.

⁸ [AIR 2006 SC 1263]

⁹ [(1960) 2 LLJ 434 (Pat)]

PROCEDURE FOR RETRENCHMENT

THE PROCEDURE FOR RETRENCHMENT TO INDUSTRIAL ESTABLISHMENT FOR WHICH CHAPTER V- A APPLIES

Section 25-F of the Industrial Disputes Act, 1947 provides that the employee who has been in the continuous service for not less than one year under an employer shall not be retrenched by the employer until-

1) ONE MONTHS NOTICE TO THE WORKMAN

According to Section 25-F(a) of the Act, the workman has been given one month's notice in writing indicating the reason for retrenchment and the period of notice has expired, the workman has been paid in lieu of such notice.

2) COMPENSATION TO THE RETRENCHED WORKMAN

According to Section 25-F(b) of the Act, the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.

3) NOTICE OF RETRENCHMENT TO THE GOVERNMENT

According to Section 25-F(c) of the Act, notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

The failure to comply with the above three conditions, then such retrenchment will be invalid and inoperative.

CONTINUOUS SERVICE:

The worker is considered to be in continuous work if they have been working without a break for a certain time. This includes times when they couldn't work because they were sick, on approved leave, had an accident or if there was a strike that was not against the law, a lock-out or if work stopped for reasons not by the workers' fault.

If a worker hasn't worked non-stop for one year or six months, they can still be seen as being in "continuous service" if:

Over the last 12 months, they have worked at least:

190 days for miners working underground, or

240 days for all other workers.

In Rajasthan State Ganganagar S Mills v. State of Rajasthan¹⁰, it has been held that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of the employer.

THE PROCEDURE FOR RETRENCHMENT TO INDUSTRIAL ESTABLISHMENT FOR WHICH CHAPTER V- B APPLIES

Section 25N of Industrial Disputes Act states certain conditions that need to be fulfilled before retrenching an employee from the service. The conditions are as follows:

1. THREE MONTH'S NOTICE TO WORKMAN

A workman who has worked for continuous period of at least one year can only be retrenched by the employer for his service. Before retrenching the employee the employer must send prior notice of retrenchment at least three month's before the date of his retrenchment and employer must ensure that the employee receive his annual wages before the notice period.

2. APPROVAL OF THE GOVERNMENT:

To retrench an employee from the industry the employer should obtain prior permission from the appropriate government or authority before issuing the notice of retrenchment.

OTHER PROVISIONS:

RULE TO BE FOLLOWED FOR RETRENCHMENT OF WORKMAN:

The principle according to section 25G of the Industrial Disputes Act, 1947 is "last come first go or first come last go".

Conditions to be fulfilled for the above said principle:

1. He should be a workman in an industrial establishment as defined in section 2(s) of the Act.
2. He should be a citizen of India.
3. The 'industrial establishment' employing such workman must be an 'industry' as defined in section 2(j) of the Act.
4. He should belong to the particular category of workman in the establishment.
5. There should not be an agreement between the employer and the workman contrary to the procedure of 'last come first go'.

¹⁰ [(2004) 8 SCC 161]

In State of UP V Kaushal kishore chukla,¹¹ it has been absorbed that the principle of 'last come first go' is not applicable to termination of services of temporary employee on the assessment of his work on stability in accordance with terms and conditions of his service.

REEMPLOYMENT OF RETRENCHED WORKERS:

Section 25H of Industrial Disputes Act, 1947 provides that when employer is retrenched from the service on the ground of surplus labour that employee must be given the first opportunity to return to work when the employer decides to employ additional employees in the industrial establishment .

ESSENTIALS OF SECTION 25H:

1. Re employment opportunity should be given to the retrenched employees.
2. Notice to be given to the retrenched employees if the employer finds a post empty and thinks of appointing someone.
3. The employee needs to be a citizen of India.
4. The place of re employment work in the industry must be same as before the retrenchment.
5. Preference must be given to the retrenched employees over the other employees when the employers decide to employ new workers in the service.

PENALTY FOR RETRENCHMENT WITHOUT PREVIOUS PERMISSION:

According to section 25Q of the Industrial Disputes Act, 1947 any employer who does not follow the provisions of sections 25F and 25N shall be punishable with imprisonment which may extent to one month or with fine which may extent to one thousand rupees or with both.

CONCLUSION:

This Act was enacted to solve all the problems that arise between employers and employees. The retrenchment plays a crucial role in managing work force dynamics and ensuring the sustainability of business. The provisions of retrenchment have been made in compliance with the basic constitutional rights of the citizens. Employers use the retrenchment to reduce the number of employees in their respective sectors if they are experiencing problems. So in order to make a country a welfare state, a socialist pattern of society must be maintained.

REFERENCE:

¹¹ [(1991) 1 SCC 691]

- 1) Industrial Disputes Act, 1947
- 2) Dr. V. G. Goswami, Labour and Industrial Laws, tenth edition, 2015
- 3) Dr. S. R . Myneni, Labour Laws 1, first edition, 2014
- 4) <https://taxguru.in/corporate-law/lay-off-retrenchment-industrial-dispute-act-1947.html>
- 5) <https://www.manupatrafast.in/NewsletterArchives/listing/ILU%20RSP/2015/Nov/MANDATORY%20REQUIREMENTS%20FOR%20RETRENCHMENT%20UNDER%20EMPLOYMENT%20LAWS%20IN%20INDIA.pdf>
- 6) <https://indiankanoon.org/doc/1056316/>
- 7) <https://www.livelaw.in/amp/know-the-law/lay-off-retrenchment-industrial-relations-code-labour-rights-189044>
- 8) <https://www.legalserviceindia.com/legal/article-12601-concept-of-lay-off-retrenchment-procedure-and-compensation-for-lay-off-and-retrenchment.html>

