PalArch's Journal of Archaeology of Egypt / Egyptology

TERMINATION OF CONTRACT OF SERVICE (EMPLOYMENT) ACCORDING TO STATUTORY PROVISIONS – A LEGAL STUDY

Dr. B. Someswararao[1], Mrs. V. N. Roselin[2], Mrs. B. Keerthi[3] and Mr. Manoj Kumar[4]

[1]*Associate Professor, School of Law, Vel Tech Rangarajan Dr. Sagunthala R&D Institute of Science and Technology, Avadi, Chennai*

[2]*Assistant Professor, School of Law, Vel Tech Rangarajan Dr. Sagunthala R&D Institute of Science and Technology, Avadi, Chennai*

[3]*Assistant Professor, School of Law, SRM IST, Kattankulathur, Chennai*

[4]*Assistant Professor, School of Law, Vel Tech Rangarajan Dr. Sagunthala R&D Institute of Science and Technology, Avadi, Chennai*

Dr. B. Someswararao, Mrs. V. N. Roselin and Mrs. B. Keerthi: Termination of Contract of Service (Employment) According to Statutory Provisions – A Legal Study -- Palarch's Journal of Archaeology of Egypt/Egyptology, 17 (6), ISSN 1567-214x

Keywords: Contract of services, Legal Restrictions, Hire and fire, Industrial Disputes, Statutory interventions, Labour Philosophy

ABSTRACT

The contract of service is an agreement between employer and workmen as to the conditions of employment. The relations between the two persons as employer and workman start from the moment a contract is entered into by them. It is called a contract of service (employment). The determination of contract of service resulting in the termination of service of a workman is subject to several legal restrictions, imposed to secure the interest of workman and not to give a free hand to the employer exercising the labour philosophy of 'Hire and Fire'. Labour Laws enunciate the restrictions on termination of the relationship of employer and workman besides the contract of service itself. The contract of service is still pivotal despite several statutes made in regulating the relations between employer and workman. It is the focal point both in creating as well as terminating the employment relationship. In Indian context, the most important statutory interventions are The Industrial Disputes Act, 1947, The Industrial Employment (sanding orders) Act, 1946 besides others. Added to them are the decisions by the Apex Court and several High Courts interpreting these statutes in particular and the legal relation emanating from a contract of service in particular. This paper aims at making an attempt to discuss the various modes of termination of employment as per the above-mentioned statutory provisions.

INTRODUCTION

The relations between two persons as Employer and Workman start from the moment a contract is entered into by them. In general parlance, the contract is called contract of employment. The contract of employment, however, is an expression referring to both a contract for services as well as a contract of service. The parties to a contract for services are Employer and Independent contractor. Legal relations between them are mostly governed by the contract for services itself besides the general principles of law of contract. The contract for services is determinable by the parties mutually and gets determined at the moment, the object of the contract for services is fulfilled by the Independent contractor. Same legal stand cannot be assumed and taken in respect of a contract of service. The relations between the employer and workman are determined not only according to the contract of service but also is affected by labour legislation, mostly passed with the avowed object of welfare of workman on the ground of inequality of bargaining power between employer and workman and the possibility of the employer imposing terms and conditions in the contract exclusively favorable to himself and detrimental to the workman. Such contracts were described as 'Yellow Dog Contracts' and its adverse effects on the rights of the workman was negated by labour legislation. The contract of service thus, is only the starting point of the legal relations between employer and workman and the culminating point is the various labour laws applicable, especially, in the context of industrial employment.

This paper takes cognizance of both primary and secondary sources like statutory provisions and judicial decisions and the policy statements made by the stakeholders. This paper is especially concerned with above provisions and judicial pronouncements relating to termination of contract of service either forever or suspending its operation for a short time. The employer may initiate certain measures which result in termination of contract of service. The employer, for the purpose of putting an end to the contract of service, may resort to any of the following measures:

1. Termination by Retrenchment of workman.
2. Termination by Closure of Industrial establishment.
3. Termination by Transfer of Industrial establishment.
4. Termination temporarily by lay-off etc.

MODES OF TERMINATION OF CONTRACT OF SERVICE

Termination of Contract of Service besides in accordance with the terms and conditions of contract of service can also be in accordance with the statutory provisions. The industrial dispute act contains the provisions which enable the employer to terminate the contract of service under certain circumstances. They are retrenchment of workmen, lay-off of workmen and closure of industry and transfer of undertakings. The legal provisions relating to them and their interpretation by the courts in India, the relevancy and desirability in the changing industrial scenario is the focus in this paper. The employer resorts to the following modes of termination.

1. **Retrenchment**

According to section 2(00) of Industrial Disputes Act, "retrenchment means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include,

a) Voluntary retirement of the workman; or

b) Retirement of the workman on reaching the age of superannuation if the contact of employment between the employer and the workman concerned a stipulation in that behalf; or bb) Termination of the service of a workman as result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation contained therein

c) Termination of the service of a workman on the ground of continued ill health".

The meaning of the term Retrenchment has come up for interpretation before the Supreme Court in a number of cases. In Pipriach Sugar Mills Ltd. V. Pipriach Sugar Mills Mazdoor Union the Supreme Court observed that "retrenchment connotes in its ordinary acceptation, that the business itself is being continued, but that a portion of the staff or the labour force is discharged as surplusage and the termination of services of all the workmen as a result of closure of the business, cannot, be properly described as retrenchment. Retrenchment means in ordinary parlance discharge of the surplus; it cannot include discharge on closure of business."

Yet in another case State Bank of India v. N.Sundramoney, the Supreme Court started giving literal meaning to the words "for any reason whatsoever" in the definition and observed that every termination is retrenchment, barring the exceptions given in the Section itself. In Delhi Cloth and General Mills Co. Ltd. V. Shambhunath Mukherjee, the Supreme Court went a step further in holding that striking off the name of a workman from the rolls constituted retrenchment. In Santosh Gupta v. State Bank of Patiala where the employer terminated the services of an employer on the ground that the employee had failed to pass the relevant test require for confirmation in service, the Supreme Court held it to be a case of retrenchment. This view was again reiterated by a majority of a three judge of the Supreme Court in Surendra Kumar Verma v. Central Government, Industrial Tribunal.

There cannot be retrenchment in the closed or dead industry. Hence termination of all workers in an industry which is not going to run is not retrenchment

PROCEDURE FOR RETRENCHMENT

The employer has to follow the well-recognized principle of retrenchment in industrial law that is 'first come last go' and 'last come first go'. This principle has been incorporated in Section 25-G of the Act. Any departure from the above principle is possible in two cases, namely: -

1) By any agreement to the contrary between the workman and the employer, and

2) For any other reasons to be recorded by the employer.

CONDITIONS PRECEDENT TO RETRECHMENT OF WORKMEN:

1) Notice: The employer is under statutory obligation to give one month or three months' notice to the workman to be affected in writing. He should also give the reasons for retrenchment.

2) Compensation: The employer has to pay compensation to retrenched employees. Such compensation shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess six months. Retrenchment without compensation is invalid and therefore liable for penalty

2. Termination by Closure of Industrial establishment

Definition and Meaning of Closure

There was no definition of closure prior to 1982. For the first time, by Act No. 46 of 1982, Section 2 (cc) was inserted, which defines closure as "Closure" means "the permanent closing down of a place of employment or part there of". Even prior to this definition, the meaning of closure has come for discussion before the courts in a large number of cases. The definition has only given legislative recognition to the judicial dicta holding that closure may be treated as stoppage of whole or part of the activity or business of an employer. In Raj Hans Press v. K.S. Sindhu, the Supreme Court observed that it is not necessary that the entire business of the understanding should be closed down. The employer is free to close a part of the business. The closure of distinct venture, though part of the business of a complex, is legal and permissible.

PROCEDURE FOR CLOSING DOWN AN UNDERTAKING

An employer who intends to close down an undertaking of an industrial establishment to which this chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representative of the workmen in the prescribed manner: provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canal, dams or for other construction work. The Government may grant or refuse to grant permission and if the Government does not communicate the order granting or refusing to grant permission to the employer within the period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been given granted on the expiration of the said period of sixty days.

CONSTITUTIONAL VALIDITY OF CLOSURE

The validity of closure has been challenged before the Supreme Court in number of cases. In Excel Wear v. Union of India, it was held that Section 25-O of the Act as a whole and Section 25-R in so far as it relates to the awarding of punishment for infraction of the provisions of Section 25-O are constitutionally bad and invalid for violation of Article 19(1)(g) of the constitution. But it was held that the decision of Supreme Court would equally apply to the provisions of Section 25-O as amended by the Act 46 of 1982. The right to close a business is integral part of the fundamental right to carry on business and is guaranteed by the Article 19(1) (g) of the constitution. In Orissa Textile and Steel Ltd. v. state of Orissa and others, the constitutional validity of Section 25-O as amended in 1982 was considered. This section was struck down being unconstitutional in Excel Wear v. Union of India. It was held by Supreme Court in the case that the amended section 25-O was not ultra-virus the constitution and it was saved by Article 19(6) of the constitution on several grounds

PENALITY FOR CLOSURE

Any employer who closes down an undertaking without complying with the provisions of sub-section of Section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extent to five thousand rupees or with both.

3. Termination by Transfer of Industrial establishments.

In the life cycle of industrial business, management and control of the undertaking changing hand is inevitable. Sometimes, the ownership of the undertaking may be

transferee and sometimes the management may be transferred. Such transfer may be due to an agreement or operation of law. When such transfer takes place, what are the legal incidents is a pertinent question.

A similar pertinent issue is the closing down of an industry by the owner due to economic or other reasons. As the closure of the undertaking will have far reaching consequences affecting the lives of workmen and the families depending on them, it calls for statutory regulations.

The Industrial Disputes Act accordingly laid down principles governing transfer of undertaking and the rights of the workman when the undertaking is transferred. The application of the provisions depends on the number of persons employed. They deal with the important aspects … Right of the employer, procedure and compensation to workmen.

Section 25 FF of the Industrial Disputes Act deals with transfer of undertaking as well as the matter of compensation to workmen. Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employee every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of S.25-F, as if the workman had been retrenched.

For the application of Section 25-FF it is necessary that the ownership or management of an undertaking must have been transferred from one employer to another.

The Supreme Court in Workmen of Karnataka Agro Proteins Ltd. v. Karnataka Agro Proteins Ltd. and others held that in case of transfer of ownership or management of an undertaking the employees can only make a claim for compensation against their employees. No claim can be made against the transferee concern. The Court cannot give direction to Transferee Company to absorb and continue in service the workmen. And yet in another case New Horizon Sugar Mills Ltd., Ariyur and Another v. Ariyur Sugar Mills Stuff Welfare Union and Others, the assets of the Sugar Mill were seized and sold in auction by the Indian Bank, a creditor of the Mills under SARFAESI Act, 2002. Consequently, the services of its employees were terminated. Therefore, the question arose was that of liability to pay compensation under Section 25-FF of the Industrial Disputes Act, 1947.

The Supreme Court held that the liability to pay its workmen would be on New Horizon Sugar Mills having regard to Section 25-FF of Industrial Disputes Act, 1947. The amount due to the workers would therefore, have to be paid from out of the sale proceeds lying within the Indian Bank. Therefore, the Court issued consequential direction in this behalf.

4. Termination temporarily by lay-off

"Lay-off", is an essential component of the present discussion on the topic "The New Exit Policy". At common Law, the employer was under no obligation to "Lay-Off" his workmen, and hence even due to temporary difficulties confronted by him, the employer used to terminate the services of workmen. But with the advent of the concept of Modern Welfare State the common Law right of the employer to terminate the services of his workmen even for temporary difficulties, has been interfered with by virtue of statutory enactments, and now he is put under a legal obligation to effect only temporary separation between him and his workmen.

Definition and Meaning of "Lay-Off"

"Lay-Off" is defined in Section 2 (kkk) of the Act, which means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and who has not been retrenched.

Right of workman laid off for compensation

Section 25-C of this Act entitles a workman to get compensation from the employer for the period he is laid-off. Therefore, to claim a lay-off compensation under section 25-C two conditions must be fulfilled, namely: -

1) The workman must have been laid off for reasons contemplated by Section 2(KKK); and
2) Requirements as provided by Section 25-C must be fulfilled.

a) The workmen must be actually employed.

b) Layoff compensation need not be provided to badly or casual workmen.

c) The industrial establishment is not of a seasonal character or one where work is performed only intermittently.

d) The name of the workman must be borne on the muster rolls of the industrial establishment.

e) The workman must have put in minimum one year of continuous service under an employer.

f) The layoff compensation shall be equal to fifty percent of the total basic wages and dearness allowance, that would have been payable to him had he not been so laid off.

g) The layoff compensation need not be paid during the period of lay-off for those days, which are weekly holidays.

h) If during any period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the layoff after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer.

i) The employer may also retrench the workman in accordance with the provisions of section 25-F at any time after the expiry of the first forty-five days. If he does retrench as mentioned, then the compensation paid to the workman for having been laid-off may be set-off against the compensation payable for retrenchment. If the workmen do not present at the workplace at the appointed time and if he refuses to accept alternative similar employment then they are not entitled to compensation.

Question of great importance is whether payment of Layoff compensation is a condition precedent for affecting a Layoff. The question came for consideration before the Bombay High Court in Central India Spinning, Weaving, and Manufacturing Company Ltd. v. Industrial Court. The court held that the standing orders read with statutory provisions create a right in favour of the workmen who has been laid-off to claim compensation, but they do not create a right of being paid compensation before he is laid-off. In K.T. Rolling Mills v. Meher the Bombay High

Court observed that compensation for Lay off could not, be awarded in advance of actual layoff on grounds of social justice.

REFERENCE

1. S.N. Misra, Labour and industrial law, (2014)
2. P.L. Malik's Industrial Law, 2017
3. Vincent Arputham, Labour& Industrial Laws (2015)
4. All India Reporter
5. Labour Law Journal
6. Labour and Industrial cases
7. Industrial Disputes Act 1947 (Bare Act)