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Labour and Employment Disputes

PRO In-Depth

Labour and Employment Disputes: India

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Introduction

The Constitution of India confers powers to state governments and the central (federal) government to enact laws on the subject of employment and labour, except for certain matters that are reserved for the central government.

A large number of labour laws exist on different aspects of labour, namely, fixation and payment of wages, social security, occupational health and safety, women and child labour, industrial relations, resolution and adjudication of industrial disputes, and equal opportunities, including opportunities for disabled and transgender individuals.

Currently, over 50 separate laws concerning employment and labour law are in effect in the country. The existing labour and employment laws can be categorised into the following categories:

a. laws enacted and enforced solely by the central government;
b. laws enacted by the central government and enforced both by the central and state governments;
c. laws enacted by the central government and enforced by the state governments; and
d. laws enacted and enforced by the various state governments which apply to respective states.

Given the plethora of laws that exist on the subject of labour and employment, we have discussed the following key employment disputes and procedures that apply thereto:

a. termination of employees;

b. disputes concerning sexual harassment; and
c. other employment matters.

Classification of employees

Employees in India are broadly categorised into workmen and non-workmen. The Industrial Disputes Act 1948 (the ID Act) deals with settlement of industrial disputes, and provides statutory protection to workmen in certain matters, such as termination, transfers and closure of establishments. The ID Act, among other things, also deals with the transfer of business undertakings in relation to workmen.

Workmen

The ID Act defines a 'workman' as any person who is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, regardless of whether the terms of employment are express or implied. The following categories of employees are excluded from the definition of workmen:

a. persons employed in an administrative or managerial capacity; and
b. persons employed in supervisory work and earning more than 10,000 Indian rupees per month.

The definition of a workman is broad enough to cover all employees, except those performing managerial functions or those performing supervisory functions and earning more than the above-mentioned threshold.

It is common for an employee to be performing multiple roles, such as managerial or supervisory work as well as work that may be technical, skilled, unskilled or operational in nature. Several courts have ruled that where an employee performs multiple roles, the dominant nature of work performed by such employee in the usual course of their role should be considered while deciding whether the employee is a workman or a non-workman.

Generally, software employees and other white-collar workers performing technical work will fall under the category of workmen. That being said, classification of white-collar employees as workmen is a hotly debated (and frequently litigated) topic and courts in India are yet to conclusively prescribe clear parameters for such determination.

Non-workmen

All employees other than workmen, namely employees performing managerial and supervisory functions, will fall under the category of non-workmen.

Non-workmen are not covered under the ID Act and their employment is regulated by the employment contract and the state-specific Shops and Establishment (S&E) Acts.

Industrial disputes

Pursuant to the ID Act, industrial dispute means any dispute or difference among employers, employers and workmen, or among workmen that is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

Generally, disputes between an employer and an individual workman will not be deemed as an industrial dispute under the ID Act, unless such dispute is espoused by the trade union in writing at the commencement of the dispute. However, as an exception, disputes between an individual workman and their employer relating to termination, discharge or dismissal of employment will be considered as industrial disputes.

Labour courts and tribunals

Labour courts

Under the ID Act, the appropriate government has the power to constitute labour courts for resolving certain industrial disputes concerning dismissal or termination of employment, withdrawal of any privilege to workmen, and disputes concerning the service rules.

Industrial tribunal

The appropriate government can set up one or more industrial tribunals with wider jurisdiction than the labour court. The nature of disputes handled by the industrial tribunal concerns the following:

a. wages of employees;
b. bonus and provident funds that are provided;
c. working hours;
d. rationalisation;
e. leave and holidays;
f. service rules concerning maintenance of discipline among the employees; and
g. any other matter that may be considered to be heard and discussed.

National tribunal

A national tribunal is formed by the central government for adjudication of industrial disputes that are considered to be of national importance. If a dispute between two parties of an industry reaches the national tribunal, then both the labour court and the industrial tribunal lose their jurisdiction over the matter.

Year in review

The past year saw the adjudication of quite a few labour disputes in the courts, leading to significant legal developments. A summary of some of the major judgments passed by Indian courts in this field can be seen below.

P v. A and others (the High Court of Bombay)

The Bombay High Court[1] has laid down the guidelines for handling judicial proceedings instituted under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013 (the POSH Act) and the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Rules 2013 to protect the identities of the parties involved. This is the first time any High Court has laid out guidelines to protect the identities of the parties in judicial proceedings under the POSH Act. Some of the key guidelines are as follows:

a. the names of the parties should not be mentioned in the orders and judgments. The orders and judgments are to read '*A v. B*', or '*P v. D*';
b. in the body of orders and judgments, the parties are to be addressed as plaintiff and defendants and not by their name;
c. the orders and judgments should not mention any personally identifiable information, such as addresses, email addresses, or mobile or telephone numbers. Similarly, witnesses' names and addresses are not to be mentioned in the orders and judgments;
d. orders and judgments on merits should not be uploaded on the internet but should be delivered in private; and
e. no order should be pronounced in open court, only in judges' chambers or in camera.

Caparo Engineering India Ltd v. Ummed Singh Lodhi and ors (Supreme Court of India)

This judgment[2] deals with the illegal transfer of workmen. In this case, a number of workmen who were working in a factory were transferred to a different factory of the same employer around 900 kilometres away. The workmen raised an industrial dispute, and the matter was referred to the jurisdictional labour court, which held that the transfer was illegal and violated the ID Act.

Section 9A of the ID Act states that a notice of change must be given to workmen prior to effecting any change in the conditions of services, which are listed in the Schedule to the ID Act. An entry in the Schedule states that notice must be given for any increase or reduction in the number of persons employed in any occupation, process, department or shift, excluding any such change due to circumstances over which the employer does not have control.

In the present case, the Supreme Court found that the nature of work at the new factory was different, as the goods being manufactured were different. Additionally, the Supreme Court also found that the impugned transfer led to the workmen being moved to the post of 'supervisor', which disentitled them to the benefits of the ID Act after the transfer.

As such, the Supreme Court found that in this case, the transfer of workmen without any notice of change violated the provisions of the ID Act and, consequently, was illegal, arbitrary, mala fide and amounted to victimisation.

G4S Secure Solutions India Pvt Ltd v. Sanjeev Pawar and ors (Delhi High Court)

In this case, the court ruled that reinstatement of employment is not an automatic remedy in all cases of illegal termination, and that a suitable compensation can also be a valid remedy. The facts of this case are that four workmen were engaged as security guards in an establishment. The establishment claimed that these workmen were habitually drunk and repeatedly engaged in physical altercations with other staff, and a police case was filed against these workmen for assault. On the basis of this police report, the management of the establishment issued a 'show cause notice' to the workmen, and subsequent to issuance of such notice and filing of replies by the workmen, their services were terminated.

This termination was challenged by the workmen in the Labour Court, which found the termination to be illegal, and awarded reinstatement along with full back wages to the workmen. When the employers challenged this decision before the High Court, the High Court relied on a previous Supreme Court judgment and opined that the relief of a lump sum compensation be granted to the workmen, and no order for reinstatement be given.

Mahip Kumar Rawat v. Ashwini Kumar Rai and ors (Madhya Pradesh High Court)

In this case,[3] the High Court of Madhya Pradesh ruled that back wages are to be calculated based on the wages that the employee would have drawn had their employment contract not been terminated.

The Madhya Pradesh High Court directed the employer to reinstate the appellant and pay him 50 per cent back wages. However, the employer calculated the back wages based on the workman's wages prior to his termination (in 1999) and not on the wages payable between his termination and reinstatement.

The High Court, in this judgment, stated that the concept of back wages is based on compensation to the workman for the period of unemployment due to illegal termination. As such, the back wages would have to be calculated based on the period of unemployment.

The High Court directed the respondent to recalculate and pay back wages to the workman based on the wages that would have been drawn by him during the period of unemployment.

Dr Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare Department and ors (Supreme Court of India)

The Supreme Court adjudicated upon the applicability of the Maternity Benefit Act 1961 (MB Act) post expiry of a fixed term of employment. The Maternity Benefit Act 1961 provides for, among other things, maternity benefit in the form of paid wages for period of absence of up to 26 weeks.

In the present case,[4] the employee was engaged on a fixed-term employment agreement, and she applied for maternity benefit just 11 days before the expiry of her employment. The employer provided the maternity benefits only for 11 days till the expiry of the employment agreement. The employee approached the court claiming that she is entitled to maternity benefits of 26 weeks.

The Supreme Court in its judgment stated that the MB Act prescribes the provision of maternity benefits and not merely paid leave. The judgment pointed out that the MB Act also stipulates that 'discharge' of an employee during the period when the woman was entitled to maternity benefit shall not have the effect of depriving the woman of such benefit, and held that discharge due to non-extension of an employment contract would also fall within the scope of this provision.

Considering this, the Supreme Court held that once the employee fulfils the eligibility conditions for maternity benefit under the MB Act, she would be entitled to the same regardless of whether her employment contract has expired or not. As a result, the Supreme Court directed the employer to pay the employee maternity benefit for the entire period as prescribed under the MB Act.

Vikas Kumar v. South Delhi Municipal Corporation (Delhi High Court)

This case[5] was presented before the Delhi High Court as an appeal against a decision by a New Delhi district court, wherein a workman was granted compensation of a percentage of the minimum wage due, as opposed to full reinstatement as prayed for by him. The dispute arose due to the workman being wrongly arrested in a murder case. After his acquittal, the employee approached his employer seeking to resume his duties but was denied the employment.

The Delhi High Court examined the provisions of the ID Act under the context of this case. Even though the Delhi High Court stated that the ID Act is a beneficial legislation, it was held that the legislation does not provide for an automatic right to relief of reinstatement. The Delhi High Court referred to several recent judgments wherein it has been held that all the facts and circumstances of the situation must be examined by the courts before determining whether reinstatement or compensation is the appropriate remedy in such cases.

The Delhi High Court also held that the tribunal or labour court under the ID Act has been afforded the discretion of determining the nature of the relief – whether compensation or reinstatement – and referred to cases wherein it has been held that the decision of the tribunal or labour courts may only be interfered with if it is perverse or illegal.

As a result of the above, the Delhi High Court held that the relief of compensation awarded to the workman in lieu of reinstatement was proper and in accordance with recent judicial trends.

Nitesh Parashar v. Institute of Chartered Accountants of India and ors (Delhi High Court)

In an order relating to interim relief sought by the petitioner in this case, the Delhi High Court opined upon the statutory time limit prescribed under the POSH Act for the completion of inquiries into a complaint of sexual harassment.

In this case,[6] the petitioner had filed a petition for quashing the complaint made against him under the POSH Act. As per the petitioner, since the inquiry had not been completed within the statutory time limit as prescribed under the POSH Act, the complaint filed against him must be quashed.

The POSH Act provides that an inquiry by the Internal Complaints Committee (ICC) into a complaint of sexual harassment under the POSH Act is to be completed within a period of 90 days. The Delhi High Court, however, held that a delay in the inquiry had not caused any prejudice against the petitioner, and the delay was also not due to any act or omission of the complainant. The order also referred to another decision of the Tripura High Court wherein it was held that the time limit prescribed under the POSH Act cannot be treated as a terminal point beyond which the inquiry cannot continue.

In accordance with the above, the Delhi High Court denied the interim relief sought by the petitioner.

Procedure

'At will' employment

Indian laws do not recognise the concept of 'at will' employment. Services of an employee can be terminated for a valid cause after an inquiry during which due opportunity is provided to the alleged employee to present their case having regard to the principles of natural justice.

The law permits employers to terminate employment in cases of redundancies after compliance with the applicable law. An employer is required to provide a prior advance notice and payment of severance compensation as per the applicable law.

Termination for workmen employees

Pursuant to the ID Act, termination of employment of workmen can be carried out for any reason, provided that all workmen who have completed one year of continuous service[7] under an employer are given:

a. notice of one month or payment of wages in lieu of notice; and
b. compensation equivalent to 15 days' average pay for every completed year of continuous service, or any part thereof over six months.

Furthermore, the employer will also be required to serve notice to the relevant labour authority about the retrenchment. The above conditions are not applicable in case of termination of employment as a punishment inflicted by way of disciplinary action.

Factories and mines employing more than 100[8] workmen will have to obtain prior approval of the relevant government authority, and also provide three months' prior written notice or payment in lieu of notice instead of one month's notice.

Prior permission of the relevant government authority will also be required for closure of establishments where 50[9] or more workmen are employed.

Procedures for settlement of termination under the ID Act

The ID Act provides for the appointment of conciliation officers, boards of conciliation, courts and tribunals for settlement of industrial disputes.

At the first instance, the dispute is referred to conciliation officers who work in the Department of Labour. Their role is to work with the parties to help them settle the dispute. The outcome of the conciliation proceedings is not binding on the parties.

The state government may also set up a board of conciliation to help settle a specific case or dispute. The board of conciliation is not a permanent body and is set up on an ad hoc basis for specific matters.

If the parties are unable to resolve their disputes through conciliation, the conciliation officer or the board of conciliation will submit to the appropriate government a full report setting forth the facts and circumstances leading to the dispute and steps taken for bringing about a settlement thereof, and its findings thereon, the reasons on account of which a settlement could not be arrived at, and its recommendations for the determination of the dispute. The conciliation officer or the board, as the case may be, is required to submit its report to the government within the prescribed time, which can be extended by the government.

The appropriate government may thereafter decide to refer the matter to the labour courts for judicial trial. The ID Act requires the labour courts to pronounce its judgments within a period of six months. However, practically, there is a significant delay in disposal of the cases.

Pursuant to the ID Act, a workman can make an application directly to the Labour Court for adjudication of termination-related disputes after the expiry of 45 days from the date when the workman made the application to the appropriate government for conciliation of the dispute.

A party aggrieved by the decision of a labour court may prefer appeal before the jurisdictional High Court followed by the Supreme Court of India.

Termination of non-workmen employees

Termination of non-workmen employees will be governed by the applicable S&E Act.

S&E legislation in many states, such as Karnataka, Andhra Pradesh, Delhi and Haryana, require that employees who have been in continuous employment for a certain specified period should not be terminated except for reasonable cause and after providing prior notice of a specified period (generally of one month) or payment in lieu of notice.

Several courts have ruled that closure of the business due to contraction in the business, reduction of work, loss in business, financial constraints, action in the interest of efficiency and economy, and winding up of a business will be considered as reasonable causes for termination of employees. However, employers are required to provide proper reasons for termination of employment, and merely stating that an employee's services are no longer required will not suffice.

S&E legislation affords the impacted employee with a right to appeal to the concerned authority in cases where no reasonable cause has been cited by the employer.

Alternative remedies

Some employees (workmen and non-workmen) may also have the right to make a claim in the jurisdictional civil courts for termination-related disputes under the pretext of breach of the employment contract. However, an employee can either seek relief under the special legislation, namely the ID Act (for workmen) or S&E legislation (in the case of non-workmen), or from the civil court for breach of contract. An employee cannot make a claim in both the civil court as well as before the authority under the ID Act or S&E legislation, as the case may be.

Disputes relating to sexual harassment at the workplace

The POSH Act aims to protect female employees as well as female visitors to the workplace and contract workers.

The POSH Act requires employers to:

a. frame a policy on the prevention of sexual harassment of female employees;
b. set up an internal complaints committee (ICC) to deal with complaints relating to sexual harassment of female employees in cases where an employer is employing 10 or more employees;
c. organise periodic workshops to sensitise employees to prevent sexual harassment at the workplace; and
d. submit an annual report with the jurisdictional labour officer on the number of complaints received and the action taken by the relevant employer.

The ICC is responsible for the following:

a. receiving complaints of sexual harassment in the workplace;
b. initiating and conducting inquiries pursuant to this policy;
c. submitting findings and recommendations of inquiries;
d. coordinating with the employer in implementing the appropriate action;
e. maintaining strict confidentiality throughout the process pursuant to the POSH Act; and
f. submitting annual reports to the employer and district officer as outlined by the policy.

The complainant may file a written complaint of sexual harassment in the workplace to the ICC within three months of the incident or latest incident (in the event of multiple incidents). The complaint must be in writing and signed by the complainant. The ICC may extend the timeline by another three months if it is satisfied that genuine reasons prevented the lodging of the complaint within the prescribed period.

In cases where the aggrieved employee is unable to file a complaint on account of death, physical incapacity or mental conditions, the complaint may be filed by the aggrieved employee's relative, friend, co-worker, an officer of the National Commission for Women or State Women's Commission, or any person who has knowledge of the incident with the written consent of the aggrieved individual or the aggrieved individual's legal heir, as may be prescribed.

Within seven days of receiving the complaint, the ICC must forward the same to the accused for their response. The accused must submit their response along with supporting documents within 10 working days of the date of receipt of complaint. The ICC should conclude the hearing within 90 days of the date of receipt of complaint. The ICC is required to follow the principles of natural justice and hear both the complainant and the respondent. Legal representatives of the parties are not allowed to participate in the proceedings before the ICC.

If requested in writing by the complainant, the ICC may recommend that the employer provide certain interim relief, namely:

a. transfer the aggrieved employee or the accused to any other workplace;
b. grant leave of up to three months to the complainant; or
c. grant such other relief to the complainant as allowed by the POSH Act or the Rules, including restraining the accused from reporting on the work performance of the complainant.

The ICC will, after completion of the inquiry, submit its finding to the employer along with appropriate action to be taken against the accused as per the employer's policy, which could include the termination of the accused's employment.

Types of employment disputes

From a general employment perspective, the most common types of disputes that arise between employers and employees relate to:

a. unfair dismissal;
b. breach of contract pertaining to non-payment of non-statutory incentives;
c. harassment and bullying; and
d. non-payment of severance compensation.

Additionally, India also has several specific laws on other aspects of employment, such as payment of wages, bonuses, gratuity benefits, maternity benefits, social security, leave and holidays, and equal opportunities. Each of the specific laws provides for a specific authority that has jurisdiction to entertain disputes covered under the legislation.

For example, the Payment of Wages Act 1936 regulates the payment of wages of certain classes of employed persons. The authority appointed under the Act has jurisdiction to entertain applications relating to the following:

a. deductions and fines not authorised to be deducted from wages; and
b. delay in payment of wages beyond the wage periods.

The MB Act is applicable in respect of an establishment where 10 or more persons are employed, or were employed, on any day of the preceding 12 months. The Act requires employers to provide paid maternity leave of a specified duration to female employees expecting a child. A female employee is entitled to maternity leave only if she has worked for the employer for at least 80 days in the 12 months immediately preceding the date of her expected delivery.

Under the Act, a claim can be made before the jurisdictional labour inspector or authority appointed by the Act for:

a. non-payment of maternity benefits; and
b. termination of a female employee during or on account of her absence from work due to maternity leave.

The Payment of Gratuity Act 1972 is a social security legislation that requires employers to pay gratuity to employees on:

a. superannuation;
b. death or disablement due to accident or disease; and
c. retirement or resignation, provided the person has completed five years of continuous service with the employer.

For every completed year of service or part thereof in excess of six months, the employer has to pay gratuity to an employee at the rate of 15 days' wages that was last drawn by the employee concerned. However, the maximum gratuity payable under the Payment of Gratuity Act 1972 is 2 million Indian rupees or more, as agreed in the employment agreement.

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person so entitled, they can submit an application to the controlling authority appointed under the Act, who will hear the parties and issue a certificate for that amount to the collector, who shall then recover the same, together with compound interest thereon.

It is important to understand that more than one authority may seem to have overlapping jurisdiction over a particular matter, and it is important to ascertain the most appropriate authority before which a given claim can be made. For example, in respect of a workman who is covered under the Payment of Wages Act 1936, the claims relating to non-payment of wages during the wage period or unauthorised deductions can be made before the authority under the Payment of Wages Act. However, the issues relating to determination of actual wages can be the subject matter of industrial disputes under the ID Act over which appropriate industrial tribunals may have the jurisdiction.

Outlook and conclusions

In 2019, the Indian government introduced four Labour Codes (the Code on Wages; the Industrial Relations Code; the Code on Social Security; and the Occupational Safety, Health and Working Conditions Code) with a view to consolidating and amending the 29 major labour laws currently enacted in the country. The Codes are meant to facilitate a more streamlined procedure for compliance by employers and employees, and resolve conflicting definitions and provisions that currently exist due to the large number of laws covering overlapping topics. The Codes have been passed by both Houses of the Parliament and have also received the assent of the President.

These Codes have recently been notified. The central government and state governments are in the process of framing relevant rules under these Codes for their implementation. Most states and union territories have framed draft rules under these codes; however, these are yet to come into force.

Lastly, with the rise in hybrid work structures and work from home arrangements implemented in the aftermath of the pandemic, employers are seeing a significant rise in dual employment cases, wherein employees are on the payroll of multiple employers at the same time. There is no specific law in India that prohibits dual employment or moonlighting, except that such restrictions are prescribed in some regulations governing factories. Generally, restrictions on dual employment are implemented by way of contractual provisions in employment agreements and policies, wherein employees are prohibited from taking up employment with any other entity while in active service of the current employer. Moreover, employment agreements also typically contain non-compete provisions – such restrictive covenants during the term of employment have also been upheld by courts in India.

Many employers in India have terminated employees' employment contracts upon finding that these employees were simultaneously employed with the company's competitor. Instances such as this underscore the importance of having clear and robust mechanisms in place to prevent dual employment scenarios, which give rise to business risks such as conflict of interest scenarios and risks of breach of confidential or proprietary information.

Footnotes

1. ^ *P v. A and others* (the High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction Suit No. 142, 2021).
2. ^ *Caparo Engineering India Ltd v. Ummed Singh Lodhi and ors* (Supreme Court of India), 2022 LLR 1.
3. ^ *Mahip Kumar Rawat v. Ashwini Kumar Rai and ors* (Madhya Pradesh High Court), 2022 LLR 30.
4. ^ *Dr Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare Department and ors* (Supreme Court of India), Civil Appeal no. 5010/2023.
5. ^ *Vikas Kumar v. South Delhi Municipal Corporation* (Delhi High Court), 2023/DHC/420.
6. ^ *Nitesh Parashar v. Institute of Chartered Accountants of India and ors* (Delhi High Court), W.P. (Civil) 88/2023.
7. ^ A workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine, and 240 days in any other case.
8. ^ The threshold for the number of workmen could vary from state to state.
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