UNIT-3
INDUSTRIAL DISPUTE ACT, 1947

COURSE TEACHER

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IMPORTANT QUESTIONS UNDER UNIT-3

1. Explain the provisions relating to regulations of strikes under Industrial Disputes Act with the help of decided cases.
2. Define strike.What are the various kinds of strikes mentioned in the Industrial Disputes Act,1947?
3. Define strike and lockout and when they will become illegal?
4. What is retrenchment? Explain the provisions relating to regulation of retrenchment?
5. Define lay off. When the lay-off shall be treated as valid? What are its effects?
6. Define ‘standing orders’ as given in the Industrial Employment (Standing Orders) Act. Explain the procedure of certification of standing orders.
7. Write short notes on illegal lockout?
8. Write a note on when workmen are not entitled to compensation.
9. Write short note on closure of an industry.

INTRODUCTION

- In India, the right to strike is still not recognized and given any legal preference. The Trade Union Act, 1926 for the first time in India came forward and legalised the concept of strike by providing limited rights regarding it to the registered trade unions. Under Indian Constitution, the right to strike is not considered as an absolute right but it mentions that it is a fundamental right to form a Union.
- The Constitution of India is known as the law of the land and it gives right to form a union but does not give right to go on a strike.
- Under the Industrial Disputes Act in India, the ground and conditions of a legal strike is mentioned. The act mentions about what is a legal strike and what constitutes a legal strike but if the conditions are not followed then it will be illegal.
- Article 19 of the Indian Constitution enshrines that the right to protest is a fundamental right but if we talk about right to strike, it is only recognized as a legal right and not a constitutional right.
- According to the Industrial disputes Act of 1947, the right to strike has some restrictions and that need to be followed. The Indian courts have observed in the case that the significance of right to strike is core of significance to the principle of collective bargaining of each worker.

- Justice Shetty and Ahmadi JJ, in the case of **B.R. Singh v. Union of India"** of the Supreme Court of India observed:
- “there is no fundamental right to strike. However, the right to form an association by the unions can be found in under Article 19(1)(c) of the Constitution of India. If the trade unions Act, 1926 SC, it can be observed that section 8 of the trade unions Act, 1926, provides for registration of trade unions. The right to form an association was recognised only to confer certain rights on trade unions.
- It was held that the strike is a form of demonstration. Though the right to strike or right to demonstrate is not a fundamental right, it is recognised as a mode of redress for resolving the grievances of the workers. Though this right has been recognised by almost all democratic countries but it is not an absolute right. Certain restrictions have been placed by Sections 10(3), 10-A (4-A), 22 and 23 of the Industrial Disputes Act on the right to strike.
- **In All Indian Bank Employees association v Industrial Tribunal**, the Apex court of India observed and stated that:"Even by broad interpretation of Article 19(1)(c), it cannot be held that trade unions have a guaranteed right to an effective collective bargaining or fundamental right to strike. The right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation need to be tested not with reference to Clause (4) of Article 19 rather with totally different considerations.

- **Ludwig Teller** in his book, "Labour Disputes and Collective Bargaining" opines that "the word 'Strike' in its broad significance has reference to a dispute between an employer and his workers, in the course of which there is a concerted suspension of employment. Because it is an expensive weapon the strike is generally labour's last resort in connection with industrial controversies".Reasons for strike is based on working hours, working conditions, salary, incentive, timely payment of wages, reduction of salary, leave.,etc.
- Lock-out is a weapon in the hands of the employer, similar to that of strike in the armoury of workmen used for compelling persons employed by him to accept his terms or conditions of or affecting employment. In lock-out an employer shuts down his place of business as a result of reprisal, or as an instrument of coercion or as a mode of exerting pressure upon the employees with a view to dictate his own terms to them.


STRIKE

STRIKE

- According to **Section 2(q)** of the ID Act, Strike is a cessation of work by the employees for any length of time under a common understand to put pressure on an employer to accept their demand.

1. Cessation of work by a body of persons employed in any industry acting in combination or
2. A concerned refusal of any number of persons who have been employed to continue to work to accept employment.
3. A refusal under a common understanding of any number of such persons to continue to work or to accept employment.

- In **Farrer vs. Close**, the Court defines strike as a simultaneous cessation of work on the part of the workmen.


LOTO
inch
inch
DANGER
LOCKED
OUT
DO NOT REMOVE
SAFETY
SAFETY

LOCK-OUT

- According to **Section 2(l)** of the Act, Lock-out means the temporary closing of a place of employment or suspension of work or the refusal by an employer to continue to employ any number of persons employed by him.
- It is declared by the employers to put pressure on their workers. It is an act on the part of the employers to close down the place of work until the workers agree to resume work on the terms and conditions specified by the employers.
- In **Jaya Bharath Textiles Works vs. State of Madras,** it was held that a permanent discountenance of business is not a lock-out because a lock-out is a temporary closure of a place of business.
- In **Praboo Pandey vs. J.K.Jute Mills,** it was held that if the temporary suspension of work is due to shortage of raw material, it is not a lock-out.

PROHIBITION OF STRIKES AND LOCK-OUTS (SECTION 22)

- Section 22 of the Act deals with the prohibition of strikes and lock-outs. This section applies to the strikes or lock-outs in industries carrying on public utility service.
- **Section 22(1)** provides that no person employed in public utility service shall go on strike in breach of contract:
  - (a) without giving to the employer notice of strike within **six weeks** before striking, or
  - (b) within **fourteen days** of giving such notice; or
  - (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
  - (d) during the pendency of any conciliation proceeding before a conciliation officer and **seven days** after the conclusion of such proceedings.
- It is to be noted that these provisions do not prohibit the workmen from going on strike but require them to fulfil the conditions before going on strike.

PUBLIC UTILITY SERVICE (SECTION 2(N)

- Public utility service" means—
- (i) any railway service or any transport service for the carriage of passengers or goods by air;
- (ia) any service in, or in connection with the working of, any major port or dock or any industrial establishment or unit engaged in essential defence services;
- (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- (iii) any postal, telegraph or telephone service;
- (iv) any industry which supplies power, light or water to the public;
- (v) any system of public conservancy or sanitation;
- (vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification.
- Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension;

- **Section 22(2)** lays down that no employer carrying on any public utility service shall lock-out any of his workmen-
- (a) without giving them notice of lock-out as hereinafter provided within **six weeks before locking out**; or
- (b) within **fourteen days** of giving such notice; or
- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceeding before a Conciliation Officer and **seven days** after the conclusion of such proceedings.
- **Section 22(3)** provides that the notice of strike or lock-out as provided by sub-sections (1) and (2) may in certain cases be dispensed with
- (1) No notice of strike shall be necessary where there is already in existence a lock-out in the public utility service concerned.
- (2) No notice of lock-out shall be necessary where there is already in existence a strike in the public utility service concerned.

- **Section 22(4)** says that the notice of strike shall be given by such number of persons to such person or persons in such manner as may be prescribed.
- **Section 22(5)** provides that the notice of lock-out shall be given in such manner as may be prescribed.
- **Section 22(6)** deals with the intimation of notices given under sub-section (1) or (2) to specified authorities.
- If on any day an employer receives from any person employed by him any such notice as is referred to in sub-section (1), he shall within **five days** report to the Appropriate Government or to such authority as that Government may prescribe, the number of such notices received on that day.
- Similarly, if an employer gives any notice as is referred to in sub-section (2) to any person employed by him, he shall report this fact within **five days** to the Appropriate Government or to such authority as the Government may prescribe.
- The employer shall send intimation of strike or lock-out on the day on which it is declared to the specified authority. The authority to whom the above intimation is required to be sent shall be specified by the Appropriate government either generally or for a particular area or for a particular class of public utility services. Sub-section (3) is in the nature of an exception of sub-sections (1) and (2) of Section 22.

- **In Mineral Minor's Union v. Kudremukh Iron Ore Co. Ltd.**,it was held that the provisions of Section 22 are **mandatory** and the **date** on which the workmen proposed to go on strike should be **specified in the notice.** If meanwhile the date of strike specified in the notice of strike expires, workmen have to give a fresh notice and all other statutory consequences flowing out of the said notice would follow. It was further held that deduction of wages for days of illegal strike would be justified.
- **In ANZ Grindlays Bank v. S.N. Khatri and others,** the Bombay High Court following the decision in Syndicate Bank v. K. Umesh Maik, held that once the strikę is held to be illegal, the question of justifiability does not arise and the employees in public utility services are not entitled to seek wages for the strike period unless they prove that the strike was legal and justified.

GENERAL PROHIBITION OF STRIKES AND LOCK-OUTS (SECTION 23)

- No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—
- (a) during the pendency of conciliation proceedings before a Board and **seven days** after the conclusion of such proceedings;
- (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and **two months** after the conclusion of such proceedings;
- (bb) during the pendency of arbitration proceedings before an arbitrator and **two months** after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or
- (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

ILLEGAL STRIKES AND LOCK-OUTS (SECTION 24)

- **Section 24** of the Industrial Disputes Act, 1947, deals exclusively with the illegality of a strike.
- Any violation or breach of **Sections 22 and 23** results in the strike becoming illegal.
- A strike or lockout shall be deemed to be illegal if it is declared or commenced in breach of Section 22 and 23; or it is continued in violation of an order made under sub-section (3) of Section 10; or It is continued in contravention of an order made under sub-section (4-A) of Section10-A.
- A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.
- No person shall knowingly expend or apply any money in direct furtherance of support of any illegal strike or lock-out.(Section 25)

T.K.RANGARAJAN VS. GOVERNMENT OF TAMIL NADU AND OTHERS

- The Tamil Nadu govt took unprecedented action against the striking govt employees and dismissed more than 200,000 in one stroke and put many of them behind bars. This unusual disciplinary action was taken by using the Tamil Nadu Essential Services Maintenance Act (TESMA) which barred all govt employees from undertaking any protest or strike.
- The aggrieved employees approached the Tamil Nadu High Court but their petitions were not entertained on the ground that govt employees cannot approach the courts directly, as per the Supreme Court judgement in the L. Chandrakumar case; the employees, thus, shall first approach the Tribunal with their grievances.
- The Verdict: The Supreme Court bench of Shah & Lakshmanan dismissed the petitions of the employees and stated that the right to strike was not a fundamental right. The Honorable bench stood alongside with the action of the Tamil Nadu Government in arresting and jailing some and dismissing all of them. Govt Employees Have No Right To Strike!

MOTI LAL YADAV VS. STATE OF UP

- A Public Interest Litigation (PIL) was filed by the petitioner on request of urgent hearing against the ongoing strike by the junior doctors in the State Medical Colleges of UP. The striking doctors were protesting in anticipation of applicability of the rule that would post them in rural areas. The adverse media reports of the number of patients death, prompted the petitioner, a practising advocate, to file this petition.
- The Verdict: The honorable judges in very clear terms stated that the doctors, more than any other professions, had no legal right to strike, protest or abstain from duty. Their fundamental duty was to look after the ailing people and administer medicines & treatment.
- The Court ordered the State govt to constitute a high powered committee that would submit a detailed report in two months time. The said committee would find out if any patient had died due to negligence during the strike period. If yes, then the deceased's heir should be provided a compensation of twenty-five lakh rupees. Furthermore, the compensation amount shall be recovered from the salaries and allowances of the striking doctors. Disciplinary action shall also be taken all those who participated in an illegal strike. Doctors cannot deny treatment on any account!

EXPRESS NEWSPAPERS LTD.
VS
WORKMEN

- The Company published several newspapers and periodicals from Madras.
- It had many unresolved disputes of long standing with its workers. Apprehending a transfer by the Company of its business to a benami (fictitious) concern in spite of a previous promise not to make such a transfer. on the 27th April 1959 the workers struck. On the 29th April, the Company announced the closure of its business at Madras. This announcement. indicated that the employees would be paid their wages, one month's salary in lieu of notice, and retrenchment compensation. Treating the closure as a lockout in response to the strike, the Madras Government

- In the case of Shri Ramchandra Spinning Mills vs State of Madras, it was seen that if the employer closes his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on employees or generally speaking when his act is what may be called as act of belligerency there will be lockout.
- In the case of Lord Krishna Sugar Mills Limited Saharanpur vs State of UP, the verdict was that a lock-out may sometimes be not at all connected with economic demands; it may be resorted to as a security measure.
- In the case of Lakshmi Devi Sugar Mills Limited vs Ram Sarup, the verdict was that in the case of lockout there is neither alteration to the prejudice of workmen of the conditions of the service application to them nor a discharge or punishment whether by dismissal or otherwise.

DIFFERENCE BETWEEN STRIKE AND LOCK-OUT

Strike	Lock-outs
It is the weapon of employees against employers to bend the employer in their side.	It is the weapon of the employer against employees to restrict the militant's spirits of the workers of the Industry.
Cessation of work by employees in the industry to show grievance or to compel the employer to fulfil their demands.	Cessation of work by the employer to accept the terms and conditions decided by the management
The Strike involves the united withdrawal of the supply of labour at work	Lockout Involves the withholding of demand of labour
The strike is of various types	The lock-out does not have varieties
The strike is conducted to gain a concession from the employer.	Lock-out is used to enforce the terms of employment during the dispute
It is a full cessation of work by employees until the fulfilment of their demands	It is a temporal shutdown by the employer, refusal of employment.

TYPES OF STRIKE

GENERAL STRIKE

- In the general strike, all the employees of the industry or that region are going on strike. Generally, it was not against the employer but it is a political pressure strike influence that government.
- It means a strike by members of all or most of the unions in a region or an industry. It may be a strike of all the workers in a particular region of industry to force demands common to all the workers. These strikes are usually intended to create political pressure on the ruling government, rather than on any one employer.
- The workmen join together for common cause and stay away from work, depriving the employer of their labour needed to run his factory. General Strike is for a longer period. It is generally resorted to when employees fail to achieve their object by other means which generally proceeds a General Strike. The common forms of such strikes are organized by central trade unions in railways, post and telegraph, etc. Hartals and Bundhs also fall in this category.

SIT DOWN STRIKE

- In this sitdown strike workers on strike but come on their place of work but do not do their work. These types of the strike are also called pen down or tool down strike in which workers are refused to use pen or tools because they are useful in work.
- It is the form of strike where the workmen report to their duties, occupy the premises but do not work.
- In **Mysore Machinery Manufacturers v/s State**, the Court held that where dismissed workmen were staying on premises and refused to leave them, did not amount to strike but an offence of criminal trespass.
- In **Punjab National Bank Ltd. v/s their workmen**, the Court held that refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises of the bank and refused to take their pens in their hands would no doubt be a strike under section 2(q) of the Act.

HUNGER STRIKE

- In this strike, all the workers are going on fasting no one eats food. They do that strike in the workplace unless the employer fulfills the demands and resolve the grievances. The employees of Kingfisher airlines went on hunger strikes for salary dues of several months.
- In **Piparaich Sugar Mills Ltd. v/s Their Workmen,** Certain employees who held key positions in the mill resorted to hunger strike at the residence of the managing Director, with the result that even those workmen who reported to their duties could not be given work. Held: That concerted action of the workmen who went on Hunger Strike amounted to "strike“.

SICK OUT STRIKE

- In this strike, all or a significant number of union members call in sick on the same day. They dont break any rules, because they just use their sick leave that was allotted to them on the same day. however, the sudden loss of so many employees all on one day can show the employer just what it would be like if they really went on strike

SLOW DOWN STRIKE

- The workmen do not stay away from work. They do come to their work and work also, but with a slow speed in order to lower down the production and thereby cause loss to the employer. Workers show as they are engaged in work..
- In the case of **Sasa Musa Sugar Works Pvt. Ltd. v. Shobrati Khan & Ors"** it was held that: "Go-Slow strike is not a "strike" within the meaning of the term in the Act, but is serious misconduct which is insidious in its nature and cannot be countenanced."

ECONOMIC STRIKE

- In an economic strike, workers do strike to fulfil their economic demands like wages, bonuses, and allowances. Workers completely stopped their work while his demand is not fulfilled. Demand is to increase wages, allowances like traveling allowances, house rent allowances, dearness allowances and also to provide some other facility."

LAY-OFF
&
RETRENCHMENT

- The Industrial Disputes Act, 1947 as originally enacted made no provision for the payment of 'lay off' or 'retrenchment compensation to the laid-off or retrenched workmen. In the absence of statutory provisions for paying compensation, the authorities had taken into consideration various factors in determining the amount of compensation. Therefore, there were no uniform rule that can be said to have observed by the adjudicating bodies.
- In 1953 a huge stock had accumulated in textile industries. Textile mills were in a mood to close one or more shifts. The closure must have resulted in retrenchment or laying-off a large number of textile employees causing great unrest in the whole of the textile industry. In order to overcome the situation the President of India promulgated the Industrial Disputes (Amendment) Ordinance, 1953 to take effect from 24th October, 1953. The Ordinance made provision for payment of compensation for lay-off or retrenchment. The said Ordinance was repealed and replaced by the Industrial Disputes (Amendment) Act, 1953.
- The Industrial Disputes (Amendment) Act, 1953 prescribed conditions under which workers might be laid-off and retrenched and the compensation to be paid to laid-off and retrenched workmen.(Chapter 5A)

DEFINITION OF LAY-OFF (SECTION 2(KKK))

- The "lay-off" 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 break-down 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.

- **Essentials:-**

a. Temporary unemployment of the workers due to lack of resources, raw materials or breakdown of machinery or even due to natural calamity.

b. The employer cannot give work to the employees due to aforesaid reasons.

c. The names of the laid-off workers should be there in the muster rolls of the establishment.

d. The said workers should not have been retrenched.

- Explanation.—Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause.

RETRENCHMENT (SECTION 2(OO))

- The "retrenchment" means the termination by the employer of the service 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 contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) 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 its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of **continued ill-health;**

APPLICATION (OF A SECTION 25C TO 25E)SECTION 25-A

- Sections 25-C to 25-E inclusive shall not apply to industrial establishments to which Chapter V-B applies or,-
- (a) to industrial establishments in which **less than fifty workmen** on an average per working day have been employed in the preceding calendar month, and
- (b) to industrial establishments which are of a **seasonal character** or in which work is performed only intermittently.
- Thus where the exemption under Section 25-A applies, the workmen are not entitled to lay-off compensation and the Tribunal has no right to grant relief on any fanciful notions of social justice. Sub-section (1) exempts such establishments where on an average less than fifty workmen have been employed.
- Explanation For the purposes of Section 25-A and Sections 25-C to 25-E the "industrial establishment" means,-
- (1) a factory as defined in Section 2(m) of the Factories Act, 1948;
- (2) a mine as defined in Section 2(j) of the Mines Act, 1952;
- (3) a plantation defined in Section 2(1) of the Plantations Labour Act, 1951.

CHAPTER VA(LAYOFF AND RETRENCHMENT

DO NOT APPLY TO ALL INDUSTRIAL ESTABLISHMENTS

SECTION 25A

FOLLOWING 3 TYPES OF INDUSTRIAL ESTABLISHMENTS HAVE BEEN EXEMPTED

- WHICH LESS THAN 50 WORKMEN ON AN AVERAGE PER WORKING DAY ARE EMPLOYED IN THE PRECEDING CALENDAR MONTH
- WHICH ARE OF A SEASONAL CHARACTER OR WORK ONLY INTERMITTENTLY (IRREGULAR)
- TO WHICH CHAPTER V-B APPLIES

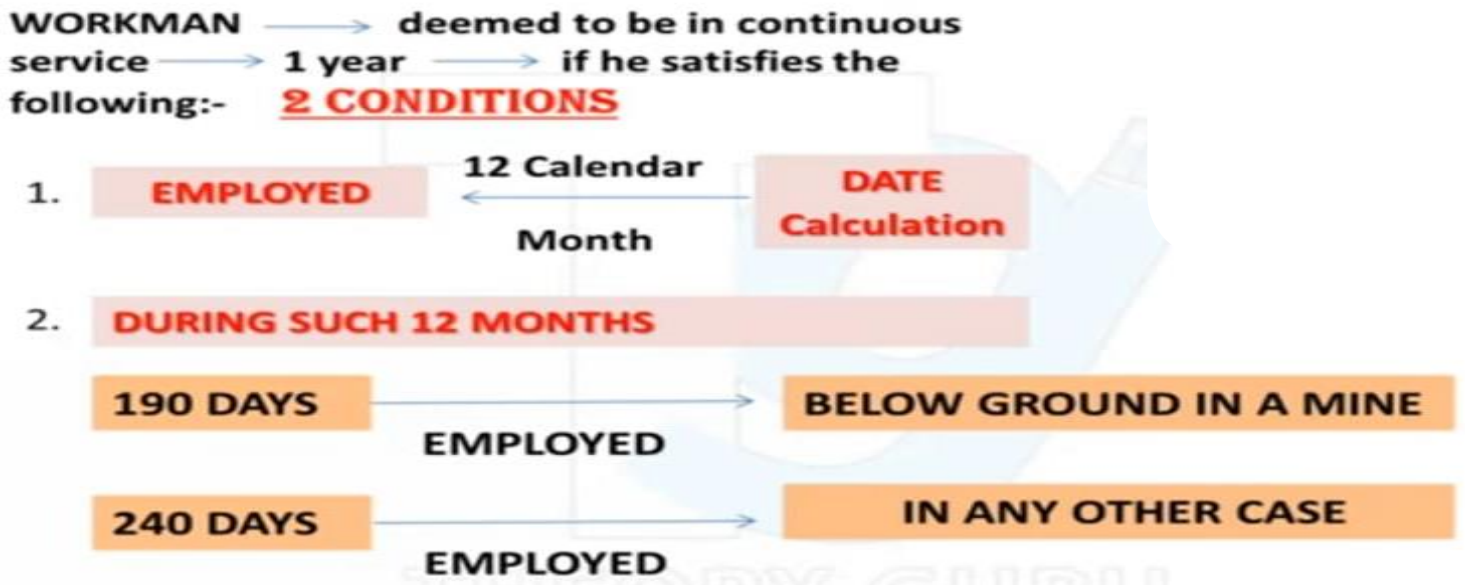
Section 25-A(2). This sub-section provides that if a question arises whether an industrial establishment is of a seasonal character or whether work is performed only intermittently the **decision of the appropriate Government** thereon shall be final.

SECTION 25-B. DEFINITION OF CONTINUOUS SERVICE.

- Section 25-B of the Act defines continuous service.
- A workman shall be said to be in continuous service for a period, if for that period his service is uninterrupted. It is also provided that any interruption on certain accounts shall not be considered an interruption and the service shall still be deemed to be continuous. These interruptions may be on account of

- (1) sickness; or
- (2) authorised leave; or
- (3) an accident; or
- (4) a strike which is not illegal; or
- (5) a lock-out; or
- (6) a cessation of work which is not due to any fault on the part of the workmen.

- 25-B defines continuous service for a period of **one year** or a period of **six months.**
- Clause (a) of sub-section (2) provides that a workman shall be deemed to have been in **continuous service for a year**, if:-
- (1) he has been in employment for 12 calendar months; and
- (2) he actually worked for not less than-
- (a) **One hundred and ninety days** in the case of a workman employed below ground in a mine, and
- (b) **Two hundred and forty days** in any other case.



- The following conditions must be fulfilled by a workman to entitle him for a **continuous service of six months**. As provided by clause (b) of sub-section (2) these conditions are :-

- (1) The workman has been in employment for a period of six calendar months; and
- (2) Such workman has actually worked for not less than-
- (a) **Ninety-five days** in the case of his being employed below ground in a mine; and
- (b) **One hundred and twenty days** in any other case.

- Explanation. For the purpose of clause (2), the number of days on which a has actually worked under an employer shall **include the days** on which-
- (i) he has been **laid-off under an agreement** or as permitted by **Standing Orders** made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on **leave with full wages**, earned in the previous year,
- (iii) he has been **absent** due to **temporary disablement** caused by accident arising out of and in the course of his employment, and
- (iv) in the case of a female, she has been on **maternity leave** so however, that the total period of such maternity leave does not exceed twelve weeks.

Workmen of American Express International Banking Corporation Vs. The Management of American Express International Banking Corporation (1985) II LAB LJ 539 (SC),

- It was held that for the purposes of determining continuous service, a workman must have actually worked for 190 or 240 days as the case may be. Sundays and other paid holidays during which a workman was in the employment of the employer and for which he had been paid wages shall be taken into account for reckoning number of days on which a workman is said to have actually worked.
- Under clauses (a) and (b) of sub-Section (2) the two conditions providing for one year's or six months' continuous service, as the case may be, must be simultaneously fulfilled. Non-fulfilment of even one of them will not entitle the workmen to be treated in continuous service. That means for a continuous service of one year a workman must have served for 12 calendar months and also have worked for 240 or 190 days. If he has served for less than 12 calendar months he will not be deemed to be in continuous service even if he has served for 240 or 190 days as the case may be. Similarly a workman who has served for 12 calendar months but has worked for less than 240 or 190 days, as the case may be, will not be deemed to have been in continuous service.

SECTION 25-C. RIGHT OF WORKMEN 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. When the employer is unable to provide work to his workmen for reasons beyond his control, he owes a duty to pay lay-off compensation to such workmen. Before a workman may claim lay-off compensation he must fulfill the following conditions:
- (1) his **name must be borne on the muster rolls** of an industrial establishment;
- (2) he must have completed at **least one year's continuous service** (what is continuous service is defined in Section 25-B);
- (3) the workman must **not be a badli (worker for a short period of time)** or a **casual workman**.
- If the above requirements, are fulfilled a workman whether laid-off continuously or intermittently, shall be paid compensation.
- The compensation payable shall be for all days during which he is so laid-off, except for such weekly holidays as may intervene.

- The amount of compensation payable shall be equal to **fifty per cent of the total of the basic wages and dearness allowance** that would have been payable to him had he not been so laid-off.
- Compensation =**50% of basic wages + Dearness allowance**
- The above rule is subject to the following limitations:
- (1) If during any period of twelve months a workman is **laid off for more than forty-five days, no compensation** shall be payable in respect of any period of the lay-off after the expiry of the forty-five days.
- (2) Where a workman is laid-off for a period of 45 days during a period twelve months, the employer has a right to retrench such workman at any time after the expiry of 45 days of lay-off. When an employer decides to retrench a workman he must comply with the requirements of Section 25-F of the Act.

SECTION 25-D. DUTY OF AN EMPLOYER TO MAINTAIN MUSTER ROLLS OF WORKMEN.

- Section 25-D of the Act imposes a duty upon the employer to maintain a muster roll for the purposes of this Chapter.
- The employer shall also provide for making of entries in the muster rolls by workmen who may present themselves for work at the appointed time during normal working hours.
- Every workman who has been laid off is required to present himself for work at the establishment on each working day at the appointed time. He shall make entry in the muster rolls maintained by the employer.
- A workman who does not so present himself and sign the muster rolls shall not be entitled to claim lay-off compensation. The duty imposed upon the employer by this section is also mandatory and non-compliance will debar the employer to take advantage of Section 25-E (ii) of the Act.

SECTION 25-E. WORKMEN NOT ENTITLED TO COMPENSATION IN CERTAIN CASES.

- Section 25-E provides that a laid-off workman shall not be entitled to compensation :-
- (1) if he refuses to **accept alternative employment** provided that such alternative employment is offered :
- (a) in the same establishment or in any other establishment belonging to the same employer situate in the same town or village or situate within a **radius of five miles** from the establishment to which he belongs; and
- (b) if in the opinion of the employer, the alternative employment does not call for any special skill or previous experience and can be done the laid-off workman; and
- (c) if the wages which would normally have been paid to the workmen in his previous employment are offered for the alternative employment also;
- (2) if he does not present himself for work at the establishment at the appointed time during **normal working hours at least once a day**;

- (3) if the lay-off is due to strike or slowing down of production on the part of workmen in another part of the same establishment.
- Any alternative employment means **similar or like employment** and it must be one which can be done by the workman.
- The expression **“can be done”** means the workman must not only be capable of doing it but it should also be acceptable to him. Where skilled workmen were offered jobs of coolies and mazdoors, which they refused, the refusal of offer was held not to forfeit their claims to lay-off compensation.

SECTION 25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.

- Section 25-F lays down the requirements for a valid retrenchment. However, these conditions apply in case of retrenchment of an employee who has been in continuous service for not less than one year. The section prescribes the conditions for a valid retrenchment, namely:-
- (a) The workman should be given **one month's notice** in writing indicating the reasons of retrenchment. Retrenchment should be effected after the expiry of the period of notice. If no such notice is given, the workman must be paid in lieu of such notice wages for the period of notice.
- (b) The workman has been paid, at the time of retrenchment, compensation, equivalent to **fifteen days average pay for every completed year of continuous service** or **any part thereof in excess of six months.**
- **Compensation = 15 days average pay for every completed year.**
- (c) **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. Provisions relating to notice of retrenchment are contained in **Rule 76 of the Industrial Disputes (Central) Rules, 1957.**

- The requirement of paying compensation is a **mandatory** pre-condition for retrenchment of a workman, therefore, its **non-compliance** will render a **retrenchment invalid**' and would **attract the penalty** under Section 31(2) of the Act.
- If retrenchment is proved **unlawful**, the workman has a right to reinstatement with continuity of service and right to wages for such period.
- Non-compliance with either of the conditions precedent to retrenchment prescribed by Section 25-F would make **retrenchment invalid and inoperative.**
- The retrenchment is **null and void** if the notice period is **less than one month** or **wages in lieu of notice are not paid** or the notice **does not indicate the reason for retrenchment,** so also where the rule of "last come first go" is not followed and the reasons for departing from this principle are also not disclosed, the termination is invalid.
- Notice of change in conditions of service is different from notice for a valid retrenchment under Section 25-F.

- The retrenchment compensation becomes payable on the fulfilment of the following conditions, namely:
- (1) if there is retrenchment within the meaning of Section 2(oo), and
- (2) requirement of Section 25-F are satisfied.
- Compensation can be recovered from the employer either under **Section 33-C of this Act, or under Payment of Wages Act.**

- In **State Bank v. S. Money**, the date of termination of services was written in the appointment order itself. The question was whether a stipulation in the appointment order regarding termination of employment amounts to termination of services within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947, so as to attract the provisions of Section 25-F(b) for the purposes of payment of compensation.
- Krishna lyer, J. held that an employer terminates employment not merely by passing an order as the service runs, he can do so even by writing a composite order, one giving employment and the other ending or limiting it. A separate subsequent determination is not necessary to attract the provisions of Section 25-F(b) of the Act. It has been reiterated by the Supreme Court in **Hindustan Steel v. Labour Court. Orissa,"** that the termination of service by running out of time stipulated in the contract of service amounts to retrenchment. Non-compliance of Section 25-F (b) renders the retrenchment illegal, and therefore. Labour Court may order reinstatement of service.

SPECIAL PROVISION RELATING TO LAY-OFF, RETRENCHMENT AND CLOSURE IN CERTAIN ESTABLISHMENTS

- By an amendment in the year 1976 this Chapter has been added as Chapter V-B to the Industrial Disputes Act, 1947(Section 25-K).
- Application of Chapter V-B.

1. The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which **not less than one hundred workmen** were employed on an average per working day for the preceding twelve months.
2. If a question arises whether an industrial establishment is of a **seasonal character** or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

DEFINITIONS (SECTION 25-L)

- For the purposes of this Chapter,-
- (a) "industrial establishment" means-

i. factory as defined in clause (m) of Section 2 of the Factories Act, 1948;

ii. a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952; or

iii. a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951;

- (b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2:

i. in relation to any company in which not less than **fifty-one per cent of the paid-up share capital** is held by the Central Government, or

ii. in relation to any corporation [not being a corporation referred to in sub-clause (ii) of clause (a) of Section 2] established by or under any law made by Parliament, the Central Government shall be the appropriate Government.

PROHIBITION OF LAY-OFF (SECTION 25-M)

- No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid off by employer **except with the prior permission of the appropriate Government** or **such authority as may be specified by that Government** by notification in the official Gazette, obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in case of a mine such lay off is due also to fire, flood, excess of inflammable gas or explosion.
- (2) An application for permission under sub-section (1) shall be made by the employer in the **prescribed manner** stating clearly the reason for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

- 3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment **being a mine**, have been laid off under sub-section (1) for **reasons of fire, flood or excess of inflammable gas or explosion,** the employer in relation to such establishment, shall within a **period of 30 days** from the date of commencement of such lay-off apply in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.
- 4) Where an application for permission under **sub-section (1) or sub-section (3)** has been made, the appropriate Government or the specified authority, **after making such inquiry** as it thinks fit, and **after giving a reasonable opportunity of being heard to the employer, the workmen concerned** and **the person interested in such lay-off**, may having heard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, **grant or refuse to grant, such permission** and a copy of such order shall be communicated to the employer and the workmen.

- 5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority **does not communicate the order granting or refusing to grant permission** to the employer within a period of **60 days** from the date on which such application is made the **permission applied for shall be deemed to have been granted on the expiry of the said period of 60 days.**
- 6) An order of the appropriate Government or the specified authority granting or refusing to grant permission, shall, subject to the provisions of sub-section (7) be **final and binding on all the parties** concerned and shall remain in force for **one year** from the date of such order.
- 7) The appropriate Government or the specified authority, may either **on its own motion** or **on the application made by the employer** or **any workmen, review its order** granting or refusing to grant permission under sub-section (4) or **refer the matter** or, as the case may be, cause it to be referred to a **Tribunal for adjudication:**
- Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an **award within a period of 30 days** from the date of such reference.

- 8) Where no application for permission under sub-section (3) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, **such lay-off shall be deemed to be illegal** from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.
- 9) The appropriate Government may, if it is satisfied that owing to such exceptional circumstances as **accident in the establishment** or **death of the employer** or the like, it is necessary so to do, **by order**, **direct**, that the provisions of sub-section (1), or, as the case may be, sub-section (3) **shall not apply** in relation to such establishment for such period as may be specified in the order.
- 10) The provisions of Section 25-C shall apply to cases of lay-off referred to in this section.

CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN (SECTION 25-N)

- 1) No workman employed in any industrial establishment to which this chapter applies, who has been in continuous service for **not less than one year** under an employer shall be retrenched by that employer, until:

a. the workman has been given **three months notice** in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the notice; and

b. the prior permission of the appropriate Government or such authority as may be specified by the Government by the notification in the Official Gazette has been obtained on an application made in this behalf.

- 2) An application for permission under sub-section (1) shall be made by the employer in the **prescribed manner** stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.
- 3) Where an application for permission under sub-section (1) has been made, the appropriate government or the specified authority, after making such **enquiry** as it thinks fit and after giving a **reasonable opportunity** of being heard to the employer, the workman concerned and the persons interested in such retrenchment, may having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order, and for reasons to be recorded in writing, **grant or refuse to grant such permission** and a copy of such order shall be communicated to the employer and the workmen.
- 4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority **does not communicate the order granting or refusing to grant permission** to the employer within a period of 60 days from the date on which such application is made, the **permission applied for shall be deemed to have been granted** on the expiration of the said period of 60 days

- 5) An order of the appropriate Government or the specified authority, granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be **final and binding on all parties** concerned and shall remain in force for one year from the date of such order.
- 6) The appropriate Government or the specified authority may, either on its **own motion** or on the **application made by the employer,** or any other **workmen**, **review its order,** granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a **Tribunal** for adjudication:Provided that where a reference has been made to a Tribunal under this sub-section it shall pass an award within a **period of 30 days** from the date of such reference.
- 7) Where **no application for permission** under sub-section (1) is made, or the permission for any retrenchment has been refused, such retrenchment shall be deemed to be **illegal** from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

- 8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as **accident** in the establishment or **death** of the employer or the like, it is necessary so to do, by order direct that the provisions sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.
- 9) Where permission for has granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to **receive, at the time of retrenchment, compensation** which shall be equivalent to **fifteen day's average pay** for every completed year of continuous service or any part thereof in excess of six months.

- In was held in **State Transport Accounts Association v. Orissa State Road Transport Corporation,** that the respondent Corporation is an industrial undertaking within the meaning of Section 25L. The Corporation has its workshops for repairs and servicing the transport buses, plants for retreading tyres, printing press to produce ticket books and other materials, such as, forms and registers to be maintained in the offices, without these units, the transport business cannot be carried on. The factories may be located in different stations and zone but they constitute an integrated whole and form specific units of the Corporation so as to make it an industrial undertaking and therefore, the orders of the retrenchment without compliance of the mandatory provisions of.Section 25-N are illegal.
- In **Rajinder Singh Chauhan and others v. State of Haryana and others**, the appellants were employees of Haryana State Federation of Consumers Co-operative wholesale stores Ltd. They were retrenched in compliance with Section 25-F of the Industrial Disputes Act, 1947. They challenged the retrenchment in writ petitions and failed to get remedy. Hence they preferred an appeal to the Supreme Court.The Supreme Court observed that respondent employer was not covered by the definition of Industrial establishment in Section 25-L of the Industrial Disputes Act, 1947. Hence, the High Court was right in holding that Section 25-N had no application to the retrenchment of appellants.

- In **Workmen of Meenakshi Mills Ltd. etc. v. Meenakshi Mills Ltd. and another**, the Supreme Court has held Section 25-N of the Act as constitutionally valid on the ground that the restrictions imposed on the right of employer to retrench workmen is in the interest of general public. It does not infringe Article 19(1)(g) of the Constitution and duty to pass a speaking order and affording opportunity to the parties concerned is sufficient safeguard against arbitrary action. Authority is not invested with judicial power while functioning under sub-section (2) of Section 25-N and hence no appeal lies to Supreme Court against an order passed under sub-section (2) of Section 25-N.It was further held that an industrial dispute may arise on account of failure on the part of employer to comply with the conditions of Section 25-N. Both workmen and management can raise industrial disputes and move the appropriate Government granting or refusing permission for retrenchment.
- In **Union of India and Others v. Jummasha Diwan,** respondent was a project employee and on the termination of the project his service was terminated. He claimed that he had put in 1060 days of continuous service and that the principle of 'last come first go' as per Section 25-N of the Industrial Disputes Act, 1947 was not complied with. His claim was upheld by the High Court. Hence this appeal to the Supreme Court.Allowing the appeal the Supreme Court observed that the concept of continuous service could not be applied in a case such as the present one where a casual employee, was employed in different projects, might be under the same employer eg. the Railway Administration of India. In a case of this nature respondent would not be entitled to his seniority. If the project came to a close, Section 25-N was not required to be complied with.

DEFINITION OF CLOSURE (SECTION 2(CC))

- The law relating to investigation and settlement of industrial disputes namely, the Industrial Disputes Act, 1947, originally does not contain the provisions relating to closure of an industry. The provisions relating to law of closure were inserted in the year 1957 in view of the Supreme Court judgment. Subsequently over a period of years the law relating to closure, has undergone series of amendments from time to time and thus was consolidated to the present position in the year 1982.
- According to **Section 2(cc)** of the Industrial Disputes Act, Closure of an industry means the permanent closing down of a place of employment or part thereof.

CLOSURE IN CASE WHERE CHAPTER V-A IS APPLICABLE

SIXTY DAYS NOTICE TO BE GIVEN OF INTENTION TO CLOSE DOWN ANY UNDERTAKING (SEC 25FFA)

- (1) An employer who intends to close down an undertaking shall serve, at least **sixty days before the date on which the intended closure is to become effective, a notice,** in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:
- Provided that nothing in this section shall apply to-
- (a) an undertaking in which. (i) less than **fifty workmen are employed,** or(ii) less than **fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- The appropriate Government may, if it is satisfied that owing to such exceptional circumstances as **accident** in the undertaking or **death** of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

COMPENSATION TO WORKMEN IN CASE OF CLOSING DOWN OF UNDERTAKING(SEC 25FFF)

- It provides that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for **not less than one year** in that undertaking immediately before such closure shall be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:
- Provided that where the undertaking is closed down on account of **unavoidable circumstances** beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F shall **not exceed his average pay for three months.**

- Explanation.-An undertaking which is closed down by reason merely of-
- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on
- shall not be deemed to be closed down on account of **unavoidable circumstances beyond the control of the employer** within the meaning of the proviso to this subsection.
- Where any undertaking set-up for the **construction of buildings, bridges, roads, canals, dams or other construction work** is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, **no workman employed therein shall be entitled to any compensation under clause (b) of section 25F**, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

PROCEDURE FOR CLOSING DOWN AN UNDERTAKING WHERE CHAPTER V-B IS APPLICABLE

PROCEDURE FOR CLOSING DOWN AN UNDERTAKING (SECTION 25-O)

- 1) 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, canals, dams or for other construction work.
- 2) Where an application for permission has been made under sub-section (1), the **appropriate Government, after making such enquiry** as it thinks fit and after giving a **reasonable opportunity** of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, **grant or refuse to grant such permission** and a copy of such order shall be communicated to the employer and the workmen.

- 3) Where an application has been made under sub-section (1) and the appropriate Government **does not communicate the order granting or refusing to grant permission** to the employer within a period of **sixty days** from the date on which such application is made the **permission applied for shall be deemed to have been granted** on the expiration of the said period of sixty days.
- 4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5) be **final and binding on all the parties** and shall remain in force for one year from the date of such order.
- 5) The appropriate Government may, either on its own motion or on the application made by the employer any workmen, **review its order** granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of **thirty days** from the date of such reference.

- 6) Where **no application for permission** under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, **the closure of the undertaking shall be deemed to be illegal** from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.
- 7) The appropriate Government may, if it is satisfied that owing to such exceptional circumstances as **accident** in the undertaking or **death** of the employer or the like it is necessary so to do by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.
- 8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), **every workman** who is employed in that undertaking immediately before the date of application for permission under this section, **shall be entitled to receive 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.**

SPECIAL PROVISION AS TO RESTARTING OF UNDERTAKING CLOSED DOWN BEFORE COMMENCEMENT OF THE INDUSTRIAL DISPUTES (AMENDMENT) ACT, 1976 (SECTION 25-P)

- The appropriate Government is of opinion in respect of any undertaking of an industrial establishment to which this Chapter applies and which closed down before the commencement of the Industrial Disputes(Amendment) Act, 1976,-
- a) that such **undertaking was closed down** otherwise than on account of unavoidable circumstances beyond the control of the employer,
- b) that there are **possibilities of restarting the undertaking:**
- c) that it is necessary for the **rehabilitation of the workmen employed** in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community to restart the undertaking or both; and
- d) that the **restarting of the undertaking will not result în hardship** to the employer in relation to the undertaking:
- It may, after giving an **opportunity to such employer and workmen**, direct, by order published in the Official Gazette, that the undertaking shall be restarted within such time (**not being less than one months from the date of order**) as may be specified in the order

PENALTY FOR CLOSURE(SECTION 25-R)

- 1) Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of Section 25-O shall be punishable with imprisonment for a term which may extend to **six months**, or with fine which may extend to **five thousand rupees** or with both.
- 2) Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of Section 25-O or a direction given under Section 25-P, shall be punishable with imprisonment for a term which may extend to **one year**, or with fine which may extend to **five thousand rupees**, or with both, and where the contravention is a **continuing one,** with a further fine which may extend to **two thousand rupees for every day** during which the contravention continues after the conviction.
- 3) Any employer who contravenes the provisions of sub-section (3) of Section 25-0 shall be punishable with imprisonment for a term which may extend to **one month**, or with fine which may extend to **one thousand rupees**, or with both.

PENALTY FOR CLOSURE WITHOUT NOTICE (SECTION 30-A)

- Any employer who closes down any undertaking without complying with the provisions of Section 25-FFA shall be punishable with imprisonment for a term which may extend to **six months, or** with may extend to **five thousand rupees, or with both.**

Penalty for lay-off and retrenchment without previous permission (Section 25-Q)

- Any employer who contravenes the provisions of Section 25-M or Section 25-N shall be punishable with imprisonment for a term which may extend to **one month,** or with **fine which may extend to one thousand rupees**, or **with both.**

Certain provisions of Chapter V-A to apply to an industrial establishment to which this Chapter applies (Section 25-S)

- The provisions of Sections 25-B, 25-D, 25-FF, 25-G, 25-H and 25-J in Chapter V-A shall, so far as may be, apply also in relation to an industrial establishment to which the provisions of this Chapter apply.

PENALTIES (SECTION 26)

- **Penalty for illegal strikes and lock-outs.**
- **Section 26(1)** prescribes a penalty which can be imposed on any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act. Thus to penalise a workman under Section 26(1) two conditions must be fulfilled, namely,-
- (1) A workman must commence, continue or in some other manner act in furtherance of a strike; and
- (2) Such strike must be illegal under the Act.Any workman found guilty of participating in an illegal strike shall be punishable with imprisonment for a term which may extend to **one month** or with a maximum fine of rupees **fifty** or with both.

➢ Section 26(2) provides that an employer shall be punishable with imprisonment extending to **one month** or with a maximum fine of rupees **one thousand** or with both if,

- (1) Such employer commences, continues or otherwise acts in furtherance of a lock-out; and
- (2) Such lock-out is illegal under this Act.

PENALTY FOR INSTIGATION, ETC (SECTION 27)

- Section 27 of the Act makes the following acts punishable, namely-
- (1) instigation to others to take part in an illegal strike or lock-out.
- (2) incitement to others to take part in illegal strike or lock-out, or
- (3) otherwise acting in furtherance of a strike or lock-out which is illegal under this Act.
- Penalty under this section shall be attracted only when the strike or lock-out is illegal because incitement or instigation of every strike is not made penal. But there must be something tangible in evidence to show that the persons responsible for instigating or inciting were deliberately trying to stir up other persons to bring about a certain object.
- Penalty under Section 27 may extend to **six months imprisonment or fine extending to one thousand rupees or both.**

PENALTY FOR GIVING FINANCIAL AID TO ILLEGAL STRIKES AND LOCK-OUTS (SECTION 28)

- To attract the provisions of Section 28 it should be proved that the strike or lock-out was illegal and the accused had knowledge that it was illegal. Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike shall be punishable under this section.
- Punishment may extend to **six months' imprisonment or one thousand rupees fine or both.**
- The use of word "knowingly" indicates that the accused must have knowledge that the strike or lock-out which he supported was illegal. Further, the use of the expression "any person" connotes that a workman or non-worker may be punished for giving financial aid to an illegal strike or lock-out calculated to disrupt industrial peace and harmony.

CASE LAWS

BHARAT PETROLEUM CORPORATION LTD. V$. PETROLEUM EMPLOYEES UNION AND OTHERS, (2003) III L.L.J. 229 (MAD.)

- In this case the High Court of Madras held that it appeared from the record that the appellant and respondents had participated in conciliation proceedings which were pending. Therefore the parties were bound by those conciliation proceedings and had to wait for decision thereon. The said proceeding related to the issued for which notice of strike was given by the respondent union.
- As the conciliation proceedings were pending the prohibition in Section 22 (1) (d) of the Industrial Disputes Act, 1947, came into operation and as such the strike by the respondents was illegal in view of Section 24.The supreme Court in India General Navigation and Railway Company Ltd., and another vs. Their Workmen (AIR 1960. SC 219), held that if the strike was illegal, workmen are not entitled to wages or compensation and they are also liable to punishment by way of discharge or dismissal.

CROMPTON GREAVES VS. THE WORKMEN (AIR 1978, SC 1489)

- Where before the conclusion of the talks for conciliation which were going on through the instrumentality of Assistant Labour Commissioner, the company retrenched as many as 93 of its workmen without even intimating to the Labour Commissioner that it was carrying out its proposed plan of effecting retrenchment of the workmen, the strike cannot be said to be unjustified, ANZ Grindlays Bank vs. S.N. Khatri and others, (1995) 11 LU877 (Bom.): In this case the Bombay High Court held that once the strike is held to be illegal, the question of justifiability does not arise and the employees in public utility services are not entitled to seek wages for the strike period. unless they prove that the strike was legal and justified.
- In this case it was held that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. A strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable.

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