

Commencement and Conclusion of Proceedings.

(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lockout has been (given) received by the Conciliation officer or on the date of the order referring the dispute to the Board.

(2) A conciliation proceeding shall be deemed to have concluded —

(i) on the date when memorandum of settlement has been signed by the parties, if settlement has arrived.

(ii) If no settlement is arrived, then the report of Conciliation officer received by the Appropriate Govt. or ~~when~~ in case of the report of the Board on the date ~~or~~ when such report is published under Section 17.

(iii) When a reference has been made to the Adjudicating Authorities.

(3) Proceedings before Adjudicating Authorities or Arbitrator shall be deemed to have been commenced on the date the reference of such dispute is made u/s 10 & 10-A.

(4) Such proceeding shall be deemed to have concluded on the date when such award becomes enforceable.

C.L.:- Workers of Industry Colliery
v/s

Industry Colliery

[AIR 1953 SC 88]

The expression "received" by the appropriate Government" in this section i.e (20) implies the actual receipt of the report by the Government and the receipt of the report by the Chief Labour Commissioner ~~is~~ ^{was} not enough.

The Associated Cement Cos. Ltd
v/s

Their workmen

[(1953) II LLJ 1369]

On the plain reading of section 10 of the I.D. Act it is clear that as soon as a reference is made by an order in writing, the reference is complete and the proceeding before a Tribunal shall be deemed to have commenced on that date as provided by Sec. 20 of the I.D. Act.

[Section 22-25]

Section 2(q) → Strike.

Strike means a cessation of work by a body of person employed in any industry or concerted refusal or refusal under a common ~~undertaking~~ understanding of any number of persons who are employed to continue to work.

Section 2(l) → Lock-outs.

Lockout means temporary closing of a place of employment or suspension of work or refusal by an employer to continue to employ any number of person employed there in.

The lockout is anti-thesis of strike. and mainly such stoppage is done by the employer whereas strike is a collective stoppage of work by the workmen in order to bring pressure upon the employer. This is the last resort or weapon in the hands of workmen in connection of industrial dispute.

Kinds of Strike

- 1) Unfair labour practice strikes which protest employers illegal practices.
- 2) Economic strikes — which may occur where there are dispute over wages or benefits.

force employees to recognize unions.

4) Jurisdictional Strikes — which are concerted refusal to work to affirm members right to particular job assignment and to protest the assignment of work to another union or to unorganized employees.

Section 22 → Prohibition of Strikes and Lock-outs.

(I) Section 22 provides that no person employed in a public utility service should go on strike in breach of contract —

(i) without giving the employer ^a notice of strike as herein provided within six week of striking.

(ii) within 14 days OR of giving such notice.

(iii) Before the expiry of the date of the strike specified in any such notice as aforesaid.

(iv) During the pendency of any conciliation proceeding before a Conciliation Officer and 7 days after the conclusion of such ~~strike~~ proceeding.

(II) Section 22 further provides that no employer carrying on any public utility service shall lock-out ~~his~~ any of his workmen —

(i) without giving them notice of lock out as hereinafter provided within six weeks before locking out.

OR

(ii) within 14 days of giving such notice.

(iii) Before the expiry ^{OR} of the date of lock-out specified in any such notice as aforesaid.

(iv) During the pendency of any Conciliation proceeding before a Conciliation officer and 7 days after the conclusion of such strike.

(III) The notice of strike or lock out is not essential if there is already in existence a lockout or strike in the public utility services, but the employer shall send intimation of such strike or lock-out to the Appropriate Govt or the Concern Authority on the date where such strike or lockout has been declared.

(IV) The notice of strike or lock out shall be given in such manner as may be prescribed.

(V) If the Employer receives a notice for strike or give a notice of lock-out then the employer shall within 5 days should report the above fact to the Appropriate Government.

(VI)

C.L:- Madhwa Coats Ltd

v/s

Inspector of Factories Madurai

[(1981) I LLJ 225 (SC)]

The workmen went on strike without serving a notice under Section 22. They claimed wages for National holidays which fell in the period of strike.

The SC held that they were not entitled to wages because they have themselves brought about a situation by going on strike without giving a notice.

Mineral Minor's Union

v/s

Kudremukh Iron Ore Co. Ltd.

[(1989) I Lab LJ 277 (Karn)]

It was held that the provision of S. 22 are mandatory and date on which the workmen proposed to go on strike should be specified. It further held that the wages should be deducted for illegal strike and the second notice should be served with the date mentioning, then the strike would be considered legal.

Section 23 → General Prohibition of Strike and
Lock-outs.

The workmen or employer shall not go for strike or lock-outs :-

- (1) During the pendency of conciliation proceeding before the Board and 7 days after the conclusion of such proceedings.
- (2) During the pendency of proceedings before the Adjudicating Authorities and 2 months after the conclusion of such proceedings.
- (3) During the pendency of arbitration proceedings before Arbitration and 2 months after the conclusion of such proceedings.
- (4) During the period of in which a settlement or an Award is in operation.

But these matter should be connected to the proceeding which are pending before the authority.

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Chemical & Fibres of India

v/s

D.C. Bhoir

[AIR 1975 SC 1660]

Section 24 → Illegal Strikes and Lock-outs

A strike or lock-out shall be illegal if —

(1) Contravention of section 22 or section 23

OR

Contravention of section 10 i.e. {section 10(3) or
Section 10-A (4-A)}

(2) A lock-out declared in consequences of illegal strike or strike declared in consequences of illegal lock out shall not be deemed illegal if ~~it has commenced and in existence at the time of the reference of the dispute to the~~ Adjudicating Authority.

Crompton Greaves

VIS

The Workmen

(AIR 1978 SC 1489)

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 the provision and cannot be unjustified unless its reasons are unreasonable.

Section 25 → Prohibition of Financial Aid to Illegal Strikes and Lock-outs.

Any person should not expend or apply any money in continuance or furtherance of illegal strike or lock outs.

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6. Section 2(cc) → Closure

- (1) Closure means permanently closing down any undertaking or a part thereof for any reason whatsoever.

7. Section 2(kkk) → Lay-off

- (1) It means the refusal or inability of an employer to give employment to a workmen on account of shortage of coal, power, raw material; failure of machinery or accumulation of stocks and natural calamities or any other connected reason.

The name of the workmen should be borne on the muster book.

- (2) The workmen whose name is there in the muster role and he is present himself for the work, during normal working hours at the time which is fixed for that purpose and after that employment is not given by the employer within 2 hours then such workmen shall be deemed to have laid-off.

- (3) Provided the workmen who is asked to present himself for the purpose of employment

the second shift of the day and men
employment is given to such workmen, then it
shall be deemed to have been lay-off only for
half-off.

- (1) (4) Provided if no such employment is given even
after the workman is present then the workman
is entitled to get compensation for that day.

Section 2(oo) → Retrenchment

Retrenchment means the termination of the
service of a workman by the employer for any
reason whatsoever, but not including the
punishment inflicted by way of disciplinary action.

Does Not Include

- (1) Voluntary Retirement by the workman.
- (2) Retirement of workman on reaching the age of
Superannuation.
- (3) Termination because of non-renewal of the
contract between employer and workman.
- (4) If the workman is having continuous ill health
(not physically / medically fit)

General Provision Related to Lay-off and Retrenchment.

(I) Section 25-A → Application of General Provision.

(I) According to Section 25-A, the general provision relating to lay off contained in Section 25-C to 25-E does not apply.

(means, a factory, a mine, or a plantation)

(1) To industrial establishments to which the provisions of Chapter V-B.

OR

(2) To industrial establishments in which less than 50 workers on an average per working day have been employed in the preceding calendar month.

OR

(3) To industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(II) If a question arises whether an industrial establishment ~~is~~ which are of seasonal character or in which work is performed only intermittently, the decision of the appropriate Govt. shall be final.

(2) Section 25-B → Definition of Continuous Service

- (1) A workman shall be deemed to have completed one year continuous service, ^{or six months} if that workman has worked for that industry without any interruption including authorised leave, legal strike, lock-out or an accident.
- (2) The workman shall be deemed one year continuous service if :-
- (i) Completed 240 days in other cases
 - (ii) Completed 190 days in case of ^{below ground in} mines.
- (3) The workman shall be deemed 6 months of continuous service if
- (i) Completed 120 days in other cases.
 - (ii) Completed 95 days in case of mines.

The number of days on which a workman has actually worked under an employer shall include the days on which —

- (i) he has been laid off under an agreement or permitted by standing orders.
- (ii) he has been on leave with wages, earned in the previous year.
- (iii) Absent due to temporary disablement caused accident. In case of female & maternity leave.

Section 25-C → Rights of workman Laid-off for Compensation.

(1) A workman (other than a badli or a casual workman) whose name is on the muster roll and he has continued one year continuous service ^{may} claim ^{lay-off} compensation.

(2) The amount of compensation payable shall be 50% of the total Basic wages + Dear Allowance (D.A)

(3) The above rule is subject to the following limitation.

(i) If any workman is laid off for more than 45 days then the workman is not entitled to claim compensation and after the ^{expiry} period of 45 days provided there is an agreement between the workman and the employer.

(ii) If any workman is laid off for a period of 45 days during a period of 12 ~~to~~ months, the employer has a right to retrench ~~the~~ such workman at any time. And the workman will be entitled to claim compensation as per the Retrenchment provision.

Badli or Casual workman means a workman who is employed in place of another workman. But such workman will be ceased to consider as ~~as~~ casual if he completes one year continuous service in the establishment.

(4) Section 25-D → Duty of an Employer to Main Muster Rolls.

It is the duty of the employer to maintain a muster rolls and provide for making of entries in the muster rolls by workman who may present themselves for work at the appointed time during normal working hours.

(5) Section 25-E → Workmen not Entitled to Compensation.

It provides that laid-off workman shall not be entitled to compensation —

(1) If the workman refuses to accept alternative employment and that alternative employment is within a radius of 5 miles from the establishment to which he belongs.

(2) If in the opinion of the employer, the alternative employment does not call for any

RETRENCHMENT

Section 25-F → Condition Precedent to Retrenchment of workmen.

The section lays down the requirement of 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.

3 Conditions for valid Retrenchment —

(1) The workmen should be given one month notice in writing indicating the reason. If no such notice is given then the workmen shall be paid in lieu of such notice wages for the period of such notice.

(2) The workmen is entitled to claim compensation equivalent to 15 days of average pay for completion of one year continuous service.

(3) Notice ^{is served} ~~should be given~~ in the prescribed manner to the Appropriate Govt.

special skill or previous experience and can be done by laid off workman.

(3) If ~~he~~ ~~does not~~ the concern workman is not present during the normal working hours.

(4) If the lay-off is due to strike or slowing down of production on the part of the work men.

C.L. :- Zandu Pharmaceutical Works Ltd.

vs

R.N. Kulkarni & Co.

(1996) 1 LLJ 560 (Bom).

((Clear))

The court held that the employer is exonerated from his liability to pay compensation where lay-off is due to strike or slowing down of production on the part of the workman.

Section 25-FF → Compensation in Case of Transfer of Undertaking.

(1) If the undertaking is transferred from one hand to another hand by operation of law or by an agreement then each and every workman who has completed one year continuous service is entitled to notice and compensation in accordance with the provision of Section 25-F, as if the workman has been retrenched.

(2) Provided this provision will not be applicable to such workman if —

(i) The service of such workman is not interrupted by such transfer.

(ii) The terms and conditions of the employment are not less favourable which were applicable to such workman before such transfer.

(iii) The new employer is legally liable to pay compensation to the workman if he has been retrenched by that new employer and his compensation should be calculated on the basis of his total service in the employment without interruption of such transfer.

Section 25-G → Procedure for Retrenchment

It section embodies the Principle of "^{First}~~Last~~ Come, ~~First~~ Go" and "Last Come, First Go"

~~where~~ The procedural protection provided under this section can be claimed by a workman on the fulfilment of the following conditions -

- (1) The workman must be a workman within the meaning of Section (S) of the Act.
- (2) The workman should belong to a particular category of workmen in the industrial establishment.
- (3) The workman should belong to a particular category of workmen in the industrial establishment.
- (4) The workman should be an Indian Citizen
- (5) There should be no agreement contrary to the principle of "last come first go" between the employer and the workman.

Section 25-H → Re-employment of Retrenched Workmen.

Section 25-H prescribes that when any workmen are retrenched, and the employer proposes to take into his employment any persons, he must give an opportunity to the retrenched workmen to offer themselves for re-employment and such retrenched workmen who offer themselves for re-employment have preference over the other person.

This section imposes a statutory ^{obligations} ~~provisions~~ on the employer to give opportunity to the retrenched employees to offer themselves for re-employment. In order to claim preference in employment a workman must satisfy the following conditions —

- (1) He should have been retrenched prior to re-employment.
- (2) He should be a citizen of India.
- (3) He should offer himself for re-employment in response to the notice by the employer.
- (4) He should have been retrenched from the same category of service in which re-employment is proposed.

II CLOSURE II

Section 25 - FFA → Notice in case of closure.

(1) An employer who intends to close down an undertaking shall serve —

- (i) A notice ^{at least} ~~for~~ 60 days before the date of intended closure is to become effective.
- (ii) The notice is to be served in the prescribed manner to the appropriate Govt. stating clearly the reason for closing down an undertaking.

(2) The provision to this section shall not apply to —

- (1) An undertaking in which less than 50 workmen are employed or less than 50 workmen were employed on an average per working day in the preceding 12 months.
- (2) An undertaking set-up for the construction of building, bridges, roads, canals, dams or other construction work or project.

Section 25-FFF → Compensation to workmen in case of Closing Down of undertakings —

This Section provides for compensation to workmen in case of closure of an undertaking.

~~A workman is entitled to compensation~~
where an undertaking is closed down the ~~work~~ for any reason, every workman is entitled to —

- (1) notice.
- (2) Compensation to be provided to such workman if he has been in continuous service for not less than one year in an undertaking.
- (3) when any compensation under this section is payable it shall be paid in accordance with the provisions of ~~sub~~ section 25-F as if the workman is retrenched.
- (4) Where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation is paid to the workman under Clause (b) of Section 25-F which shall not exceed his

average pay of his 3 months.

An undertaking shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the above provision in following circumstances.

- (a) by reason of financial difficulties or
- (b) by accumulation of indisposed stocks.
- (c) by expiry of the period of lease or license granted to it or
- (d) by exhaustion of minerals in the area ~~of~~ in which operation is carried on where the undertaking is engaged in mining operation.

Exception

In the following cases no workman is entitled to compensation for retrenchment ~~of~~ or closing down an undertaking in which he is employed.

- (1) In the case of construction work where undertaking set up for the building bridges, dams or other construction and such undertaking is closed down within 2 years.
- (2) In case of mining where an undertaking is closed down by ^{season} merely of exhaustion of the minerals in the area in which such

operations are carried and no workman shall be entitled to any notice or compensation if —

(a) The employer provides them with an alternate employment with effect from the date of closure. •

(b) the service of the employment has not been interrupted by such alternative employment.

Special Provision Relating to Lay-off, Retrenchment And Closure in Certain Establishment.

The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on a average working day for the preceding 12 months.

Section 25-M → Prohibition of lay-off

(1) The workman (not casual workman) whose name is borne in the muster roll and has been laid off then prior person from the Appropriate Govt is required.

(2) The employer shall make an application

in the prescribed manner for the reason for such lay-off should be mentioned clearly in the application. A copy of such application should be served to the concern workmen simultaneously.

(3) where a workmen of an industrial establishment being a mine has been laid off for the reason of flood, fire or excess of inflammable gas or explosion, then the employer after such lay-off should apply for such approval from the Appropriate Govt. within 30 days from the date of such lay-off.

(4) When an application for permission has been made to the Appropriate Govt. then the Appropriate Govt. should inquire into the matter and after hearing both the parties the Appropriate Govt. in writing shall communicate to the employer and workmen about granting or refusing such permission.

(5) If the Appropriate Govt. or the concern authority does not communicate the order their permission shall be deemed to have been granted after the expiry of 60 days.