

(8) General Unfair Labour Practices on part of the Employers [Schedule V]. (22)

(1) To discharge or dismiss employees —

- (i) by way of victimisation.
- (ii) Not in good faith but in colourable exercise of employers right.
- (iii) by falsely implicating an employee in a criminal case on false evidence or concocted evidence.
- (iv) for patently false reason.
- (v) on untrue or trumped up of allegation of absence without leave.
- (vi) in utter disregard of principles of natural justice in the conduct of domestic enquiry or with undue haste.
- (vii) for misconduct of a minor or technical character without having any regard to the nature of service of the employee ^{so} as to amount to a shockingly disproportionate punishment.

Case Law

To discharge or dismiss employee.

C.L:- R.D. Sune v/s Tata Iron and Steel Company Ltd.
[1989, 1 CLR 533, Bombay High Court].

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The question arose whether a resignation included in the expression of discharge or dismissal.

The Court held that the "forced resignation" terminology should be construed in the expression of discharge or dismissal, or it will defeat the very purpose and object of the legislation.

Termination of service on ground of loss of Confidence.

C.L. → J. T. Jamer
v/s

Larsen Toubro Ltd.

[1958, II CLR, 517 BHC].

No domestic enquiry was conducted. Grievances made by a workman for not attended to by the employer. The company indulged in unfair labour Practice.

Item II -> To abolish the work of regular nature ²⁹ been done by the employer and to give such work to the contractor as a measure of breaking a strike.

Item III -> To transfer an employee malafide from one place to another, under the guise of following management policy.

Item IV - To insist upon individual employees who were ~~not~~ on legal strike to sign a good conduct bond as a pre-condition to allowing them to resume work.

Item V -> To show favouritism on a particular set of workers, regardless of merit.

Item VI -> To employ ~~ess~~ employees as badi, casuals or temporary employees and to continue them for several years with the object of depriving them of the status and privileges of permanent employees.

Item VII → To discharge or discriminate against any employee for filing charges or testifying against an employer in an enquiry or proceeding relating to any Industrial Dispute.

Item VIII → To recruit employees during a strike which is not an illegal strike.

Item IX → Failure to implement award, settlement or agreement.

Item X - To indulge in act of force or violence.

(8) Unfair Labour Practices on Part of the Employers. (4) (27)
[Schedule II]

- (1) To interfere with restrain or coerce employee in the exercise of their rights -
- (a) threatening employees with discharge or dismissal, if they join a union.
 - (b) threatening a lock out or closure, if a union should be organised.
 - (c) granting wage increase to employees at crucial period of organization.
- (2) To dominate, interfere with or contribute, support financial or otherwise to any union, that is to say -
- (a) an employer taking an active interest in organizing a union of his employees.
 - (b) an employer showing partially or granting favour to one of several unions attempting to organize his employees or to members.
- (3) To establish employers sponsored unions.
- (4) To encourage or discourage membership in any union by discriminating against any employee that is to say -

(a) discharging or punishing an employee for taking part in any strike. 19

(b) changing seniority of employee because of union activities.

(c) giving unmerited promotion to certain ~~unions~~ employees with a view to undermine the strength of their union.

~~(d)~~ (5) Discharging office bearers or active union members on account of their union activities.

(6) Proposing or continuing a lock-out deemed to be illegal under this Act.

(8) Discuss Unfair Labour Practices on Part of the Trade Unions under MRTU & PULP ?

Ans :- (I) Meaning of Unfair Labour Practices.
[Take it from Introduction].

Unfair Labour Practices on Part of Trade Unions.
[Schedule III].

- (1) To advise or actively support or instigate any illegal strike.
- (2) For a Recognised Union to refuse to bargain collectively in good faith with the employer.
- (3) To indulge in coercive activities against certification of a bargaining representative.
- (4) To state, encourage or instigate such coercive action such as wilful go-slow, squatting on work premises after working hours or ghedas of any of the members of the managerial or other staff.
- (5) To stage demonstration at the residence of the employers or the managerial staff members.
- (6) To indulge in acts of force or violence or to hold out threats against non-striking employees or against managerial staff.

Q) Discuss the procedure in dealing with complaints regarding unfair labour Practices under MRTU & PULP?

Ans (I) Introduction

[Meaning of Unfair Labour Practices].

(II) Procedure for Dealing with Unfair Labour Practices [Section 28]. (ULPs)

- (1) If any person has engaged in or is engaging in any unfair labour Practice then any union, employee or employer or investigating officer may file a complaint before the Industrial Court or Labour Court.
- (2) Such complaint must be filed within 90 days of the occurrence of the ULPs. However, if sufficient cause of delay is mentioned then the Court can entertain the complaint after the said period.
- (3) Once the complaint is filed, the Court should decide the complaint within 6 months from the date of the receipt of the complaint.
- (4) If it considers necessary, the Court may direct investigation to be made by the Investigating officer. The ~~sub~~ Investigating

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officer should submit the report in the prescribed time period.

(3) During the investigation of the complaint, the Investigating officer may visit the undertaking where the practice have been committed. He may also make effort to promote a settlement of the complaint.

(6) After investigation, the Investigating officer may submit the report to the court, setting out full facts and circumstances of the case. The copy of the report should be made available to the complainant and also the opposite party on payment of the prescribed fees.

(7) If on receipt of the report, if the court finds that the complaint has not been satisfactory settled and the ~~fact~~ matter should be further considered, the court shall proceed with the matter and give its decision.

(8) The decision of the court shall be in written order which is final and cannot be called in question in any civil or criminal court.

(9) The Court becomes enforceable from the date specified in it and the copies are to be forwarded to the State Govt.

Section 29 →

The order is binding on —

- (1) all parties to the complaint.
- (2) All parties who were summoned to appear as parties to the complaint.
- (3) Their heirs, successors and assigns of the employer in respect of undertaking.

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C.1.

Executive Engineer, Public works &
Health Dept, Nagpur.

N/S.

P. D. Kalsait.

(1985, MLJ 338)

The Bombay High Court held that it is not necessary that a motive or mens rea must be present in each and every case of an unfair labour practice.

C.L:- Hindustan Lever Ltd.

v/s

A. V. Kate, A

[AIR 1996 SC 285]

SC held that a mere threat to discharge or dismiss an employee, if he joins a union is, itself an unfair labour practice.

C.L:- Hindustan Computers Ltd.

v/s

Miss Nathy Rose Pessu.

[2008 I CLR 926]

Court held that termination of services of a probationer during the probation period cannot be termed as unfair labour practice under the Act.