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India's Labour Legislation and its Employment Relation for the Next Decade



IMPACT OF GLOBALISATION ON INDUSTRIAL RELATIONS AND JUDICIAL REVERENCE IN INDIA

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ABSTRACT *Social justice implies two things. First equitable distribution of profits and other benefits of industry between employer and employee. Secondly providing protection to employees against harmful effects with regard to their health safety and other employment hazards. Above all the employees are allowed to make their entire legitimate claim as against the employer without any impediments. A peaceful employment atmosphere may be created to ensure that the employee in making their legitimate claim are not bared by any artificial eventualities created by the employers and the government. It is in this context that the judiciary interfered and played a positive role by safeguarding the right to equality as enshrined in our constitution in the matter of the entitlement of employee and the claim made based on the employment relationship.*

Introduction

The preamble of the ILO envisages that 'Labour is not a commodity and all human beings have the right to freedom and dignity of economic security and equal opportunity'. Labour legislations enacted post Constitution of India has sought to tackle various problems relating to working environment, socio economic and political justice. Under the Constitution of India labour is a subject matter of concurrent list and a large number of labour laws have been enacted on different aspects of labour. Globalization is the integration of national economies with the international economy. The Indian Government adopted the policy of economic liberalisation during 1991. The labour legislation on our statue book is primarily for redressing the balance between employers and employees. Socio - economic upliftment of labour is absolutely imperative for securing industrial peace. But the globalization, Liberalization and Privatization have brought new market imperatives. This has also influenced the industrial adjudication on industrial relations in awarding reliefs to the employees. If we consider the approaches of the industrial jurisprudence from 1970 to 1990 the interest of the workers were given prime importance after there was a shift due to the change in the economic policy and globalization. This study is an attempt to indentify how the judicial pronouncements on industrial relations have been shifted.

Burden of proof is shifted

In order to invoke the provisions of the Industrial Disputes Act 1947 and claim relief there under the workmen has to prove that he has been in continuous service for a minimum of 240 days in a calendar year. In a catena of case the principle that the burden to prove the workman had worked for 240days is entirely upon him has been evolved. Further when the workmen in order to prove that he worked for 240 days called for certain documents and some of the documents were not produced the Apex court has held that only because some documents have not been produced by the management an adverse inference cannot be drawn against it.[7]

Compensatory payment in lieu of reinstatement

Under section 11A of the ID Act the industrial tribunal and labour court have discretion to award any relief to the retrenched workmen. The recent trends show that compensation in lieu of reinstatement has been the normal rule. The workmen having worked only for a short period the direction of reinstatement was modified and compensatory payment was awarded. Even after taking into consideration of the period of services rendered by the workman, a lump sum payment in lieu of reinstatement is ordered. It was seen that in recent times the Hon'ble Supreme Court had clearly laid down that an order of retrenchment passed even in violation of section 25F may be set aside but an award of reinstatement should not be automatically passed. The award of reinstatement with full back wages in a case were a workman has completed 240days in a proceeding year has not been found to be proper and instead compensation has been awarded. [18]

The court has also held that while awarding compensation the manner and method of appointment, nature of employment and length of service are relevant. The above principle has been again endorsed by the Apex Court and held that the workman was engaged as a daily wager and his engagement continued for about 7years the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. [12]

Illegality due to non-payment of retrenchment compensation

Fr retrenchment certain procedures has been established in the ID Act. Even in cases where the statutory compliance for retrenchment was violated the views of the court has been changed. The Hon'ble Supreme Court held that the illegality in an order of termination on account of non-payment of retrenchment compensation does not necessarily result in the reinstatement of the workman in service. The reinstatement of the workman in service does not appear to be an acceptable option but monetary compensation should sufficiently meet the ends of justice. It is fairly well settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation. It is essential for the workman to establish that he was in continuous service of the employer within the meaning of S.25B of the ID Act. The burden of proof is squarely on the workman. [14]

House Based Workers and status of workmen.

The globalization and new economic policy has made the workforce to work in their home. Now the concept out sourcing

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has been the rule in most of the industries. It was held in a case that a house based worker who was collecting material from the factory and returned the same after doing job with the help of his family members is a workmen. The court held that the proper test for the existence of employer and employee is, whether or not the master has the right to control the manner of execution of the work. The nature of extent of the control might vary from business to business and is by its nature incapable of precise definition. [16]

Casual Workers and their absorption

Earlier the Supreme Court held that under Article 32 and Article 226 of the Constitution of India, court should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees. The same court has distinguished its view the above judgement does not denude the tribunals and Labour courts of their statutory power to order permanency of workers, the victims of unfair labour practice. The basic requirement to claim permanent status is employer employee relationship. [19]

Relief of back wages

When the termination of services is held bad, payment of full wages is proper. When legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to back wages too. If the workman was wrongfully terminated who has rendered a considerable period of service, he may be awarded full back wages. The above position finds a shift. The relief of back wages is awarded when the workmen was not gainfully employed during the period of non-employment. The burden to prove which was initially on the employer was now shifted to workmen. The workmen should plead and prove that he was not gainfully employed elsewhere. It is significant to point out that now the Supreme Court has held that gainful employment includes self employment. The income from an establishment or from self employment merely differentiate source of income generated and the end use being the same. The rule of reinstatement with back wages propounded in 1960's and 70's has been considerably diluted and the Courts and Tribunal cannot order payment of back wages as a matter of course in each and every case of wrongful termination of service. [35]

Closure and relief to workmen

The ID Act establishes a procedure for the closure of an industry. But a full bench held that the court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where would place an impossible burden on the employer. Thus the economic burden was not placed on the employer.

Binding nature of the settlements

The court emphasised the settlement of industrial disputes with greater binding nature for the economic inflow and investment from the international market. The court stressed the importance of collective bargaining and the principles of industrial democracy. A fair and just settlement is always beneficial to the management as well as to the body of workmen and society at large creating industrial peace and harmony. Even during adjudication proceedings the parties can arrive at an amicable settlement which may be binding on the parties to the settlement. [28]

Fixed period appointment not retrenchment

In State of Rajasthan v. Ramesh Lai Gahlot the workman was appointed for a period of three months or till the regularly selected candidates assumed office. His services were terminated nearly after ten months. The Court following its earlier judgement held that once an appointment is for a fixed period, section 25 F does not apply as it is covered by clause (bb) of section 2 (oo) of the Act. When the termination was in terms of the letter of appointment saved by sub clause (bb) of section 2 (oo), neither reinstatement nor fresh appointment and backwages could be ordered.

Conclusion

The workplaces of our new world are being transformed by the dynamic push of international trade patterns, capital investment flows, and migratory labour movements. But the regulation of these workplaces remains the province of national labour and employment laws. Compared to the whirl of change in the international economy and labour standards, domestic labour legislations have largely stood still over the past fifteen years and the judiciary has made attempts to fill the places of uncertainty in order to maintain the industrial peace and harmony. The court is very keen in not awarding backwages and at the same time recognised the home workers with the workmen status. The industrial harmony has been the prime importance and reinstatement on the illegal termination has been limited to compensation. The court has also differentiated its view on public employment from industrial employment. The court has been too legalistic in placing onus of proof on the workman to establish 240 days service for claiming the benefit of retrenchment compensation under the ID Act. This legalistic approach is not in tune with the practical realities. It goes without saying that though the thrust of judicial activism in favour of the workers seems to be waning. [31]

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