

Retrenchment under Indian Law

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The term retrenchment means cutting back or reduction.² It commonly understood as to remove or terminate. The term 'retrenchment' was not originally included in the Industrial Dispute Act, 1947 and it was only in the year 1953.³ In India the term is explained under Section 2(oo) of the Industrial Dispute Act, 1947⁴ which says as 'the terminations by the employer of the service and a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action.' The definition further says that following forms of termination are not covered under retrenchment,

- a. Voluntary retirement of the workman.
- b. Retirement of the workman on reaching the age of superannuation.
- c. Termination of services of a workmen as a result of non-renewal or expiry of a contract
- d. Termination of the service of a workman on the ground of continued ill-health.
- e. Termination otherwise than as punishment inflicted by way of disciplinary action.

The *Supreme Court in State Bank of India Vs Shri N. Sunder Money*,⁵ held, '*for any reason whatever – very wide and almost admitting of no exception.*' Thus the term is wide and includes termination of any form except given under the exception of the Act.

The provision of retrenchment is not applicable to industrial establishment employee less than fifty workmen and industries of seasonal character. The procedure for retrenchment is provided in section 25G of the Industrial Dispute Act, 1947. It provides that ordinarily who was the last person to be employed shall be retrenched first thus emphasizing on the principle of 'last come

¹ B.SC, LLB, DHRM, CEB,C.I

² <http://www.yourdictionary.com/retrenchment>

³ Industrial Disputes (Amendment) Act, 1953, which was deemed to have come into force on the 24th day of October, 1953

⁴ Under Chapter VA

⁵ 1976 AIR 1111, 1976 SCR (3) 160

first go.’⁶ Further Section 25H⁷ provides that employer while employing shall give preference to retrenched employee.

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 following are valid procedure of retrenchment,

- a. A month’s notice in writing describing the reason for retrenchment or wages in lieu of such notice.
- b. The workmen shall be paid compensation at the time of retrenchment, compensation equivalent to fifteen days average pay for every completed year of continuous service.
- c. A notice shall be served to the Government or the authority in the prescribed manner.

Section 25N provides conditions for retrenchment for Industrial establishment employing more than 100 workmen. In such industries, the workmen shall be given three months notice in writing similar to section 25-F. however it is mandatory to seek prior approval from the Government for such retrenchment.

Conclusion

The Industrial Dispute Act, 1947 lays procedure of retrenchment. It provides three segments based on number of workmen employed in a industrial establishment. Ie, where less 50 workmen are employed, where less than 100 workmen are employed and where more than 100 workmen are employed. Thus it can be clearly seen that the lawmaker has adopted a practical approach to retirement keeping in mind the need and the requirement of the industry and protection of the workmen. The law of retrenchment is neither rigid nor too flexible.

In Global market, India holds a competitive edge for industrial development and growth and labor law and practices is one of the important criteria to sustain long term investment. India’s adoption of practical approach in this direction will prove a boon for industrial development and growth thus ultimately benefiting large scale employment market in India.

⁶ Where any workman in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

⁷ Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.