Authorities Under I.D Act

A) Introduction.

The Industrial dispute Act is an act to make provision for investigation and settlement of disputes. Different modes for settlement of disputes provided by the Act can be broadly categorised into three, i.e. conciliation, adjudication and arbitration.

i) Work committee, Conciliation officers and Board of conciliation are the authorities which settle the disputes through conciliation.

ii) Labour court, Tribunal and national tribunal are adjudicatory authorities which settle disputes through adjudication.

iii) The act also has the provision for voluntary reference of dispute to arbitration.

B) Authorities under I.D Act.

The Industrial Disputes Act 1947, provides for the following authorities.

1) The Works Committee.

i) Section 3 provides for the composition of the Work Committee.

ii) The power to constitute work committee rests with the appropriate Government. It prescribe that works committee should be constituted in every industrial establishment employing 100 or more workers

iii) Members - The membership has to consists of representatives of employers and employees in equal ~~manner~~ number but representatives of employee can be greater number.

iv) Function.

a) It is the duty of committee to promote measures for securing and pre-serving amity and good relations between the employer and workman.

2) Conciliation officer.

Conciliation is the oldest recognised process of settling mutual conflicts not only between individuals and groups but also between nation.

i) According to Section 4 of the Industrial Dispute Act 1947, the appropriate Government may appoint one or more conciliation officers by notification in the Official Gazette.

ii) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or more specified industries and either permanently or for a limited period.

iii) Powers —

a) For the purpose of inquiring into existing industrial dispute, he has power after giving the notice of to enter the premises occupied by Industrial establishment.

b) Officer has power to call for and inspect any document which he may consider relevant to the dispute.

3) Board of Conciliation.

i) According Section 5 of the Industrial Dispute Act, 1947 the appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

ii) The Board consists of a Chairman and two or four other members, as the appropriate Govt. thinks fit.

iii) Duties.

a) The board is required to investigate the report without delay and to induce the parties to the dispute, come to a fair ~~and amicable~~ settlement.

b) If the dispute is settled, the board has to send a report to Government along with a memorandum of the Settlement signed by the parties.

c) If the dispute is not settled, it has to send a report to government stating the reasons and recommendation for determination of the dispute.

4) Court of Inquiry

i) According to Section 6 of the Industrial Dispute Act 1947, the appropriate government may constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

ii) Members.

a) A court of Inquiry may consist of one independent person or such number of independent person as the appointed appropriate government may think fit.

b) If consist of two or more members, one of them shall be appointed as a chairman.

5) Labour Court.

i) According to section 7, of IDA 1947, the appropriate government has been empowered to constitute Labour court.

ii) The appropriate government by notification, in the Official Gazette, may constitute one or more labour courts for adjudication of industrial dispute specified in the second schedule.

iii) If consisted of one person, appointed by the government, He is called the presiding officer.

6) Industrial Tribunal.

i) According to Section 7(A) of the Act, the appropriate government by notification in official Gazette may constitute one or more Industrial Tribunals for adjudication of Industrial dispute relating to any matter specified in the II schedule or III schedule.

ii) A tribunal shall consist of one person only to be appointed the by the appropriate Government.

iii) Qualification for appointment.

a) He is or has been a Judge of a High Court.

b) He has for a period of not less than three years, been a District Judge or an Additional District Judge.

7) National Tribunal.

i) According to Section 7 (B) of the Act, the Central Governmen may constitute one or more National Industrial Tribunal for adjudication of industrial dispute by notification in the official Gazette.

ii) Tribunals are constituted to adjudicate upon such industrial dispute which, in the opinion of the Central Government, involve questions of national importance or of such nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes.

iii) A National Tribunal shall consist of one person only to be appointed by the Central Goverment.

iv) Qualification of presiding officer:

> He is or has been, a judge of High Court.

Collective Bargaining.

A) Introduction.

Industrial disputes between the employee and employer can also be settled by discussion and negotiation between these two parties in order to arrive at a decision. This is also known as Collective Bargaining. The term collective Bargaining was first used in 1891 by Sidney Webb.

B) Definition.

According to International Labour Organisation, the collective Bargaining means -

> All negotiation which takes place between
> Employers, group of employer or one or more organisation and one or more worker organisation.
> regarding working condition and terms of employers and workers and regulating relation between employer of the organisation and a worker's organisation.

C) Collective Bargaining involves.

i) Negotiations.
ii) Drafting
iii) Administration
iv) Interpretation of documents written by employers, employees and the union representatives.
v) Organizational Trade Unions with open minds.

D) Important features of Collective Bargaining.

i) It is a Group Action.
ii) ~~It is a continuous~~ Collective bargaining is a group action as opposed to individual action.
iii) It is a continuous process.

Collective bargaining is a continuous process and does not end with one agreement. It is a process

that goes on for 365 days of the year.

iii) It is a bipartite process.
Collective bargaining is a two party process. Both the parties - employers and employees - collectively take some action.

iv) It is flexible and mobile.
It has fluidity. There is no hard and fast rule for reaching an agreement.

v) It is an art.
Collective bargaining is an art, an advanced form of human relations.

E) Advantages of Collective Bargaing. (P, PRSP)
There are some advantages of collective bargaining to the employers and employee also.

1) ~~It is~~ pro-employees.
It make easier for employees to fight for their rights as hard-working people. ~~It aim is~~ It gives the voice to such unions whose aim ~~to~~ is to work for a betterment of employee.

2) It prevents employees from going on strikes.
When there are big issues between employees and employers that are not settled, a popular option for employees are ~~g~~ to go on strikes. Collective Bargaining maintain the proper relation between employees and employers. It get benefit of prevent striking situation.

3) Reduces Bias and favoritism.
Sometime someone getting additional benefits simply because of their relationship with their boss or other irrelevant things. This is generally reduced and possibly eliminated, with the use of collective bargaining.

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4) Stabilizes the business.

Without the fear of layoffs, or wage cuts, people much more stable in their job and position at a company or industry due to collective bargaining.

5) Provides security to workers.

Since collective bargaining contracts are legally binding agreements, the employees can be sure of their work condition. The management cannot change any of the condition.

F) Disadvantage of Collective Bargaining.

i) It can be biased to employers.

Some groups not in favor of collective bargaing argue that this process gives too much power to employees and leave the employers with tied hands when it come to running their businesses.

ii) Time and Money consuming.

Collective bargaing can be costly, bothin terms of time and money. It take many days for the hearing the opinion of the two parties.

iii) It is prone to inequality.

Critics of collective bargaining say that this can lead to either the employers or employees getting less of what they deserve.

iv) It can widen the gap between employers and employees.

Collective bargaining has aim to give equal solution, there are cases which where nothing is agreed upon. When talks become futile, the situation might aggravate instead of mitigate. This can create a barrier between employers and employees instead of a healthier relationship.

Authorities of MRTU & PULP.

A) Introduction.

Full form of MRTU and PULP Act 1971 is the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971. This Act extends to the whole of the State of Maharashtra. This act provides the collective bargaining for recognitted trade union.

B) Authorities of MRTU and PULP.

There are following authorities of MRTU and PULP Act 1971.

1) Industrial Court

The State Government by a notification in the official Gazette shall constitute an Industrial court.

a) Composition

i) It required not less than 3 members.

ii) One of them is presiding officer. who has been or to be a judge of high court.

iii) One member must have special knowledge of labour law; industry.

iv) The member should not connected with the complaint referred to that court or with any industry directly affected by such complaint.

2) Labour Court

The State Government shall by notification in the official gazette institute one or more labour court.

a) Composition.

i) The member of labour court shall appointed under article 234.

ii) Any person who is the judge of district court can be appointed with the consultant of State Judicial service authority.

iii) or is not more than 65 years of age.

b) Power and duties.

It has power to decide complaint relating to unfair Labour practices.

3) Investigating Officer.

i) The State Government may by notification in official gazette appointed such no. of investigation officer for any area as it may be consider necessary.

ii) The investigation officer is appointed to assists to labour court and industrial court in the discharge of their duties.

a) Duties of investigation officer.

i) The investigation officer is under the control of the industrial court and act as per the power given by the court.

ii) The officer assist the industrial court in the matter of verification of membership of union.

Strike and Lockout

A) Introduction

The Industrial dispute Act 1947 is to has objective to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial dispute by negotiation. This deals with the retrenchment process of employees, procedure for layoff, procedure for strike and lockout of industry.

B) Strike and lockout

Strikes and lockout are the last resort action taken by employees and employers respectively to ensure that both get their demands. Reasons leading to a strike are oftem economic, whereas reasons leading to a lockout could be both economic and non-economic. These are the weapons used by the employees and employers.

C) Concept of strike [Section 2(q)]

'Strike' means cessation of work. It may be ~~inv~~ resorted to :-

i) by a body of persons employed in any industry acting in combination; or

ii) a concerted refusal; or

iii) a refusal under a common understanding of persons who are employed to continue to work or to accept employment.

In order to strike take place, the following components should be in place according to the Act :-

i) There has to be an industry.

ii) Work must stop. It must be a combined action of individuals.

iii) A relationship between the parties must be strictly of employment.

iv) It should be a planned refusal to work.

1) Types of strike.

Workers in the industrial world have deal with various types of strike. The strike differ in their mod of actions they come along with. Strike produce different impacts on industry.

The various types of strike includes :-

i) General strike
ii) Tool down strike
iii) Pen down strike
iv) Go slow strike

2) Case law.

i) Kameshwar Prasad and Others Vs. State of Bihar and Union of India.

'Bihar Government Servants' conduct rules, 1956 had a rule, Rule 4-A that prohibited workers from demonstrating or initiating any strike. The petitioners and other employees in the state of Bihar filed a case before the High Court concerning the rule. The High Court made a judgement in favor of the employees and petitioners saying that strike is the workers' right though not fundamental.

3) Prohibition of strike (Section 22)

1) Concept of Lockout. (Section 2(l))

'Lockout' means the -

i) temporary closing of a place of employment; or

ii) the suspension of work; or

iii) the refusal by an employer to continue to employ any number of persons employed by him.

Lockout is an act of employer. Lock-out means 'to shut down or to close'. Prior 1860 lockout was known as 'turn off'. Lockout is effective and widely recognized weapon in hands of employers. It is the antithesis of strike.

1) Prohibition of Lockout (Section 22)

Strikes and lockout prohibited under Sec^{n} 22.

The lockouts are not allowed to take place when:

i) Without giving prior notice of lockout within 6 weeks before the lockout, or

ii) Within 14 days of giving such notice; or

iii) Before the expiry of the date of lockout specified in any such notice; or

iv) during the pendency of any conciliation proceedings before a concibiation officer and 7 days after the conclusion of such proceedings.

2) Relations to lockout.

i) Termination of service.

It does not amount to lock-out because in termination of service the employment or industrial relat^{n} is served or broken whereas in a lockout there is only suspension of relations.

ii) Suspension of workmen.

It is not a lockout because even if suspension is for indefinite period, without pay.

iii) Retrenchment & closure.

Termination of employment by retrenchment and closure does not amount lockout.

E) Panalty for Illegal strike and Lockout. [Sect^{n} 26 (1) or (2)]

i) Any ~~per~~ workman who commence, continue or otherwise act in furtherance of, a strike which is illegal under the Act, shall be punishable with imprisonment for 1 month or with fine ₹ 50 per person or with both.

ii) Any employer who commence, continue or otherwise act in furtherance of a lockout which is illegal under the Act, shall be punishable with imprisonment for 1 month or with fine ₹ 1000 per person or with both.

F) Conclusion.

Strike and lockouts cannot take place just in any way and thus, they have boundaries and circumstances that render them either legal or illegal Illegal ~~one~~ ones have consequences.

(matter) Scope and application and model of S.O: Act.

A) Introduction.

This act may be called the Industrial Employment (Standing Orders) Act 1946. It extend to the whole of India. It applies to every industrial establishment wherein 100 or more workmen are employed on any day of preceding 12 months.

B) Objective (mebpf)

i) The employer is require define the conditions of working.
ii) To minimise industry conflicts.
iii) To bring about uniformity in terms and condition of employer.
iv) To foster harmonious relation bin between employer and employees.
v) To provide statutory sanctity and important to standing order.

c) Scope and application. (eaa hac pcs mpp)

i) An act extend to the whole of India.
ii) It applies to every industrial establishment wherein 100 or more workmen are employed on any day of preceding 12 months.
iii) The appropriate government can exempt any establishment from any of the provision of act.

It applies to railway, factory, mines, oil fills, motor services, docks, plantation, workshops, civil construction and maintenance work.

iv) The act has 15 section and a schedule.
v) The act is applicable to all workman employed in any industry to do any skilled, unskilled, manual, technical and clerical work, Even the apprentice are also included. But the person employed mainly in

managerial / administrative capacity drawing wages exceeding ₹ 1600 are not covered.

vi) The act classified workmen into the categories i.e. Temporary, Permanent and Badli workmen and appren

vii) The act provides with the manner of intimating the workmen and the period required. It also speak about hours of work, holidays, paydays and wages days.

viii) The concept of shifting ~~is~~ working is mention details.

ix) It speaks about condition and procedure for applying to the employer or an authority which may grant leave ~~the~~ and holidays.

x) The act also mention the requirements regarding how and when to enter the primise by certain gates and liability to research.

xi) The act also provide closing and reopening of particular section or department of the establishment.

xii) Provision regarding suspention or dismissal are mention in detail.

D) Model of Standing Order (Schedule - I) (Section)

The Schedule-I speaks about,

i) Conditions of procedure in apply for grant of leave and holiday to the appropriate authority.

ii) Requirement to enter primise but certain gate and liability to research.

iii) Closing and reopening of a department or a section of the industrial establishment.

iv) Temporary stopege of work and rights and liability of the employer and workmen arising therefrom.

vi) Termination of employment and notice to be given by employer or workmen.

vii) Suspension or dismissal from misconduct and act of omission which constitute misconduct.

viii) The needs of redressal for workmen against the unfair labour treatement by the employer or his agent are mention.

E) Meaning of Standing Order

Standing order define under Section 2(g) of Industrial Employment (Standing Order) Act 1946, According to Section 2(g), Standing order means. rules relating to matter set out in the schedule of the act.

f) Model standing order.

Model standing order prescribed by the Central govt or a state govt. for the purpose of act to serve as a model. They provide a pattern of rules of conduct relating to the various matter specified in the schedule of act.

Workman under ID Act 1947

A) Introduction.

Section 2 (s) of the original Industrial Dispute Act 1947, defined the word 'workmen'. But there is amendment in definition of workmen by Section 3 of the Industrial Dispute (Amendment and Miscellaneous Provision) Act 1956.

B) Definition.

According to break up of the new definition is as follow.

i) 'Workmen' means any person including an apprentice,
ii) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work.
iii) for hire or reward,
iv) the terms of employment may be express or implied and.
v) in relation to any industrial dispute, it includes any such person who has been dismissed, discharged, retrenched in connection with that dispute or as a consequence of that dispute.

c) Excludes,

But it does not include any such person -

a) who is subject to the Air Force Act, or the Army Act, or the Navy Act. or.
b) who is employed in police service or as an officer or other employee of prison or
c) who is employed in a supervisory capacity and draws wages exceeding ₹ 6500.

D) Case laws. (Who are workmen) [CPS]

1) Chintaman rao Vs State of Madhya Pradesh.
It was held that there should be a contractual relationship between master and servant. i.e. the workman is under the supervision, direction and control of his master.

2) Physical Research Laboratory Vs. K.G. Sharma.
The Supreme Court of India held that Laboratory Ahmadabad would come within the definition of 'workmen' under the Industrial Disputes Act and other similar legislation in the field of relations between employers and employees.

3) Standard Chartered Grindlays Bank Retired Employees Association Vs. Union of India.
It was held that a retired employee can be included in the term 'workman' as defined in Section 2 (s) of the I.D. Act 1947 and can be a party to an industrial dispute.

E) Case laws (Who is not a workman). [SMS]

1) Sub divisional inspector of post vaikan Vs. Theyyan Joseph.
It was held that extra departmental agents in postal services were civil servants and not workmen.

2) M.M. Wadia Charitable Hospital vs. Umakant Warekar.
It was held that it was never the object of I.D. Act that highly qualified doctors or surgeons would be entitled to claim the protection of this welfare legislation. In the case of medical men rendering only professional service to various institutions and no relationship is created between the parties which entitled them to claim the status of workmen.