

2016 Labour Court ruling could make it tough for IT firms to sack staff at will

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By **M Saraswathy**



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The earlier order was given on an industrial dispute plea filed by K Ramesha, who was dismissed as Senior Service Programmer while working in [HCL Technologies](#).

Ramesha was fired in 2013, with the management citing poor performance as the reason. Ramesha filed a case against the company in Chennai's Labor Court for wrongful termination.

HCL had argued that as Ramesha was a 'supervisor', the labour rules covering 'workman' under the Industrial Disputes Act did not apply to him. But the court ruled that the job of an engineer in a software company involved skills and technical knowledge, and so Ramesha was a 'workman.'

More importantly, the court also said that HCL Technologies could not produce any evidence to show that failure to improve performance or failure to measure up to the expectations or standing orders of the company would amount to an act of misconduct.

HCL Tech had to reinstate Ramesha and pay full back wages and all other benefits from the date of dismissal to the date of reinstatement.

Leading IT companies have sacked a few thousand people between them over the last month. But in the majority of the cases, the employees were forced to resign so that the companies did not have pay severance packages.

The Industrial Disputes Act clearly spells out conditions of retrenchment of employees in an organisation and also says that 'last in, first out' policy is to be followed in terms of retrenchment.

The Act requires the employer to pay severance and notify the labour authorities of a retrenchment. In cases of industrial establishments having at least 100 (300 in select states) workmen, there is a requirement to obtain prior permission of the government to terminate workmen.

Vikram Shroff, Head, Employment and HR Law at Nishith Desai Associates explained that termination for reasons of non-performance or under-performance can become highly subjective on depend on fact-specific situations.

He also said that labour departments and courts in India receive several claims of unlawful or illegal termination, where employees demand reinstatement with back wages and continuity. The employer may be required to demonstrate that there was reasonable cause for termination and that proper processes were followed.

In the recent firings at IT firms, many employees were told that their performance was not up to the mark, and so they would have to resign.

While court cases may take time to be resolved, the petitioners stand a better chance of a favourable ruling if they move the courts in groups.

“Unless mentioned in the offer letter, an employee cannot be sacked on grounds of performance unless of course the company itself shuts down. In these cases, they can approach the court for redressal,” said an HR official working with companies on designing employee contracts and compensation.

In an office environment, while an employer will not be answerable as to why a particular employee’s productivity is below par, in court cases lawyers said that explicit proof will have to be provided as to why the decision was taken, what metrics were used to judge the employee, what was the time period considered and how have the peers in the particular function/department performed.