

Did your company show you the door? It may be tough to fight it in a court of law

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By **M Saraswathy**



Have you been one of the victims of the recent retrenchment activity by companies? If yes, fighting it legally with the company is an arduous task. On one hand while you need to have tough evidence to show that you have been removed on unreasonable grounds without being given prior warning, legal recourse will also take time and expenses will also be high.

The Industrial Disputes Act, 1947 (IDA) gives a guidance on the conditions related to retrenchment of workmen. The rules say that a workman who has been in the employ of a company for over a

year can't be summarily sacked or laid off without being given one month's notice in writing. He will have to be given the reasons for his dismissal, too. Otherwise the workman will have to be paid in lieu of such a notice.

Vikram Shroff, Head, Employment and HR Law at Nishith Desai Associates said that in the USA, there is a concept called 'at will' employment, where the employer can, subject to ensuring there is no discrimination, potentially hire or fire at its will. Such a model is not followed in almost all other countries including India.

Shroff said, in general, labour laws in India allow termination of employment only on reasonable grounds or for reasons regarding employee misconduct. The level of protection under the laws depends on various factors including the level of seniority in the organisation. For example, a 'workman' under the Industrial Disputes Act, 1947 (IDA) excludes those employees who are primarily employed in a managerial, administrative or supervisory capacity.

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

Shroff explained that termination for reasons of non-performance or under-performance can become highly subjective. 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.

Recently, the Karnataka High Court passed a judgment stating that dismissal has to be in the rarest of rare cases since it is like capital punishment, although in that case the workman was dismissed from service after holding an enquiry in which the act of misconduct was proved.

“From a practical standpoint, litigation against the employer has its own challenges given the timelines and procedural requirements, extent of damages awarded by courts, whether it affects future employment prospects, etc, which could all become a deterrent,” said Shroff.

There is no definite court judgment saying that IDA will be applicable to all employees. Hence, if the employer has cited low performance post appraisal as a reason, unless there is concrete data it is difficult to contest the decision.

Sharanya Ranga, Partner, Advaya Legal explained that there is some ambiguity on whether the statutory protections available to workmen under the Industrial Disputes Act will apply to employees of an IT/ITES company.

“It is, therefore, important that the employer follows due processes as set out in the employment contract and company policies. Prior notice (or payment in lieu of such notice) for termination of employment without cause is always recommended, together with some severance compensation. Three months’ notice is fairly common. But nothing stops an employee from taking his/her employer to court for wrongful dismissal,” she added.