

THE
NATIONAL LAW REVIEW



55 NEW ARTICLES

Employment Termination in India: Recent Developments

Article By

Archita Mohapatra
Vikram Shroff

Like 2

Tweet

Monday, November 29, 2021

Unlawful termination of employment remains by far the most contentious issue in Indian labor laws. This is largely due to absence of the concept of an at-will employment system. In general, employment may be terminated only for reasonable cause or employee misconduct, subject to complying with necessary procedures.

If the employer has not complied with applicable law or contract while terminating employment, the employee has a right to challenge the termination order as per the processes set out under the applicable national or state laws. In the past, courts have passed orders of reinstatement along with back-wages and continuity of service, in cases where the employees were successful in proving that employment termination was unlawful or in cases of unfair labor practices. However, recently there has been a shift in the manner the courts have been adjudicating upon employment termination related matters.

Laws governing employment termination

Termination of employment of an employee is governed by both federal and state level labor laws. The Industrial Disputes Act, 1947 (IDA), *inter alia* contains provisions with respect to retrenchment, layoffs, unfair labour practices and closure of an establishment. The IDA defines “retrenchment” to mean *the termination by the*

employer of the service of a workman for any reason whatsoever other than as a result of a punishment inflicted by way of disciplinary action. Retrenchment excludes:

1. voluntary retirement of the workman;
2. retirement of the workman on reaching the age of superannuation (as per the terms of contract);
3. termination as a result of non-renewal of the contract; and
4. termination on the grounds of continued ill-health.

The IDA applies only to individuals categorized as “workmen”^[1], which excludes persons who are employed in a managerial or administrative capacity, or supervisors who draw a monthly salary exceeding INR 10,000 (approx. US\$ 130).

Section 25F of the IDA provides three conditions which precedent to retrenchment of workmen who have completed continuous service of at least one year (240 days). The employer is required to:

1. give one month’s notice or pay in lieu thereof, indicating the reasons for retrenchment;
2. pay retrenchment compensation (severance) equivalent to 15 days’ average pay for every completed year of service or any part thereof in excess of six months; and
3. give a notice to the labour authorities in the prescribed format.

Section 25N of the IDA requires the employer of a factory to obtain prior government permission for retrenchment. Section 25G of the IDA provides for the principle of last-in-first-out (LIFO) to be followed, wherein 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. Besides the IDA, the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 also contain provisions on employment termination. Additionally, any termination provisions under the state-specific shops and establishments acts also need to be complied with by the employer^[2]. Some of the new shops and establishments acts which have been based on the Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016 such as those for Maharashtra (Mumbai & Pune), Gujarat (Ahmedabad) and Uttarakhand (DehraDun), have done away with the employment termination provisions.

The employer is also required to ensure compliance with the terms on the individual employment contract and HR policies prior to terminating employment.

Previously, courts were of the view that if the employer terminates the service illegally and the termination is motivated, the termination may amount to unfair labor practice and in such circumstances, reinstatement being the normal rule, it should be followed with full back wages.^[3]

Recent case laws on unlawful termination

The Supreme Court (SC) has recently adjudicated upon an issue of whether the termination of the respondent (employee) by the appellant (bank) was justified under the law.^[4] The court opined that the employee is not entitled for reinstatement. It relied upon certain precedents to state that violation of Section 25F of the IDA does not automatically entail in reinstatement with back wages. Further, it added that “*the relief to be granted depends on the facts of individual cases*”. Instead of reinstatement, the SC awarded compensation of INR 5 lakhs to the employee.

The SC held in another significant case that “*reinstatement cannot be automatic and if the transgression of Section 25F is established, then suitable compensation would be the appropriate remedy*”.^[5] In this case, the appellant was a daily wage employee in the Public Works Department (PWD) who had allegedly been terminated without

following the due procedure laid down in Section 25F of the IDA. Further, unfair labor practice was claimed on the part of the employer since certain junior workers were retained while the appellant employee was terminated, although the appellant employee could not adduce convincing evidence to establish retention of junior workers. In such circumstances, the SC held that: *“there may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”*

The Supreme Court of India (SC) has recently held that *“reinstatement with full back wages is not automatic in every case, where termination/dismissal is found to be not in accordance with procedure prescribed under law”*.^[6] In this case, the respondent was in effective service of the employer (bank) for six years until 1991 and had attained age of superannuation, so the court deemed it appropriate to award the employee a lump sum monetary compensation of INR 15 lakhs.

Employment termination under the new IR Code

In September 2020, India enacted the Industrial Relations Code, 2020 (IR Code) which subsumes three (3) laws pertaining to industrial relations, being the: i) Industrial Disputes Act, 1947 (IDA), ii) Trade Unions Act, 1926, and iii) Industrial Employment (Standing Orders) Act, 1946.

While the IR Code is not yet in effect, the provisions with respect to layoff and retrenchment have generally been retained. However, the IR Code has increased the applicability threshold for provisions relating to requirement of government permission for termination (retrenchment) of employment to 300 workers on an average per working day in the preceding 12 months. Additionally, in case of retrenchment of a worker, the employer will be required to deposit 15 days' wages to the Worker Reskilling Fund to be set up by the government once the IR Code is made effective. Finally, penalty for non-compliance of the IR Code has been increased significantly, with the maximum amount being INR 2 million (approx. US\$ 2,670).

Conclusion

Some of the recent case laws on employment termination demonstrate a critical shift in the judicial mindset on dealing with claims or unlawful termination or unfair labour practices on the part of employers. These developments are seen positively by employers, although they are advised to watch out for this space as the new labour codes unfold in India.

FOOTNOTES

[1] Section 2(s) of the IDA:

(s) *“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--*

(i) *who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950). or the Navy Act, 1957 (62 of 1957); or*

(ii) *who is employed in the police service or as an officer or other employee of a prison; or*

(iii) *who is employed mainly in a managerial or administrative capacity; or*

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

[2] Certain states have provided exemptions to certain category of employees from the purview of the law or certain provisions of the law.

[3] Hindustan Tin Works Pvt Ltd. v. The Employees of Hindustan Tin Works Pvt Ltd and Ors (AIR 1979 SC 75

[4] Madhya Bharat Gramin Bank v. Panchamlal Yadav [2021] SCC Online 759

[5] Ranbir Singh V. Executive Engineer P.W.D [2021] SCC Online 670

[6] Allahabad Bank and Ors. v. Krishan Pal Singh [2021] SCC Online 751

Nishith Desai Associates 2021. All rights reserved.

National Law Review, Volume XI, Number 333



PRINTER-FRIENDLY EMAIL THIS ARTICLE DOWNLOAD PDF REPRINTS & PERMISSIONS

RELATED LEGAL HEADLINES

Global Employment Law Update - Part 3: Estonia to Ireland

By *McDermott Will & Emery*

U.S. Whistleblower Law Can Help Hold Infosys Accountable Where Indian Law Cannot

By *Maraya Best*

India's New Labor Codes: Comparison of Employee v. Worker

By *Sayantani Saha*

Update on Proposed Law on Employment of Local Candidates in Gurugram (Gurgaon)

By *Sayantani Saha*

TRENDING LEGAL ANALYSIS

Amicus Briefs, OSHA, and the Sixth Circuit

By *Squire Patton Boggs (US) LLP*

Mexico's New Minimum Wage for 2022

By *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*

Present But Not Accounted For: NYSE Amends Treatment Of Abstentions In Certain...

By *Nelson Mullins*

ALERT: New State Privacy Requirements for Mortgages Funded After December 1, 2021

By *Bradley Arant Boult Cummings LLP*

THE
NATIONAL LAW REVIEW

ANTITRUST LAW

BANKRUPTCY & RESTRUCTURING

BIOTECH, FOOD, & DRUG

BUSINESS OF LAW

ELECTION & LEGISLATIVE

CONSTRUCTION & REAL ESTATE

ENVIRONMENTAL & ENERGY

FAMILY, ESTATES & TRUSTS

FINANCIAL, SECURITIES & BANKING

GLOBAL

HEALTH CARE LAW

IMMIGRATION

INTELLECTUAL PROPERTY LAW

INSURANCE

LABOR & EMPLOYMENT

LITIGATION

CYBERSECURITY MEDIA & FCC

PUBLIC SERVICES, INFRASTRUCTURE, TRANSPORTATION

TAX

WHITE COLLAR CRIME & CONSUMER RIGHTS

CORONAVIRUS NEWS

[LAW STUDENT WRITING COMPETITION](#) [SIGN UP FOR NLR BULLETINS](#) [TERMS OF USE](#) [PRIVACY POLICY](#) [FAQS](#)



Legal Disclaimer

You are responsible for reading, understanding and agreeing to the National Law Review's (NLR's) and the National Law Forum LLC's [Terms of Use](#) and [Privacy Policy](#) before using the National Law Review website. The National Law Review is a free to use, no-log in [database](#) of legal and business articles. The content and links on www.NatLawReview.com are intended for general information purposes only. Any legal analysis, legislative updates or other content and links should not be construed as legal or professional advice or a substitute for such advice. No attorney-client or confidential relationship is formed by the transmission of information between you and the National Law Review website or any of the law firms, attorneys or other professionals or organizations who include content on the National Law Review website. If you require legal or professional advice, kindly contact an attorney or other suitable professional advisor.

Some states have laws and ethical rules regarding solicitation and advertisement practices by attorneys and/or other professionals. The National Law Review is not a law firm nor is www.NatLawReview.com intended to be a referral service for attorneys and/or other professionals. The NLR does not wish, nor does it intend, to solicit the business of anyone or to refer anyone to an attorney or other professional. NLR does not answer legal questions nor will we refer you to an attorney or other professional if you request such information from us.

Under certain state laws the following statements may be required on this website and we have included them in order to be in full compliance with these rules. The choice of a lawyer or other professional is an important decision and should not be based solely upon advertisements. Attorney Advertising Notice: Prior results do not guarantee a similar outcome. Statement in compliance with Texas Rules of Professional Conduct. Unless otherwise noted, attorneys are not certified by the Texas Board of Legal Specialization, nor can NLR attest to the accuracy of any notation of Legal Specialization or other Professional Credentials.

The National Law Review - National Law Forum LLC 4700 Gilbert Ave. Suite 47 #230 Western Springs, IL 60558 Telephone (708) 357-3317 or toll free (877) 357-3317. If you would like to contact us via email please [click here](#).

Copyright ©2021 National Law Forum, LLC
