

LAYOFF: A BAIL OUT



1. INTRODUCTION:

Labour law is a concurrent subject in the Indian Constitution, which implies that labour and employment regulations in the country are governed at both the federal and state levels. The main federal statutes that regulate the termination of employment include the Industrial Employment (Standing Orders) Act (IESA), 1946 and the Industrial Disputes Act (IDA), 1947.[1]

Layoff means a company reducing its workforce for various reasons like saving costs, restructuring, mergers, loss of business opportunities etc. Layoffs may also happen because an employee's skill set is no longer useful for a company in the present scenario.

Layoffs have been the talk of the Industrial World ever since Covid-19 has hit the shores. The IDA being primary legislation which deals with the provisions of Layoff for all those decades was amended recently with the introduction of Industrial Relations Code, 2020 (hereinafter referred to as "Code"). The Code has been passed by both the houses of parliament and has also received the assent of the President. However, the Code is yet to be notified. The Code combines three legislations being the IESA, IDA and the Trade Unions Act, 1926.

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] the inability, failure, or refusal of the employer to provide employment to a workman whose name is mentioned in the muster roll of his industrial establishment and who is not retrenched due to the lack of power, coal, raw materials, accumulation of stocks, breakdown of machinery or natural calamity for any other relevant reason.

2. DEFINITION OF LAYOFF:

The term Layoff is defined under Section 2 (kkk) of IDA and now under Section 2 (t) of Code[2].

There are certain essential conditions specified according to IDA before implementing a layoff:

- There must exist an inability, failure, or refusal from the employer's side to provide employment to the workmen.
- Such inability, failure or refusal must be due to lack of power, coal, raw materials, accumulation of stocks, breakdown of machinery or natural calamity for any other relevant reason.
- The name of the workman must be mentioned in the muster roll of the employer's industrial establishment.
- The workman must not have been subjected to retrenchment[3].

The procedure of lay off is distinct for different establishments as classified under CHAPTER V-A AND V-B. Through this article let us analyze the term layoff, rights of employees for compensation and its procedures for establishments covered under Sections 25-C TO 25-E of Chapter VA of IDA.

[3] Retrenchment refers to the termination of employment for any reason other than punishment for a disciplinary action. This definition remains unchanged and finds its place under Section 2(zt) of Code and was provided under Section 2(oo) in the IDA. The applicability of retrenchment and layoff procedures are distinct for workman.

3. HOW IS LAY OFF DIFFERENT FROM RETRENCHMENT?

Basis	Layoff	Retrenchment
Meaning	A layoff can be defined ⁴ as the inability, refusal or failure of the employer to provide employment to the workman whose name is borne on the muster roll of his industrial establishment due to the shortage of coal, raw materials, power, and breakdown of machinery or accumulation of stocks, natural calamity or any other connected reason and not retrenched.	Retrenchment can be defined ⁵ as the termination of the services of the workman by the employer due to any reason other than a punishment as a result of any disciplinary action against the worker.
Relationship	Here, the employer-employee relationship continues.	The employee-employer relationship ends.
Temporary or permanent?	The workmen are appointed back after the end of the layoff period.	The employee-employer relationship ends.
After declaration	Establishment operations stops because of the shortage of raw material, the breakdown of machinery, economic recession and so on.	The operations and functioning continue even after retrenchment is declared.

4. WHAT ARE THE RIGHTS OF WORKMEN WHO ARE LAID OFF OF THE ESTABLISHMENTS UNDER CHAPTER VA?

The workman who is laid off is entitled to compensation that is equivalent to half of the total wages and allowance given for the said period of lay-off, as per Section 25C of the IDA and under Section 67 of the Code.

However, such compensation is subject to the following conditions -

- a workman (other than a badli^[6] workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off,

- Whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene.
- Compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off,
- Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days if there is an agreement to that effect between the workman and the employer.

[4] Section 2(kkk) of the IDA and retained under Code under section 2(t)]

[5] Section 2(oo) of the IDA and this definition is retained under Code,2020 section 2(zh)

[6] "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.



5. What is the basis of payment of compensation for establishments under chapter VA?

Section 25B of the Industrial Disputes Act, 1947 and under Section 66 of the Code:

Workmen can only be termed in Continuous service if, he has worked for at least one year without any interruption. He shall be eligible for compensation if he has rendered a minimum of one year of continuous service. The interruption of such continuous service is not affected by reasons such as an accident, authorized leave, sickness, legal strikes, a lockdown, and the termination of work that is not due to the fault of the workmen as stated under Section 25B.

The said section has exceptions which are kept unaltered in the Industrial Relations Code, 2020:

There are two exceptions where even if a workman is not in continuous service shall be deemed to be in continuous service for a period of one year or six months—

For a period of one year:

- If the workman was employed for the preceding 12 calendar months from the date on which such calculation is being made.
- If the workman during such 12 months had rendered his services for 190 days or more in the case of being employed in a mine and 240 days in any other employment.

For a period of six months:

- If the workman was employed for the preceding six calendar months from the date on which such calculation is being made.

If the workman during such six months had rendered his services for 95 days or more in the case of being employed in a mine and 120 days in any other employment.

6. WHEN THEY ARE NOT ENTITLED FOR COMPENSATION

Section 25(E) of IDA and Section 69 of the Code covers certain scenarios where workman is not entitled to compensation in certain cases:

- 1.If he refuses to accept any alternative employment in the same establishment or in another belonging to the same employer situated nearby within 5 miles (8kms as per Section 69 of the Code) from previous establishment which does not require any special skill and that the workman is given similar wages as he was getting previously.
- 2.If he does not report to work at the establishment every day at the appointed time.
- 3.If such lay-off has been due to strike or slowdown of production in any other part of the same establishment.

Illustration:

'ABC' is establishment whose owner 'P' is planning a Layoff. 'P' will be giving all his 80 workers alternate employment in the same MIDC area with similar amount of wages they all were getting paid while working in 'ABC'. Two of the 80 workers decide not to opt for such alternate employment and demand compensation against such lay off. Here, the Two employees will not be entitled with any compensation as per Section 25(E) of IDA.

7. APPLICABILITY

These provisions will not apply to establishments if an establishment has less than 50 workmen or if an establishment is seasonal/intermittent in character. To determine whether an establishment is of seasonal character, the decision of appropriate government will be final, both as per Section 25A (2) of Industrial Dispute Act, 1947 and Section 65(2) of the Code. All layoff provisions under Sections 25 A to 25 E of Chapter VA of IDA have been retained under Chapter IX Section 65 to Section 69 of the Code.

Chapter-VB of IDA relates to special provisions of lay-Off, retrenchment and closures which is applicable only to those industrial establishments which are not seasonal in nature and where there are more than 100 workmen, and such establishments require to obtain prior permission from appropriate government before laying off workmen. However, under Chapter X of the Code establishments with more than 300 workmen requires to obtain prior permission from appropriate government before laying off workmen.

ILLUSTRATION:

TRP is Cashew nut factory where it has 33 workers, working for them. TRP works for 4-6 months in year as those Cashew nuts production only happens for that certain period. Besides, cashew nuts are imported from South Africa. The workmen working here if in any case try to get compensated for the non-working 6 months of the year it will fail as their establishment is seasonal in nature and the number of workers being 33 only and hence not covered as per norms of IDA.

8. JUDICIAL ANALYSIS

The term workman is a key determinant for determining compensation to be paid. There are few differences to be noted in definitions part such as;

Key Differences	As per IDA	As per Code
Define as	Workman	Worker
Apprentices	Apprentices have been included while defining workman.	Apprentices have been excluded (as defined under Apprentices Act,1961).
Wages	Amounts to Rs.1,600 per month.	Amounts to Rs.18,000 per month.

The term workman was recently interpreted in the case of *Thirumalai Selvan Shanmugam vs. Tata Consultancy Service Limited*[7], before the Principal Labour Court of Chennai. The petitioner had joined the respondent company as an 'Assistant System Engineer' and was subsequently promoted as an 'IT Analyst' and lastly was promoted to the position of a 'Test Manager'. The Company terminated his services in 2015 due to poor performance, but this termination was contested by the employee, and it was claimed that the company had undertaken mass retrenchment.

[7] ID/0000034/2016, Labour Court Chennai.



The petitioner contended that since his main duties and responsibilities are maintaining the respondent Company's IT infrastructure, installing any updates in the business machines, troubleshooting problems, installing software updates, and assisting the respondent company's clients on a daily basis, he was merely undertaking duties and responsibilities that are technical and clerical. The Petitioner contended that since the job required technical and clerical expertise he would fall under the definition of a 'Workman' and would therefore be liable to receive all the benefits under Section 25(f)[3] upon retrenchment. Opposing the petition, the employer contended that the Petitioner was engaged in a managerial position as a Test Manager and hence was not a 'workman' for the purpose of applicability of 'retrenchment' provisions of IDA.

The Labor Court held that, Petitioner's role of a Test Manager will not exclude him as a 'workman' based on certain supervisory aspects of his role. The petitioner was reinstated in the respondents' company along with an order to pay back wages in full and rest other benefits from the date of his termination of service till his date of reinstatement.

9. Conclusion:

Employers should be considerate while laying off and terminating the services of the employees and should ensure complete adherence to the provisions of law.

As seen in the case below, the government body indulged in a decade long litigation where a watchman contested his termination. In spite of four rounds of litigation before the labour court and the Gujarat High Court, the employer dragged the matter from 2010 to 2022 and ultimately the Supreme Court ordered reinstatement with back wages. Further noted that in, Jeetubha Khansangji Jadeja Vs. Kutchh District Panchayat.[8]

The Appellant was appointed as a watchman on 05.10.1992 by the management (Respondent) at Shirai Dam at the Beraja Village of Mundra Taluk, Gujarat. The appellant was terminated by the respondent without following the Industrial Disputes Act, 1947.

The appellant was also denied reinstatement despite serving in continuity for 10 years within the same employment. In Labour Court, the respondent claimed that appellant was working on temporary basis and the condition of working 240 days in a given year was never fulfilled by appellant in any given year. However as per the evidence produced both Oral and documentary, the appellant contentions were proved right, as muster rolls were only maintained by respondent for period between 1994-1998. Hence the Labour court passed an award dated 31.08.2010 stating termination was illegal and appellant should be reinstated but without back wages.

The Aggrieved respondents filed an appeal against the award in Gujarat High Court which was dismissed.

[8] Civil Appeal No.6890 Of 2022 [@ Special Leave Petition (Civil) No. 8393 Of 2022].

The respondents then appealed further in division bench. The division bench heard this matter through a special leave petition and set aside the earlier awards. Though reinstatement was denied, a lumpsum compensation of Rupees One Lakh was awarded.

The Supreme Court observed that all these findings, appeals, orders kept the appellant away from employment for more than 10 years, which is itself poor and unfair despite having primary evidence from appellant side and stated that the management cannot be absolved of the primary responsibility in its litigative proclivity. Hence, the Supreme Court stated that the appellant was entitled with back wages at current rates within 6 weeks from the date of order for preceding 2 years that is from 2021-2022 from the order was passed and the appellant was entitled to be reinstated in the employment along with the back wages.

It should be further noted that while the employer and employees may have their independent employment agreements, the said agreements are always subject to provisions of laws. Thus, employers should ensure that any termination policy or clause outlined within a contract should be checked against the law by a professional.

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