Rotaract
Informatics Institute
of Technology

EMP
LAW
YEE

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News from the club

Chartered in 2010, the Rotaract club of IIT a group of young individuals who have perfected the craft of 'service before self' for almost 12 years. We are a community of over 700 people continually engaged in helping our community and developing our own skills through the Rotaract movement. Rotaract Club of Informatics Institute of Technology (RACIIT) has worked to uplift our community and provide an opportunity for all students at IIT to engage in volunteerism while learning how to develop themselves as better citizens in society. Our zealous Rotaractors put their energy into a variety of projects that aim to improve our society by fostering stronger friendships inside the club and in the community.

Our energetic Rotaractors focus their strength in numerous areas where they strive to uplift our society through various community-based projects, build better friendships within the club and the Rotaract Community, provide service at an international level and to develop one's professionalism. All effort put towards this movement is to sustain humanity and to cultivate relationships within one another which in return makes a huge impact in our lives.

In today's day and age employees and employers are not aware of the laws that govern their actions and protect them from harm in the workplace. The lack of this knowledge is a key factor in employee dissatisfaction.

Emp-Law-Yee is an initiative by our club to educate current employees and the employers and make them aware of the rights they are entitled to. This book will help with the sustainability of the project since the employees will have a reference to look up when they are in a vulnerable situation.

Inside

01. Who is an employee and an independent contractor?

Introduction

Labour laws apply only for employees and not for independent contractors. Employer's obligations, statutory protections, and various payments, such as EPF, ETF, and gratuity, will only apply to employees and not to independent contractors.

Independent contractors are on their own. Person, who hires the independent contractor, has no obligations towards him other than the payment for the work that is done under the contract. Therefore, it is essential to identify who is an employee and who is an independent contractor.

Law recognizes various tests to determine whether you are an employee or an independent contractor. This chapter will convey some of the standard tests used by courts to determine whether a person is an employee or an independent contractor.

Control test

The oldest test that is used to determine whether a person is an employee, or an independent contractor is the control test. The question to be asked here is who exercises the right of control regarding how the work is to be carried out. Therefore, if a business selects a person, pays him, has the right to dismiss him, assigns jobs to him, and tells him what to do and how to do the job, that person will be an employee of that business.

However, the value of the control test is diminishing nowadays. With the development of technology, persons have become highly skilled and qualified. Companies must provide freedom for employees to do the work as they think fit. Therefore, although there is no apparent control, a person can still be an employee.

For example, professionals who are in the permanent staff of a hospital are employees of that hospital. Because even though they are professionals with high skills, they are appointed by hospital authorities. In contrast, visiting surgeons or others who are not part of the permanent staff will not be employees of that hospital.

Integration test

The question to be asked here is whether the work done is an integral part of the employer's business. This test depends on whether the person is part and parcel of the organization. If a person does the most important business work, that person will be an employee of that business.

Economic Reality test

The question to be asked here is whether the worker is in business on his or her account, as an entrepreneur, or works for another who takes the ultimate risk of loss or chance of profit. For example, if a person would increase his profits by accelerating the work or lose profits by delaying his work, such a person will not be an employee but an independent contractor.

Multiple tests

These tests will not look into single factors such as control or integration, but all factors involved in a given situation. If considering all these factors concludes that the person is 'in business on his account', he will be an independent contractor. Under this test, multiple questions will be asked. Such questions are whether the individual is performing services as a person in business on his account, is the individual using his equipment, does he hire his helpers, what degree of financial risks he has taken, and many more. Under this test, there are no strict rules or exhaustive lists to determine the relationship.

Conclusion

Only employees can enjoy the benefits and protections provided by labour law. Courts carry various tests to determine whether a person constitutes an employee or not. With the development of technology, the importance of these tests is depreciating.

02. Sectors of Employment

This chapter will briefly list the relevant acts (also called statutes and legislation) that separately apply to public and private sector employees. It is important to note that many laws, which apply to the public sector, will not apply to private-sector employees and vice versa. However, the later chapters of this booklet will only discuss the laws that apply to private-sector employees. All the acts mentioned in this chapter will be discussed in the later chapters.

Laws relating to Public Sector Employees

The 1978 Constitution of Sri Lanka guarantees certain rights to the citizens. These rights are known as fundamental rights. If the government violates a fundamental right, a citizen can file an application to the Supreme Court of Sri Lanka seeking relief from such violation.

Accordingly, since the government itself is the employer, public sector employees enjoy certain fundamental rights. These fundamental rights are indicated in Article 10-14 in the constitution. In case of a violation of such a fundamental right, they can file a fundamental application to the Supreme Court.

For example, where a woman working in a public sector has grounds to establish that she is being discriminated against because of her gender, she can file a fundamental application because her right to equality (Article 12 of the 1978 constitution) has been violated. However, this remedy is only available to public sector employees and not for the employees in the private sector.

Normal Labour Legislations, such as the shop and office act, EPF act, gratuity act, industrial dispute act, do NOT apply to them. However, Trade Union Ordinance, Workmen's Compensation Act, and Factories' Ordinance do apply to them. Here Establishment Code 1985 governs the terms of employment in the public sector. This code was formulated in 1985, setting out procedures to be followed in appointment, transfers, disciplinary control, and dismissal of public officers.

Employees of Public Corporation

management of corporations come up with their schemes but often also follow the Establishment Code. Here apart from the TEWA, all the other labour legislation will apply. The employees here can recourse to both fundamental rights and most of the standard labour laws applicable to the private sector.

Domestic Workers

IDA and other labour legislations apply to them as well. However, ETF and EPF Acts do not apply here.

Plantation Workers

There are special laws applicable to plantation workers such as the Estate Labour (Indian) Ordinance No. 13 of 1889 as amended, Indian Immigrant Labour Ordinance No. 1 of 1923 as amended, and the Medical Wants Ordinance No. 9 of 1912 as amended. They are also covered by the Wages Boards Ordinance, Industrial Disputes Act, Maternity Benefits Ordinance, and Payment of Gratuity Act.

Private Sectors.

The acts that apply to private sectors will be discussed from here on.

03. Types of contracts of employment.

This chapter will discuss different types of contracts of employment and unique issues of such types of employment. Here Terms of the contract would depend on the type of the contract.

Monthly Contracts

This is also known as permanent employment. The word permanent does not mean perpetual (everlasting) employment. This type of contract is governed by the terms and conditions of the contract and the company's rules. In other words, their monthly contract will be automatically renewed until proper termination by the company.

If the employer has terminated an employee's services, the decision of termination can be challenged in a labour tribunal as per the Industrial Disputes Act No.43 of 1950. More details are discussed in the later chapters.

Fixed Terms Contracts

This is where an employee is recruited for a definite term, and the contract ceases at the end of the term. There is no guarantee for the renewal of the contract after the expiration of the fixed term. For example, Nimal is hired to work in a company from the 1st of January 2020 to the 31st of December 2020. After the 31st of December 2020, there is no guarantee that his contract will be renewed.

However, an aggrieved employer, whose contract was not renewed, can refer the matter to an arbitrator or an Industrial court. Industrial Courts and arbitrators can entertain industrial disputes arising out of an employer's refusal to renew a fixed-term contract, but not labour tribunals. Labour tribunals are empowered only to hear matters where the employer terminated the employee's services and do not include terminations arising out of mutual consent.

What if the employee habitually renews fixed-term contracts? Then an employee may become entitled to an implied right to renewal unless there has been misconduct, inefficiency, or even closure on the employer's part.

Also, remember that non-disciplinary terminations are different from the expiration of a fixed-term contract, and hence the latter does not fall under the Termination of Employment of Workmen (Special Provisions) Act (TEWA). However, if the employee is terminated before the stipulated end date on non-disciplinary grounds, then TEWA would apply.

Casual Employment

A casual employee is someone who is employed by chance or on no regular contract of employment. For example, a window cleaner, who is hired by a company from time to time and paid daily wages, is a casual employee. Usually, casual employees have no assurance that they will be offered work in the future and have no obligation to report to work. A casual employee is usually employed for a day or a short period. Casual employees will receive his or her payment at the end of each task/day. If the worker is paid weekly or monthly, then he will not be categorizedas a casual worker.

Temporary Contracts

How does it differ from casual employment? The only reliable guideline is that the longer the employment period, the more likely the employee is temporary rather than causal. These employees are recruited for a brief period or to perform a specific task. Employees under temporary contracts are generally part and parcel of the employer's business, unlike casual employees. Also, temporary employees are given the same protections afforded to permanent employees under many statutes. This is another way in which it differs from casual employment. An example is the employment of a secretary for a short period to fill a gap temporarily when the permanent employee goes on extended leave.

Apprenticeship

Probationers are hired to prove his or her suitability for the job. In contrast, apprenticeships are hired to equip the individual with the skills required to be an employee. Apprentices are those with the commitment to learn a skill. Protection for apprentices is provided under the Industrial Disputes Act and the Termination of Employment of Workmen Act.

04. Probationary Employment

Who is a probationer?

A probationer is an employee who is hired for a fixed and limited period. Here the employer assesses and tests the capacity and capability of the employee and should make a final decision whether he is suitable for permanent employment.

Therefore, a probation period is a trial period during which the employer tests the probationer's capacity, conduct, or character before admitting him to regular employment. A probationer has the same rights as a confirmed employee; however, their termination happens differently.

Employer's duties on a probationer.

The employer should provide adequate information and instructions to the probationer regarding expectations and shortcomings and how to improve. If the employer is genuinely not satisfied with the employee, he can dismiss the probationer. The employer has the sole right in deciding whether the services of a probationer should be extended or terminated at the end of the probation period,

Should the employer give reasons when he is terminating a probationer?

There is no statutory duty for the employer to give reasons for his decision. However, it is advised that the employers provide reasons for his decision to discontinue a probationer's service. The reason is that a court or tribunal may find that the employer may have acted in bad faith if the employer has failed to disclose any reasons. In conclusion, if the employer has provided sufficient reasons for terminating the probationer's service, then the probationer has no case against the employer. However, if the employer has failed to provide any reasons for his decision, the employee may succeed on an application to a tribunal or to a court.

No automatic confirmation after the expiry of the probationary period.

A probationer is still a probationer even after the expiration of his probationary period unless he is expressly confirmed as permanent. However, it is unfair to the probationer to keep him for a more extended period without any confirmation. In a situation like this, courts have found that it is fair for the employee to presume automatic confirmation.

05. EPF

What are the employees applicable to the Employee Provident Fund (EPF)?

- Both employers and employees contribute to the fund, and most employments are covered under the EPF Act.
- Employees with government as employers, employees in local government service, and local government employees who are not covered by any pension scheme are not covered by this act.

Following employments also have been exempted from the scheme.

- Employment of domestic service
- Employment in any undertaking which is carried on mostly to give industrial training to juvenile offenders or to persons who are destitute, dumb, deaf, or blind.
- Charitable organizations or organizations, maintained solely for religious worship or social service, employing less than 10 persons.

The administration and enforcement of the fund

- These are entrusted to the commissioner of labour and Provident Fund Section of the Central Bank. The Labour department acts as the administrator of the fund and the central bank functions as the custodian of the fund. The employers must send contributions to the central bank, which maintains individual accounts for the members of the fund.

Rates of Contribution

- Every employee and employer of any covered employment has to contribute a minimum of 8% and 12% respectively of the 'total earnings of the employee every month, on or before the last day of the succeeding month.
- It is also mandatory for the employer to deduct the employees' contribution from his salary and remit the same with his contribution to the central bank. These contributions should be sent directly to the Provident Fund division of the Central Bank by the employer every month on or before the last day of the succeeding month.

Non-payment of contributions

Any monies due shall be recoverable as a debt to the state by an action under the Civil Procedure Code. Any employer who contravened any provision of the act shall be guilty of an offense. And is liable on conviction after summary trial before the magistrate, he is liable to be sentenced to a fine not exceeding Rs.1000/- or/and imprisonment up to 6 months. When a body cooperates commits an offence, the liability falls on every director and any responsible officer.

When are EPF benefits payable to the members?

- On reaching the age of retirement, male 55 & Female 50. However, propositions are being made to extend up to 60 years for both males and females.
- On termination of the employment
- After a female employee cease to be employed in consequence of marriage
- After an employee cease to be employed.
- On taking up permanent residence abroad.
- After an employee takes up permanent employment in the public service or in the Local Government Service
- Where a member who is an employee in a public cooperation or government owned business undertaking, withdraws the total amount lying to his credit in the event of being terminated from service

Caution to employers

- Let us say the employee requested the employer not to deduct his or her contribution to the EPF. However, regardless of the request, if the employee went to the labour tribunal, the labour tribunal will order the employer to pay the entire payment, including the employee's contribution, out of his pocket. Therefore, the employer should strictly adhere to this law and deduct the appropriate amount for EPD regardless of any requests and promises by the employees.

06. ETF

Rates of Contribution

ETF is a non-contributory fund and only the employer is required to make a contribution of 3% of the employee's total earnings to the fund.

Withdrawal

One needs not to wait until 55 or 50 years to withdraw one's benefit like in the case of EPF. A member could claim the amount standing to his credit in the fund in any following circumstances.

a) On termination of employment provided that he had not made any withdrawal from the fund during the preceding 5 years.
b) When he is over 60 years of age.
c) On migration
d) On cessation of employment
e) E. Because of, permanent and total incapacity of work
f) On taking up permanent employment in public or local government service.

07. Gratuity

Eligibility

- Employees employed in an establishment that has fifteen workers or more: and
- Whose service is five years (unbroken) or more.

Liability

- Any employer with fifteen or more employees employed during any day of the relevant year is liable to pay gratuity.

Computation

- Monthly paid employees- ½ last monthly salary for each year of service.
- Daily paid employees- fourteen day's salary for each year of service
- Piece paid rated employees- daily earning during the preceding three months before the cessation of employment of the workman.

Failure to pay gratuity

Employers are obliged to pay gratuity within 30 days of the termination. Surcharge calculated at a rate of: -

- When the delay does exceed one month a surcharge of 5%
- When the delay exceeds one month but does not exceed 3 months a surcharge of 15%
- When the delay exceeds 3 months but does not exceed 6 months a surcharge of 20%
- When the delay exceeds 6 months but does not exceed 12 months a surcharge of 25%
- When the delay is for over 12 months a surcharge of 30%

Forfeiture of gratuity

- Any workman whose gratuity is payable under the Gratuity Act whose services have been terminated for the reason of fraud, misappropriation of funds, willful damage to property or causing the loss of goods shall forfeit gratuity to the extent of the damage or loss caused by him.
- However, if the forfeiture is unfair, such employees can make an application to the Labour Tribunal

Remedy for employees who are employed under an employer employing fewer than 15 employees

- Such employees may apply to the Labour Tribunal under Section 31B(1)(b) IDA where it is justifiable to make an order for payment of gratuity in those circumstances

Failure to pay

- Any failure or delay on the part of the employer would entitle the workman to complain to the Commissioner for Labour who is empowered to take legal action against such employers

Offenses

- Any employer who contravenes the provisions of the Gratuity Act is liable to prosecution and, after inquiry, if convicted, is liable to a fine of Rs. 500 and/or imprisonment for a period of 6 months. If the employer is a body corporate, the directors are liable.

08. Non-disciplinary Termination.

Introduction.

There are two ways in getting terminated from employment. They are disciplinary termination and non-disciplinary termination. A disciplinary termination occurs where the workman is dismissed based on misconduct on the part of the workman. A non-disciplinary termination occurs where a workman is discharged from his services in the absence of any fault on his part, such as the closure of a business. This chapter will discuss the provision pertaining to non-disciplinary termination, whilst disciplinary termination will be discussed in the next chapter.

What is non-disciplinary termination?

When your boss fires you from the job, without any fault on your part, it is called non-disciplinary termination. In non-disciplinary termination, the employer must obtain written consent from you OR the labour commissioner, before proceeding with the termination. Therefore, if you did not provide consent for the termination, the employer must apply to the commissioner seeking approval to grant or refuse termination,

Should the commissioner state reason for his decision?

Here commissioner has absolute discretion to grant or refuse the approval. The commissioner must give notice in writing of his decision and state the reasons for his decision to grant or refuse the termination.

Finality of the commissioner's decision.

Once the commissioner grants or refuses the approval, such a decision will be final, in the sense, either you or the employer will not be able to challenge the decision in any court of law. However, there are few instances where you can challenge the commissioner's decision by filing a writ application to the Supreme Court.

Consequences of non-compliance.

The employer should comply with the above procedure. If he did not follow the above procedure, such termination would be illegal. In such a situation, the commissioner can reinstate the employee and order compensation.

What happens when the employer fails to comply with a commissioner's order? In such circumstances, the law states that an employer is guilty of an offense and liable on conviction after summary trial before a Magistrate to imprisonment.

For further information in the regard.

Please refer to the act that governs non-disciplinary termination, Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971(TEWA). However, the act will not apply for cooperative and local government employees and for the employees whose employer is the government.

09. Disciplinary termination.

What is disciplinary termination?

A disciplinary termination occurs where the service of a workman is dismissed based on misconduct on the part of the workman. An act should be regarded as an act of misconduct if it is inconsistent with the fulfillment of conditions of service.

Some of the misconducts are absence, late attendance, negligence, insubordination, abuse, disobedience, assault, false allegations against superiors, theft & misappropriation, drunkenness, loss of confidence, misconduct outside the workplace, refusal to carry out instructions, refusal to accept transfer, refusal to perform reasonable overtime, refusal to attend the domestic inquiry and many more.

Disciplinary Procedure within a Company.

When an employee is alleged of misconduct, there is no legal duty to conduct a disciplinary procedure. However, big companies usually conduct inquires and hand over a charge sheet to the accused employee.

Here to conduct the inquiry, an inquiry officer shall be appointed. The inquiring officer should not be below the rank of the executive but above the rank of the accused employee, and he is prohibited from giving evidence.

If the accused employee admits, he will have to provide a statement to that extent. If he denies, evidence shall be led to support his stance.

Finally, the inquiring officer has to submit the report and his findings to the management. Findings with regard to each of the charges leveled against the accused employee have to be mentioned and should state whether the accused employee is guilty or not.

Disciplinary inquiries.

There is no statutory obligation to conduct a disciplinary inquiry. The disciplinary inquiry should be conducted if there is a requirement under a contract of employment or collective agreement. A Labour Tribunal may consider the evidence given in a disciplinary inquiry. Here labour, an offense categorized asanl is not bound by the disciplinary inquiry. And evidence heard in the disciplinary inquiry should be again rendered to the labour tribunal. The worker cannot be deprived of his wages during the period of suspension pending a disciplinary inquiry. An inquiry helps to

establish the bona fides of the employer, while dismissal without inquiry may indicate that the employer has acted arbitrarily.

Absence and Late Attendance as a misconduct

Courts have regarded absence and late attendance as valid misconduct to terminate an employee. Here The fact that the absence had been covered by medical certificates is irrelevant. The workman is guilty of incorrigible absenteeism and exceeding his leave entitlement. Courts have held this as a sufficiently good ground for dismissal. Courts also recognize a workman's **repeated unpunctuality** as a serious breach of duty.

However, unauthorized absence for a short period of time is not considered as amounting to misconduct. Therefore, an unauthorized absence only justifies a termination if that was continued over a long period of time. In a decided case, the court held that termination of services of a workman who has absented himself for about six weeks without authority was held to be justified despite the fact that he was in jail during this period.

Negligence as a misconduct

Discharging your duties negligently is also a ground for dismissal. Negligence means carelessly doing something which a person is duty-bound not to do or omit to do something which he was duty-bound to do.

Disobedience as a misconduct

An act of disobedience would warrant dismissal if a person issued the order with authority. Moreover, the order must be clear, positive, lawful, and unambiguous. Courts have held that if an employee refuses to carry out lawful and justified instructions, his services can be terminated on that basis. Refusal to accept transfer and refusal to perform reasonable overtime without any valid reasons can also be considered valid grounds for dismissal.

Drunkenness as a misconduct

Drunkenness would justify dismissal if an employee was found drunk habitually during working hours.

10. Settlements of Industrial dispute and conciliation

From time to time, in companies and industries, there is always some sort of dispute. Here an industrial dispute is defined as any dispute between an employer and workman or employers and workmen or workmen and workmen connected with employment or non-employment or terms of employment or conditions of labour or termination of services or reinstatement in service of any person.

The Industrial Dispute Act governs these industrial disputes. You can find most of the details on industrial disputes and the methods used to solve an industrial dispute in this act. The industrial dispute act introduced four main settlement methods: conciliation, arbitration, Industrial courts, and labour tribunals.

This chapter will illustrate what conciliation is, and the following three chapters will demonstrate separately how arbitration, industrial courts, and labour tribunals are used to solve industrial disputes.

Conciliation

Simply, conciliation is a friendly interference to help the parties to arrive at a settlement of their differences. Here commissioner or an authorized party can induce the party to come to a fair and amicable settlement. If the commissioner succeeds in settling the industrial dispute via conciliation, then the settlement should be reduced into writing and get the parties to sign the statement. Then this settlement will bind parties referred in the settlement.

Any party to the settlement may cancel the settlement at any time by sending a valid notice to the commissioner & every other parties. Some advantages of conciliation are less expensive, a wider range of issues can be discussed, and speedy settlement.

11. Arbitration.

What is arbitration?

Arbitration is one of the oldest methods of settling disputes. Basically, arbitration is the settlement of a dispute between two parties by reference to the decision of an outsider at their request. Hence in contrast with conciliation which is a friendly interference to help the parties to arrive at a settlement of their differences, arbitration is the submission of a dispute to the judgment of a third party. Therefore, unlike the conciliator, the arbitrator performs quasi-judicial functions.

What is meant by a quasi-judicial process is an issue is referred to a third party who must function in the judicial sense- hear both parties, decide facts and apply rules. Thereafter the arbitrator would grant an award as he thinks fit. Arbitration is faster and less expensive when compared to normal court procedures.

Types of arbitration.

There are two types of Arbitration, Voluntary and Compulsory. In compulsory arbitration, at first, the minister will decide whether the dispute is minor or not. If he thinks the dispute is minor, he has the power to refer the dispute to an arbitrator. Here the consent of the party is irrelevant.

Minister's powers and limitations under arbitration.

Here the minister can refer a dispute to an arbitrator. However, he cannot cancel such reference and re-refer to some other arbitrator once such reference is made. For example, if the minister referred the matter to an arbitrator called Mr. Perera, he cannot cancel such reference and again refer the same matter to Mr. Silva.

Further, a minister can refer an industrial dispute for arbitration when an inquiry is held in the Labour Tribunal regarding the same. However, the minister has no power to refer an industrial dispute for arbitration when there is an inquiry pending in the Labour tribunal regarding the same dispute

Powers of arbitrators.

The arbitrator shall make all such inquiries into the dispute as he may consider necessary, here such evidence as may be tendered by the parties to the dispute, and after that make such award as may appear to him just and equitable.

Here arbitrator is not restricted to the evidence that the parties only render. An arbitrator is entitled to require persons to furnish particulars, documents and give evidence.

Case laws have established that although an arbitrator does not exercise judicial power, they have a duty to act judicially, which requires them to hear the parties, decide facts and apply the rules with judicial impartiality. Case laws have further stated that an Industrial arbitrator is not tied down by the terms of the contract of employment and can create new rights between the parties.

Termination of an award

Any party bound by the award may cancel it by sending a written notice to the commissioner and every other party. Upon such notice, the award shall cease to affect, the expiration of three months or expiration of 12 months from the date where the award was granted.

12. Labour Tribunals (LT)

Establishment of Labour Tribunals.

Labour Tribunals are established to grant speedy relief on termination of services. Thus, this enabled a workman or a trade union on behalf of a workman to directly seek relief from a labour tribunal whose primary function was to hear and determine applications in respect of such terminations.

What disputes does the labour tribunal hear?

The termination of services by the employer. Here the termination should not have to be wrongful.

Dispute relating to any due gratuity or other due benefits on termination, or the amount of such gratuity can be referred.

Disputes relating to forfeiture of a gratuity (in terms of the Gratuity act).

Other matters relating to the terms of employment

How to apply to labour tribunals?

Here it is compulsory to have a termination.

A workman or trade union on behalf of a workman can make an application in writing to a labour tribunal.

Labour tribunals are not open to public servants.

Application to a Labour Tribunal shall be made within a period of three months from the date of termination of the services.

Every application must be in Form D in the Schedule to the Regulations and must be submitted to the Secretary of the Labour Tribunal in duplicate. If there is only one employer, only two copies should be rendered and if there is more than one employer copy for the number of employers with an addition copy for the LT must be provided.

Restrictions placed on LT regard to proceedings with an application

Where the subject matter is under discussion between the employer & the trade union, the applicant shall be suspended until such discussions are over.

Where the same matter has been referred for arbitration by the minister, the applicant will be dismissed.

Where an application is similar to a dispute already being considered by the LT, it may suspend the application until such inquiries are over.

Where the workman has sought relief elsewhere, he cannot seek relief at the labour tribunal.

Powers & duties

LT is empowered to grant any relief or redress to a workman notwithstanding anything to the contrary in any contract of service

Labour Tribunal has a duty to make all such inquiries and hear all such evidence as the tribunal may consider necessary, and thereafter make such order as may appear to the tribunal to be just and equitable.

LTs can award reliefs that are not contractually or legally due. For example, a Labour tribunal can award gratuity if the Labour tribunal determines that it is just and equitable to pay gratuity, even though it is not legally due.

The LT must hear evidence of both sides. The fact that the employer held a domestic inquiry is not a reason to exclude evidence of an employee.

Reliefs

Compensation- Labour tribunal can grant compensation as an alternative labour additional to reinstatement. One such instance is if the employment is being a personal secretary, personal clerk, personal driver, or domestic servant. The second is where the workman requests compensation. Another instance is where the tribunal thinks it is the better option.

Reinstatement- When making an order of reinstatement, the tribunal must be mindful of the nature of the applicants' employment and also consider whether it would disrupt and dis-organize the management of the business.

Appeal

Where a workman, trade union, or an employer is dissatisfied with the order of an LT they are permitted to appeal by way of a written petition on a question of law to the High Court established under Article 154P of the constitution. A further appeal lies from the decision of the High Court to the Supreme Court.

13. Industrial Courts.

Introduction

Like arbitration, the minister can refer an industrial dispute to the industrial court for settlement. Every order of the minister must be accompanied by a statement prepared by the commissioner setting out each of the matters which to his knowledge is in dispute between the parties.

Powers of IC appear

The industrial court can make all such inquiries and hear all such evidence, as it may consider necessary, and thereafter to take such decision or make such award as may appear to the court just and equitable.

The industrial court can consider and decide any other matter which has been in dispute between the parties prior to the date of the order of reference.

The industrial court may, at any time after the commencement of proceedings in respect of an industrial dispute, permit any party or trade union, employer or workman included in such party, to raise any fresh matter relating to the dispute for the decision of such court, only if such matter could not have been raised at the commencement of the proceedings.

Effect of an award

The award of an industrial court shall be transmitted to the commissioner to be published in the Gazette. Every award of an Industrial Court shall be "binding on the parties …and the terms of the award shall be implied terms in the contract of employment between the employers and workmen bound by the award.

Application for reconsideration of awards of industrial courts

Unlike in conciliation and arbitration, there is no provision to apply for the termination by giving an award to the commissioner. Any party, who wishes to set aside or replace or modify an award or for a new award, should make an application to the minister and the minister shall refer the application for consideration by Industrial Court.

14. Trade Unions

Introduction.

The right to form, join and support a trade union of choice is one of the fundamental rights guaranteed and protected by the present constitution. The Supreme Court has further held that the right of all employees to voluntarily form unions was a part of the settled law of the land.

Registration of Trade unions.

Every trade union shall apply to be registered under Trade Union Ordinance within a period of three months from the date of establishment. Every application for registration shall be signed by at least seven members of the union. If the Registrar is satisfied that a trade union applying for registration has complied with the requirements, shall register the trade union. The Registrar, on registering a trade union, shall issue a certificate of registration. Further, a non-registered trade union become an unlawful association and thus immediately ceases to enjoy any of the rights, immunities, or privileges

Registrar may cancel or withdraw the certificate of registration at the request of the trade union upon dissolution or if he is satisfied that the registration has been obtained by fraud or mistake if the objects are unlawful if the funds of the union are expended in an unlawful manner or on unlawful objects or the objects not authorized by the rules of the union and if the union has ceased to exist.

Collective bargaining.

Collective bargaining is the activity/process leading up to a collective agreement. A collective agreement is one in writing regarding working conditions, and terms of employment concluded between an employer and workers' organizations. Collective agreements bind the parties, anything contrary in the contract of employment will be null and void unless more favourable to the employees.

Collective bargaining is one of the main objectives of a trade union is to strive for better terms and conditions of service by its members. To achieve this end, the unions must be recognized by the respective employers and be able to negotiate and bargain freely with the latter. Here a union can strike a better deal with the employers, assuring a better working environment for its members.

Strike action.

Strike action is one of the last resorts by which a trade union can defend and espouse its interest. The legal position in Sri Lanka indicates that there is no provision either in the constitution or statute granting the right to strike. However, case laws have recognized the right to strike. Case laws also have established that a probationer has as much a right to strike as a confirmed workman.

Notably, it should, however, be pointed out that the right to strike is never absolute. it is also an offense to commence or continue with a strike in an industry that has been declared as an essential industry by the president.

15. Miscellaneous.

Minimum age.

SL raised the minimum age from 14 to 16 years in 2021. The minimum age for hazardous work is set at 18 years. However, a child under 16 years can participate in agri-business or a business with an educational or charitable purpose, provided such partake occur before or after school hours.

Minimum wage.

The minimum monthly wage in any industry or service was increased to Rs 12,500 from Rs 10,000, and the minimum daily wage was enhanced to Rs 500 from Rs 400.

Leave.

An employee is entitled to 14 days of annual leave, starting from the second year

From the second year onwards, an employee is permitted for 7 days of casual leave for ill health and private business.

Maternity leave consists of 14 days of pre-confinement leave and 70 days after confinement. However, after the second child, they're entitled to 42 days of paid maternity leave, with 14 days of pre-confinement leave.

Regulation of Hours and Overtime.

Shop and Office Act states that a normal day's work is limited to 8 hours, and a normal week is limited to 45 hours, excluding one hour for meals. Any work done beyond the above period will qualify as overtime. Regulation 6 states that overtime shall not exceed 12 hours a week. Overtime for any excess work done will be calculated at 1.5 times the normal hourly rate. However, these provisions do not apply to executives and managers in a public institution.

Factory Ordinance provides provisions concerning overtime for women and young persons. It dictates that overtime for women should limit to 60 hours and 55 hours for the young person. Further, pregnant women, nursing mothers and women, who delivered stillborn children should not be engaged in overtime.