Hiring and Firing in India

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Abstract

Indian Labor and Employment Law is among one of the most complex in the world and therefore employers in India have to exercise great caution while hiring and managing employees. As any firm hire, it is mandatory to conform to various central and state regulations that ensure employees are well protected and has access to various. There are regulations that one need to conform when any firm could hire such contracted labor. Workers are more aware of their rights under the law—and they’re more likely to seek the advice of an attorney if they think they’ve been wronged by their employer. As a result: Many workers are getting even by suing their employers for wrongful discharge or discrimination. This paper reviews the legal prospective regarding the hiring and firing aspects in firms according to different laws in India.

Keywords: Employee hiring, Employee firing, Employee termination.

1. Introduction

According to Indian Labour and Employment Laws there are three main categories of employees: government employees, employees in government controlled corporate bodies known as Public Sector Undertakings (PSUs) and private sector employees. The rules and regulations governing the employment of government employees are covered under the Constitution of India. Accordingly, government employees enjoy protection of tenure, statutory service contentious and automatic annually salary increases. Public sector employees are governed by their own service regulations, which either have statutory force, in the case of statutory corporations, or are based on statutory orders. In the private sector, employees can be classified into two broad categories namely management staff and workman. There is no statutory provisions relating to their employment and accordingly in case of managerial and supervisory staff/employee the conditions of employment are governed by respective contracts of
employment and their services can be discharged in terms of their contract of employment.[1,2]

Many employees don’t know what are their rights and what the Indian laws says to protect their rights, it’s very important to know the rights as an employees in any firm, people join firms but they are unaware of the laws related to their hiring and firing, due to which many employers exploit there employees, in government sector such cases are less but in privet sector they are many, this paper focuses on the laws in India which were formulated to protect employees from illegal firing and other legal aspects related to hiring and firing of employees.

While hiring employee whether on full time bases/directly hiring, or on permanent or fixed term basis or on temporary period all the laws potentially be applicable. Till now there are no specific laws in India, which could provide procedure or manner for hiring employees in private sector. Organizations hire employees on permanent basis or contract basis, the employee could be hired through newspaper advertisements, recruitment firms, online job portals, personal networks. A permanent worker can be terminated only for proven misconduct of for habitual absence from work.

The terms of the employment, either on contract basis or permanent employee basis, would be governed by the contract between the organisation and the employee. However, the Local Shops and Establishments Act also plays an important role for such provisions.[3]

2. Labour Laws
According to labour laws in India certain conditions were laid down for legal termination of any worker/ employee, which firms should follow, other than these the termination would be treated as illegal in law. Following are the laws which are related to termination of employee/ worker in different sectors.

2.1 non-workman in Private Sector [4]
Primarily, none of the Labour Laws apply to non-workmen and service conditions of such employees they are governed by the respective contracts and general service conditions (if existing).

- In case of termination, courts cannot reinstate the Employee.
- Employee only has recourse for damages.
- Courts in India are conservative in awarding damages and punitive damages are rarely awarded.

2.2 When Termination of Employment is Illegal in Law [4]
- Workmen get protected under various legislations in India. Under section 9A of IDA it becomes difficult to vary the terms and conditions of the workman.
- It will be illegal to retrench and lay off if statutory conditions are not fulfilled and prescribed compensation is not paid to the workmen.
- In certain cases Appropriate Government’s prior permission is also required.
Termination of employees not workmen will be governed by the terms of their appointment letter / employment contract and follows, any termination not as per their contract may be construed to be illegal.

2.3 Lay-Off and Retrenchment of Workman in Private Sector [4]
- Section 2 (kkk) defines “lay-off” the failure of the employer to provide employment due to shortage of raw material, power etc. but who has not been retrenched.
- Section 2 (oo) defines “retrenchment” as termination of a workman for any reason whatsoever otherwise than voluntary retirement, reaching age of superannuation, non renewal of contract or termination due to continued ill-health.
- Section 2 (oo) (bb)–provides for termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

2.4 Chapter VA and VB of IDA with Reference to Lay-off, Retrenchment, Transfer and Closure [4,7]
2.4.1 Chapter VA applies to industrial establishment - in which less than fifty workmen on an average working day have been employed in the preceding calendar month and which are seasonal in character.
- Section 25C- A workman laid-off under this Chapter is entitled to fifty percent of his basic wages and dearness allowance.
- The workman who has been in continuous service for at least one year (a year being defined as 240 days of actual work) is terminated, covered under chapter VA, the conditions listed below will have to be fulfilled.
- Section 25F- Workman cannot be retrenched unless the employer has complied with–(i) giving one months notice in writing, (ii) paid compensation equivalent to 15 days average pay (for every completed year of continuous service) or any part thereof in excess of six months and (iii) notice in the prescribed manner to the appropriate Government.

2.4.2 CHAPTER V B Chapter VB applies to industrial establishment in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.
- Section 25M–Prohibits the employer to lay- off except with the prior permission of the appropriate Government unless it is due to the shortage of power or due to natural calamity.[4,7]
- Section 25N–No workman to which this chapter applies can be retrenched until the employer (i) has given three months notice in writing with reasons for retrenchment and (ii) prior permission has been obtained from the appropriate Government (“specified authority”). [4,7]
• An extremely compelling case has to be made out in the application to the appropriate Government, but even so the Government rarely grants this permission. [4,7]
• Several amendments are on the anvil which will give the freedom to the employers by not being required to make an employee permanent, even if the employee has completed 240 days. [4]
• Labour laws in the Special Economic Zone (SEZ) are to be amended substantially with amendment in the Contract Labour (Regulation and Abolition) Act, 1970 which will allow the employers to follow a hire and fire policy under certain conditions. [4,7]

3. List of Laws for Workers in India [7]
3.1. Laws related to Industrial Relations such as:[7]
1. Trade Unions Act, 1926

3.2 Laws related to Wages such as: [7]
4. Payment of Wages Act, 1936
5. Minimum Wages Act, 1948
7. Working Journalists (Fixation of Rates of Wages) Act, 1958

3.3 Laws related to Working Hours, Conditions of Service and Employment such as [7]:
17. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
22. Dangerous Machines (Regulation) Act, 1983
23. Dock Workers (Regulation of Employment) Act, 1948
26. Industrial Employment (Standing Orders) Act, 1946
27. Mines and Mineral (Development and Regulation) Act, 1957
28. Plantation Labour Act, 1951
29. Private Security Agencies (Regulation) Act, 2005

3.4 Laws related to Equality and Empowerment of Women such as [7]:
30. Maternity Benefit Act, 1961

3.5 Laws related to Deprived and Disadvantaged Sections of the Society such as [7]:
32. Bonded Labour System (Abolition) Act, 1976
33. Child Labour (Prohibition & Regulation) Act, 1986
34. Children (Pledging of Labour) Act, 1933

3.6 Laws related to Social Security such as:
35. Workmen’s Compensation Act, 1923.
39. Employers’ Liability Act, 1938
40. Beedi Workers Welfare Cess Act, 1976
41. Beedi Workers Welfare Fund Act, 1976
42. Cine workers Welfare Cess Act, 1981
44. Fatal Accidents Act, 1855
47. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
49. Personal Injuries (Compensation Insurance) Act, 1963
51. Un-organised Workers’ Social Security Act, 2008
4. Conclusion
I would like to conclude that there are many laws in every sector (public sector, private sector) for the protection and welfare of different kind of workers, (permanent, contractual, part time) but very less people know the proper use of it to avoid exploitation by the employer. Many workers enter the contract agreement/bond without reading and without knowing the legal prospect and conditions of the contract. To avoid the misuse of laws workers enter into trade unions which give them a sense of security. But there is a need to make workers aware of their rights and laws, which would affect them. If workers/employees would know laws related to termination then employers would not fire employees unnecessarily. There are 51 laws in India which are related to employees/workers and they cover all aspects related to working condition, wages, welfare, social security. Usually it is seen that factory workers are unaware of the firing laws and they are fired without any notice so there is a need to make them aware of it. As very less literature is available related to hiring and firing topics the study became short in providing the framework in laws. This study covered only what the laws say related to firing of employees/workers. For future study I would suggest that study could be done to know the knowledge/awareness among workers and employees regarding hiring and firing laws in India.

References

[4] Information on www.rtcrajpura.bsnl.co.in/emagazine/General/Labour%20Laws.ppt