

Indlaw



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OFFICE BEARERS 1979-80.

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for
The Bangalore Employers'
Association
BANGALORE

Bangalore Employers' Association

Bangalore Employers' Association was founded in 1976 with the active co-operation of a few small scale industrialists and a handful of professionals. Since 1976, it has been growing steadily and presently the strength is around 100. There is a great need for increasing the membership of the Association and strengthening the organisation in the interest of the employers. The objectives of the Association are to enlighten the employers on various aspects of Industrial Law applicable to their establishments, to provide opportunities for employers of different trade and business, to get together, to know each other better, and to understand each other. This would help in creating a healthy industrial

relations atmosphere and certainly to a substantial extent, help in evolving a uniform service conditions of the workmen in and around Bangalore.

The Association mainly comprises of small scale industrialists, and medium scale industrialists apart from a handful of large scale industrialists. A few devoted professionals who are committed to the cause of healthy employer - employee relations, are actively participating and evincing great interest in the day to day functioning of the Association. It is hoped that this unique opportunity will not be brushed aside by the employer.



RETRENCHMENT

'Retrenchment' is a recognised form of termination of service by the employer. The word 'retrenchment' has been defined under Section 2(o)(o) of the Industrial Disputes Act, 1947, as follows :

'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action, but does not include :

- a) voluntary retirement of the workman ; or
- b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- c) termination of the service of a workman on the ground of continued ill-health.

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BANGALORE EMPLOYERS' ASSOCIATION

No. 95, 1st Main, 7th Cross
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Dated

13 MAR 1964

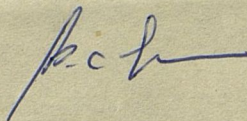
Dear Member,

You are aware that the Bangalore Employers' Association has taken up the task of bringing out a monthly bulletin 'INDLAW', so as to assist the members in getting to know the latest implications on the laws affecting their interests. The association comprises of a large number of employer members and a few professionals. The cost of publication has been proposed to be made up by seeking advertisements from employers. Every bulletin will have to carry at least three advertisements, each costing Rs. 200/- so that the bulletin could be self-sufficient.

As the bulletin is being brought out to benefit the employers in particular, we expect spontaneous response from you. According to us, an employer has only to give one advertisement once in every three years. We appeal to you to release an advertisement at your earliest convenience. We are sure you will appreciate the need for bringing out the bulletin and co-operate with us whole heartedly.

Thanking you in anticipation,

Yours faithfully,



The General Secretary
Bangalore Employers' Association
No. 95, 1st Main, 7th Cross
Palace Lower Orchards
Bangalore-560 003

Date :

Dear Sir,

In response to your request, we are pleased to release an advertisement for our bulletin 'INDLAW' to be published in the month of.....1980. The advertisement matter is enclosed. Also enclosed is our cheque for Rs. 200/- drawn in favour of 'Bangalore Employers' Association'', the receipt of which please acknowledge.

Thanking you,

Yours faithfully,

EDITORIAL

Bangalore Employers' Association was founded in 1976 by the active participation of R & M Associates. The objects of the association are to bring the employers in different trade and business under one umbrella so that a better understanding could be created amongst them and also, to educate the employers and if possible the workmen on Industrial Law and relations. It has been founded with the idea of conducting Seminars, Conferences & Discussions on various aspects of industrial Law affecting the employers and employees.

One other object is also to ensure that competent, professional men represent the employers before the labour courts, the industrial tribunal and the labour and conciliation officers. This became necessary, in view of Section 36 of the Industrial Disputes Act according to which, lawyers cannot, as a matter of right, appear before the abovementioned forums. Therefore, professional men can appear before these forums only as officebearers of employers' associations. So far, by and large, the Bangalore Employers'

Association has achieved only the last objective, the reason being during last three years only professionals have been evincing active interest in this organization and it is only the compulsion of law that has made it necessary for the employers whose cases are pending before the labour courts and industrial tribunals to become members.

Of late, there has been a greater awareness and enthusiasm from employer-members for activating this association. It is this interest and enthusiasm that is responsible for the outcome of 'Indlaw'. Educating the employers on Industrial Law being one of the objectives of the association, it has been decided by the executive committee to bring out a monthly bulletin under the name and style of 'INDLAW' from March 1980.

This is the first issue of the bulletin and the editor hopes that employer-members would co operate in ensuring success of the objectives of the association by actively participating.

EDITOR



S. N. Murthy

S. N. Murthy was born in Tumkur District of Karnataka, had his schooling at Bombay and graduated from Karnataka University. Later, he took his LL.B Degree from B. M. S. College of Law with distinction. Also took his L.L.M. in Industrial Law and Administrative Law from Bangalore University.

He started his career as a lawyer at King & Partridge, well known Advocates and solicitors. After resigning from King & Partridge, started his independent practice at the Bangalore Bar. He is presently associated with R & M Associates, Bangalore.

SUPREME COURT OF INDIA IN

PUNJAB BEVERAGES P. LTD. VERSUS SURESH CHAND & ANOTHER., 1978 II LL. J—1

The Supreme Court of India had occasion to consider the entire law in respect of approvals and permissions envisaged under Sec. 33 of the Industrial Disputes Act, 1947. After discussing the objects and purposes of Industrial Disputes Act and the nature of the proceedings under Sec. 33 of the Industrial Disputes Act, the court held that a mere contravention of Sec. 33 of the Industrial Disputes Act, will not make the order of discharge or dismissal void & inoperative. The court negating the contention of the workmen that the above view would deprive them of the protection afforded under Sec. 33, has held, that the fact that contravention of Sec. 33 of the Industrial Disputes Act, by an employer would render him liable to punishment under Sec. 31 (1) which can extend to imprisonment, is a good deterrent. Also the court held that the workman has the remedy of moving the appropriate Govt. for making a reference to the Court under Sec. 10, apart from the right in his own capacity to directly make a complaint application to the

court under Sec. 33 (A) of the Act.

The Supreme Court held, that the position would be the same whether it is a case where the employer makes no application for approval and thus contravenes Sec. 33 (2) (b) or in a case where such an application is made, but which does not result in grant of approval on account of it (approval application) being withdrawn. It held that the withdrawal of an application for approval stands on the same footing as if no application had been made at all.

Though the court elaborately discussed the effect and consequences of making an approval application and or withdrawing an application already made, it did not touch upon the point as to what would be the fate of a dismissal order when an approval application, which is made is rejected for non-compliance with the provisions of Sec. 33 (2) (b) or, making a defective application. The question did not come up for

consideration before the court and it is yet to be seen as to how the Supreme Court would react to such a situation. In the normal course, in the light of the above judgement, it should be possible to infer that if an approval application is rejected on technical grounds, then it would stand on the same footing, as if no application had been filed or similar to making of an application and withdrawing it before an order is passed on the same. Much can be argued on both sides on this point and one has to hopefully wait for the Supreme Court to deal with this important aspect of law. However, it would be safer for the employers to make an application for approval if only they are sure about the application being allowed, if not, to hold back and allow the workman to have re-course to Sec. 33 (A) of the Industrial Disputes Act. In such a situation, the threat of prosecution is of course very much in existence. Keeping these facts in view, an employer has to decide about making or non-making of an approval application. □

Founders of Bangalore Employers' Association



M. V. A. Raja

R & M Associates are the founders of the Bangalore Employers' Association. R & M Associates is constituted of two partners Mr. M. V. Ambareesha Raja and Mr. A. M. Mallesh. The existence of Bangalore Employers' Association and its growth are entirely due to the efforts of these two Industrial and Personnel Management Consultants.

Mr. M. V. Ambareesha Raja was born in Bangalore and educated in Bombay. Graduated from the University of Bombay in Economics, did his Post graduation in Sociology and Bachelor of Law in the Bombay Law College and post graduate diploma in Social Service Administration at Tata Institute of Social Science, Bombay in 1960.

After undergoing training at Tata Oil Mills at Bombay in the Personnel Department, he was the first Industrial Relations Officer in G. K. W. Sankey Division in Bangalore for a short period and joined the Motor Industries Company (MICO) as Assistant Personnel Officer and finally rose to

be their Personnel Officer. After 5 years, left MICO, and has been in the field of consultancy for almost 10 years, initially as a Partner in ILPM Consultants and for the last 5 years, as Partner of Mr. A. M. Mallesh in R & M Associates.



A. M. Mallesh

Mr. A. M. Mallesh is a Planter from Hassan District, Sakleshpur. Graduated from Central College, Bangalore in Science and also graduated in Law from Bangalore University. He passed his post graduate diploma in Social Service Administration at National Institute of Social Science, Bangalore, now merged with the University of Bangalore.

He started his career in G.K.W. Sankey Division, Bangalore as Assistant Industrial Relations Officer. He later assumed high responsibilities as Personnel Officer in John Fowler (India) Ltd., Bangalore and thereafter as Personnel Manager in the Mysore Porcelains Ltd., now a subsidiary of B. H. E. L.

He was one of 3 partners in the

ILPM Consultants and is now a Partner in R & M Associates. Mr. Mallesh has been in the consultancy field of Industrial Relations and Personnel Management for the past 10 years.

PRESIDENT

Sri. S. B. Patil, Managing Partner-ACUMAC—graduate in Mechanical Engineering from the University of Poona in the year 1958. He then served the College first as a lecturer in Mechanical Technology and later as Superintendent of Workshops. After his selection as entrepreneur to start an ancillary industry at HMT,



S. B. Patil

Bangalore, he resigned his job in the year 1964 and took up the unit. He was having keen interest from the beginning on the machine shop side. Even while he was in service, this desire to do something on his own prompted him to resign his lucrative job at the College of Engineering, Poona. Though he had to face a lot of hardships during the initial period of his enterprise, he does not regret his decision.

Sri S. B. Patil now employs fifty people and is planning for expansion at Peenya where two acres of land are allotted to the unit.

RETRENCHMENT

Though on a plain reading of the definition an impression arises that termination of service of a workman for any reason (subject of course to exceptions stated therein amounts to retrenchment), the meaning has still to be construed as termination of the service of a workman on account of surplus labour only. Any termination by the employer cannot amount to retrenchment, though on the face of

it the definition seems to suggest the same. The Judgement of the Supreme Court in State Bank of India Versus Sundaramoney reported in 1976 SCC (L&S) 132 appears to accept the view that any termination by the employer would amount to retrenchment. According to this judgement it would appear that every termination (excepting the exception stated in the definition) by the employer amounts to retrenchment. If this interpretation is accepted, then termination of

service of an employee for inefficiency which is normally referred to as discharge simpliciter, termination for loss of confidence would also come within the definition of 'retrenchment' as defined under the Industrial Disputes Act, 1947. Accepting this, interpretation would mean unduly widening the definition which is certainly not contemplated by Parliament, while enacting the Industrial Disputes Act, 1947.



The Supreme Court in Pipraich Sugar Mills vs. Pipraich Sugar Mills Mazdoor Union reported in AIR 1957 SC 95; 1957 (1) 115 235 (SC) : has categorically stated that retrenchment as defined under the Industrial Disputes Act, 1947, would mean termination of service of an employee for surplusage labour only. This pronouncement rendered in the year 1956 by a bench of five judges still holds the law on the subject, as the Judgement in State Bank of India vs Sundaramoney is a judgement by a bench consisting of two judges. The pronouncement in Pipraich Sugar Mills is to be accepted as the law on the subject in view of the Supreme Court ruling that when there are conflicting Judgements of the Supreme Court, the law as enunciated by the larger bench prevails.

In view of this position of law, it has to be concluded that 'retrenchment' as defined under Section 2 (o)(o) of the Industrial Disputes Act, 1947, means termination of services of an employee for surplusage of labour only.

Retrenchment in Establishments employing ~~more than 50~~ less than 300

Section 25F of the Industrial Disputes Act, 1947, states the conditions precedent to retrenchment of a workman. It reads as follows :

Conditions precedent to retrenchment of workmen :

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until ;

- a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service.

- b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof, in excess of six months; and
- c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Govt. by notification in the official Gazette).

The courts have interpreted that retrenchment must follow payment of compensation. In other words, retrenchment compensation must be paid and/or tendered to the employee before retrenchment is effected. This is a very vital condition. Failure to comply with this condition would render retrenchment invalid and the courts are bound to reinstate the workmen with full backwages.

An establishment which retrenches workers should note that Section 25G of the Industrial Disputes Act, 1947, makes it obligatory on the employer to follow the principle of 'last come first go' in each category of service. The employer has to prepare a list of all the workmen categorywise and while retrenching, the juniormost must be retrenched first. The only circumstance under which a deviation could be made is, where there are strong reasons to be recorded in writing for retaining the junior in preference to a senior.

The Industrial Disputes Act, 1947, makes yet another obligation on the employer, in that, it makes it statutorily compulsory for an employer to give first preference to a retrenched worker while increasing the strength of employees in that particular category of employment. In other words, an employer who has

retrenched, as and when he intends to increase the strength, should first offer re-employment to the retrenched worker. Here again, the principle of seniors first and juniors next should be followed and only on their refusal to take up re-employment new persons can be employed. As the words used in 25H are 're-employment,' no obligation is cast on the employer to offer the same service conditions or wage scale the employee was drawing before retrenchment.

Retrenchment in establishments employing more than 300

Chapter 5-B has been included during the year 1976 by amending the Industrial Disputes Act, 1947, whereunder, additional obligations are imposed on an employer while retrenching employees. The procedure applicable in this case is more or less the same as above. But the period of notice is increased to three months and prior permission of the appropriate Govt. has to be sought before effecting retrenchment.

A similar provision made applicable in case of closure has been subsequently struck down by the Supreme Court. However, till date, no employer has challenged the above provision in respect of seeking prior permission for retrenching. It is yet to be seen as to what view the Supreme Court would take, if this provision is challenged.

(In our next issue of this bulletin to be released during first week of April 1980, another article in continuation of this, dealing with case law on retrenchment with particular reference to Supreme Court Judgements will be published. Those members interested in specific answers to questions relating to retrenchment may please address the same to the Editor, Indlaw, Bangalore Employers' Association, so as to reach him before 25th March 1980).