

## HR Law Hotline

July 12, 2022

### EMPLOYMENT TERMINATION IN INDIA - CHENNAI LABOUR COURT ORDERS REINSTATEMENT OF TECHNOLOGY SECTOR EMPLOYEE

- The Principal Labour Court, Chennai ordered one of India's leading technology companies to reinstate the employee by treating the employment termination as unlawful.
- The Court held that the employee was a 'workman' and hence entitled to protection under the retrenchment provisions of the law.
- The litigation protracted for 7 years (only lower judiciary) resulting in Order for reinstatement of workman with back wages.

The Principal Labour Court, Chennai in its recent judgement<sup>1</sup> held that the petitioner would not lose his entitlement as a workman as per Industrial Disputes Act, 1947 ("IDA") merely because he had been doing some lead role along with his main duty. As a result, the termination was held to be illegal as the employer did not comply with the twin conditions enunciated under section 25-F<sup>2</sup> of the IDA.

#### BACKGROUND

The dispute arose as a result of termination of employment of an employee ("Petitioner") by the employer, a leading technology company in India. The Petitioner was employed with the employer since August 10, 2006. The Petitioner's employment was terminated by the employer with effect from February 2, 2015 as a result of performance issues.

Following the failure of conciliation, the Petitioner challenged the termination of his employment as illegal and accordingly filed an application before the authority competent to hear such disputes, the Principal Labour Court at Chennai ("LC"), as per provisions of the IDA. The Petitioner claimed to be a 'workman' as per section 2(s)<sup>3</sup> of IDA and accordingly, owing to non-compliance with applicable requirements for 'retrenchment' of workmen as per IDA, prayed for setting aside of his termination order and reinstatement with the employer with continuity of service, back-wages and other attendant benefits.

At the time of termination of employment, the Petitioner was employed as a Test Manager of a test team comprising of five software engineers. 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.

#### ANALYSIS

The contention of the parties centred around whether the Petitioner performed managerial or supervisory functions as a Test Manager, keeping him out of the ambit of protection of IDA. In deciding so, the LC referred to several Supreme Court judgments discussing the ambit of the term 'workman' as per IDA.

The LC noted the Supreme Court's observation in the matter *HR Adhyanthaya and Ors. v. Sandoz (India) Ltd.*<sup>4</sup> stating: "...in order to bring a person within the meaning of a 'Workman', it is not enough that he is coming under the exception provided u/s 2(s) of the I.D.Act, but also he should carry on any one of the activity provided in the main part of the Section, such as manual, unskilled, skilled, technical, operational, clerical, for hire or reward." In view of the same, the LC looked into the detailed nature of work performed by the Petitioner as a Test Manager prior to termination of his employment, to determine whether the Petitioner could be functionally considered a 'workman'.

Further, the LC also referred to the Supreme Court judgment in the matter *Anand Regional Co-op. Oil Seedsgrowers Union Ltd. v. Shaileshkumar Harshadbhai Shah*<sup>5</sup> where it was *inter alia* held that "What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being in charge of the section alone and that too it being a small one and relating to quality control would not answer the test." and additionally inferred that a person's employment in a supervisory or clerical capacity will depend on the nature of principal duties carried out by such person - that is, whether such duties are of supervisory or clerical nature<sup>6</sup>.

In view of these Supreme Court judgments and the facts of the matter, the LC concluded that the Petitioner's role of a Test Manager will not exclude him as a 'workman' merely based on certain supervisory aspects of his role.

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Once it was concluded that the Petitioner was a ‘workman’, the LC analysed whether the employer had complied with section 25-F of IDA in terminating his employment. The LC observed that the employer had provided a month’s notice to the Petitioner as per section 25-F of IDA. However, the petitioner was not paid retrenchment compensation. Accordingly, the LC considered the Petitioner’s termination order as issued by the employer to be illegal, being non-compliant with provisions of IDA. As a result, the Petitioner was entitled to reinstatement with continuity of service along with payment of full back-wages and benefits.

CONCLUSION

This judgement draws attention of employers in India towards the necessity to comply with applicable laws while terminating employment. The key take-away remains LC’s analysis of the term ‘workman’ based on past Supreme Court judgments and rationale behind determining whether an employee despite holding title as a manager may be considered a ‘workman’ as per IDA. Accordingly, employers are advised to be mindful of the requirements of the law while executing any termination of employment, to avoid an adverse court order similar to the instant case. The judgement is a clarion call to do away with ‘one size fits all’ approach for employment termination in India.

– Vivek Ilawat, Sayantani Saha & Vikram Shroff

You can direct your queries or comments to the authors

<sup>1</sup> *Thirumalai Selvan Shanmugam v. Tata Consultancy Services Limited*, I.D.No.34/2016

<sup>2</sup> Section 25-F of IDA provides that 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 the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (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 Government by notification in the Official Gazette.

<sup>3</sup> Section 2(s) of IDA defines Workman as 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 IDA 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 INR 10000 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

<sup>4</sup> 1994 SCC (5) 737

<sup>5</sup> 2006 (6) SCC 548

<sup>6</sup> *Ananda Bazar Patrika (P) Ltd. v. The Workmen*, 1970 (3) SCC 248

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