

Are techies workmen?

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Last week, the southern state of Tamil Nadu was on the radar of information technology (IT) majors for all the wrong reasons. In a clarification note, the state administration said employees in the IT sector were bound by the same law that covers other sectors - Industrial Disputes Act 1947 - and, hence, could form trade unions.

"IT company employees are free to form a trade union and can redress their grievances by evoking the provisions of Industrial Disputes Act 1947. It is also informed that no IT industry has been exempted from the provisions of Industrial Disputes Act 1947," Kumar Jayant, principal secretary, department of labour and employment, Tamil Nadu, has said in the note.

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This led to heated debate with one business channel even analysing whether the note would have any effect on the scrip of the IT majors, most of whom have presence in the state.

But legal experts say the Tamil Nadu government's announcement is just stating what has already been provided in the law. "The Tamil Nadu government has simply clarified the law and its applicability to IT companies and its employees. There is no new provision, because there was no exemption to begin with," says R Chandrasekhar, president of IT sector lobby group Nasscom.

Moreover, the law is only applicable to certain employees, those who are in non-supervisory roles, and earning less than Rs 6,500 per month. "So, not all employees fall into its ambit," Chandrasekhar adds.

The industry association is not looking at any legal action, saying this is just a factual statement of the law that is applicable at present, and that which had been applicable in the past. However, another senior Nasscom executive says the IT sector would like to work with the government to have labour laws that are in sync with the knowledge-service sector. The association has been consulting law firms to analyse the legal implications of the observations by the Tamil Nadu government.

Employee-employer relationships in India are mainly governed by three labour laws - the Industrial Disputes Act, 1947, the Trade Union Act 1926, and the Industrial Employment (Standing Orders) Act, 1946.

Under the Trade Union Act 1926, all workers have the right to form a union, or refuse to be a part of it. The Act defines a union as a combination formed primarily for the purpose of regulating relations between the workman and employer.

In January 2015, the Madras High Court restrained IT major Tata Consultancy Services (TCS) from terminating an employee without the prescribed notice period, saying it violates the Industrial Disputes Act 1947. That was the first time when a high court stated that the laws under this Act also applied to the IT sector - one of the largest employers of organised labour.

"Labour laws such as the Industrial Disputes Act have a wide coverage and should extend to skilled and technical workmen in India's technology and knowledge-based industries, similar to other sectors. Besides, the Constitution of India provides the right to form associations or unions," says Vikram Shroff, head of HR law practice at Nishith Desai Associates. To that extent, the contents of the note issued by the Tamil Nadu labour department does not come as a surprise, Shroff adds. "It should be considered as a reminder, rather than a change to the existing law."

However, in the nature of employment that the IT sector provides, in case of litigation, confusion might arise whether the employee falls under the workman category. Under the Industrial Disputes Act 1947, workman is any person employed to do any manual, skilled, unskilled, technical, operational and clerical work.

In Ved Prakash Gupta vs M/s Delton Cable India case, it was held that any person employed in managerial or

supervisory capacity is not a workman. Lawyers point out that in an IT firm, a person might be leading a team of people, but he or she in turn reports to a manager. "It has to be decided on a case-by-case basis whether a person is in a supervisory role, and not on the basis of designation," says Atul Gupta, partner at Trilegal.

In May, a labour court in Chennai reinstated an employee of IT major HCL saying the company could not provide evidence justifying that he was in a supervisory cadre, and hence not a workman.

Now, why should a progressive move of allowing a bargaining body make a sector jittery? The reason perhaps lies in why the note was issued by Tamil Nadu's labour department in the first place.

Towards the end of 2014, rumours of a large-scale lay-off at TCS hit the headlines. A few affected employee organised protests, under the banners of Forum for IT employees (FITE) and Puthiya Jananayaga Thozilalar Munnani, running campaigns on social media. The fronts, after failing to extract a response from the state government, approached the Madras High Court seeking a direction from the administration to clarify whether the IT sector was covered by the Industrial Disputes Act, following which the note was issued.

To show that the layoffs were not extraordinary, the IT major gave a detailed break-up of the "involuntary attrition" for the first nine months of 2014-15. TCS said the figure stood at 2,574, or 0.8 per cent of its overall employee strength. The corresponding numbers for 2013-14 and 2012-13 were 2,203 and 2,132, respectively.

"Retrenchment is very common in the IT sector and with increasing use of artificial intelligence (AI), the trend will only increase. That's why the companies are apprehensive," says an executive with an IT firm.

Many in the legal fraternity feel that with the rise in employees' awareness about their rights, the litigation cost of technology companies might go up. To counter this, companies should step up their focus on employees' welfare, and provide better learning and growth opportunities within the firm, says Shroff.