

# Jurisprudence of Penalty for Lay-Off, Retrenchment and Closure

Dr. Harishchandra Ram\*

Assistant Professor of Law, University of Lucknow, Lucknow, UP

**Abstract – One thing is common to do lay-off, retrenchment and closure of industrial establishment that is termination of service of workmen for short period or permanently. The employer has the genuine problem to do so, not with the feeling of retaliation. The provisions of this Act, prevent to him to do arbitrary lay-off, retrenchment and closure. Section 25M lays down the prohibition of lay-off, Section 25N conditions precedent to retrenchment of workmen and Section 25-O procedure for closure. Having under the conditions of provisions of Act, does the act of lay-off, retrenchment and closure.**

-----X-----

## INTRODUCTION

Supreme Court and High Court have opined that employer has the fundamental rights to close down or restart his industrial establishment. If the employer does not follow the conditions precedent he shall be penalized with the punishment under sections 25Q, 25R and 30A.

**The general definitions of lay-off, retrenchment and closure are under the Industrial Disputes Act, 1947:**

**Section 2(kkk)[1]. Lay-off** (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Explanation.—Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day:

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

**Section 2 (oo)[2] “Retrenchment”** means the termination by the employer of the service of a workman for any reason whatsoever, otherwise 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
- (bb) termination of the service of the 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; or]
- (c) termination of the service of a workman on the ground of continued ill-health.

**(cc) “closure”** means the permanent closing down of a place of employment or part thereof. [3]

**Amended Provisions relating to penalty and procedure:**

Actual tripartism applied by the act of Parliament by taking the cognizance of the grievances of

retrenched, laid-off and terminated of services of workman due to closure. In this juncture the Parliament is inserted the Chapter VB by the Industrial Disputes Amendment Act, 1976. It's provided the compensation to the workman for retrenchment, lay-off and closure as well as penalties for illegal retrenchment, lay-off and closure. For this purpose Sections 25Q and 25R placed in Chapter VB of the Act. Section 25K provides the terms and conditions for the application of Chapter VB.

**Section 25K.- Application of Chapter VB- (1)** The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than[4] [one hundred] workmen were employed on an average per working day for the preceding twelve months.

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

It can be said through the research comment that the sub-section 2 of Section 25K has the restrictions for establishment of seasonal character or the work is performed only intermittently. And it does not applied on those establishments where workmen employed not less than one hundred. The A. G. Has the sole power to decide the question if arises of both nature of establishment. It means the lay-off and retrenchment compensation awakes the expectation of such workmen who are employed in seasonal nature establishment and intermittently nature of work. It can be said that it's on the wishes of A. G., whether the seasonal character or intermittently work are industrial establishment or not. Here the A.G. has hold the decision on question has to arise regarding the workmen employed in the establishment of seasonal or intermittently nature of work. The A.G. did not left any space to Court to give any decisive opinion in such cases.[5] It is being request to the A.G. to take positive action with view of welfare state.

**Section 25L deals the provisions of industrial establishment. By virtue of these provisions the penalty provisions have existence:**

**Section 25L definitions.**-for the purpose this Chapter[6]-

- (a) "Industrial Establishment" means-
- (i) a factory as defined in clause (m) of section 2 of the Factories Act. 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);
- (b) Notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2,
- (i) in relation to any company in which not less than fifty-one percent of the paid-up share capital is held by the Central, Government, or
- (ii) in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of section 2] established by or under any law made by Parliament.
- (iii) The Central Government shall be the appropriate government.

**Judicial delineations regarding 'Industrial Establishment' are as followed:**

1. *State Transport Accountant Associations vs. Orissa SRTC*[7] in this case it was decided that Orissa State Road Transport Corporation which has several factories, Plants and repair workshops were engaged in "manufacturing process" are the factory under the Section 2(m) of the Factory Act, 1948 and it is in radius of industrial establishment which is mentioned in Section 25L of the I.D. Act, 1947.
2. *Lal Mohammad and Others vs. India Railway Construction Co. Ltd. And others*[8] in this case the respondent company resisted in his writ petition and submitted that the writ petitioners were only ad-hoc employees and were not regularly appointed the actual recruitment procedure. They were employees in Rihand Nagar Project. The project was completed and thereafter they were retrenched on closure of project by followed the provisions of 25F of the I.D. Act., 1947. Supreme Court held that writ petitioners employed initially on ad-hoc basis subsequently service were regularised and become permanent. The notice of retrenchment declared null and void. Learned justice quashed the order of termination; they were ordered to be continued in their job and were to be paid salary. And opined that Section 25N does not apply in present case. Actually the company not a factory.
3. *Seelan Raj and others vs. Presiding Officer First Additional Labour Court, Chennai and Others*[9] the Bench of S. Rajendra Babu and Y.K. Sabharwal JJ for the identical

reasons, they think matter should also be referred to a larger bench of S.C. The question, where a data processing unit falls within the definition of "industrial establishment" under section 25-L, in the sense where could be 'factory' as defined in Section 2(m) of the Act for the application of Chapter VB.

4. *Ramesh vs. E E Jayakwadi Project*[10] in this case single Justice Kachchar of Bombay High Court held that compliance with the provisions of Section 25M was necessary only in respect of three types of establishment as mentioned in section 25L. The irrigation division of the Jayakwadi Project not covered by it.

Penalty and procedure related provisions are drafted accordance with the prohibition and conditions under the I. D. Act, 1947. If the employer does not follow these provisions shall be penalised. The Employer must be followed the mandate of the Act, which is followed:

#### **Section-25M. Prohibition of lay-off:**

- (1) No workman (other than a badly workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except [11] [with the prior permission of the appropriate government or such authority as may be specified by that government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion].
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.[12]
- (3) Where the workmen (other than badli workmen or casual workmen) of industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate government or the

specified authority for permission to continue the lay-off.

- (4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
- (6) An order of the appropriate government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
- (7) The appropriate government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

*Provided* that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

- (8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all

the benefits under any law for the time being in force as if they had not been laid-off.

- (9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.]
- (10) The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.[13]

**Explanation :** For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

#### **25N. Conditions precedent to retrenchment of workmen:**

- (1) No workman employed in any industrial establishment to which this Chapter applies, 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 three months' 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; and
- (b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where an application for permission has been made under sub-section (1) and the appropriate government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
- (5) An order of the appropriate government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
- (6) The appropriate government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to a Tribunal for adjudication:

**Provided** that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

- (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on



which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

- (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.
- (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, 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.]

**25-O. Procedure for closing down an undertaking:**

- (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

**Provided** that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

- (2) Where an application for permission has been made under sub-section (1), the appropriate government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regards to the, genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other

relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (3) Where an application has been made under sub-section (1) and the appropriate government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
- (4) An order of the appropriate government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.
- (5) The appropriate government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

**Provided** that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

- (6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.
- (7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.
- (8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every

workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive 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.]

Above mentioned provisions have imposed the terms and conditioned on the employers in closing down the industrial establishment, retrenchment and lay-off of workmen. In other words the employer shall be punished if he does not follow the restrictions which are provided in the I. D. Act, 1947.

## PENALTY AND PROCEDURE:

**Section 25Q. Penalty for Lay-off and Retrenchment without previous permission.-** any employer who contravenes the provision of section 25M or section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

It can be said in the form of comment that the prohibition of lay-off in section 25M and condition precedent of retrenchment of workmen in section 25N. the previous permission is mandatory for employer to retrench and lay-off to workmen. If he breaks the provisions of the Act, shall be punished with imprisonment, fine or with both as the case may be. Here the legislation has formed a language of penalty exactly not on *mens rea* for conviction as a penalty adopted the doctrine of deterrent nature of punishment. Actually the factum of contravention of the provisions of Section 25M and section 25N are sufficient to take cognizance.

The Supreme Court directed to the employer if he have to retrench the workman the notice of this regard has to send to Appropriate Government or notified authority.[14]

## Section 25R. Penalty for Closure.-

- (1) Any employer who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-O shall be punishable with imprisonment for term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.
- (2) any employer who contravenes [15][an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-O or a direction given under section 25P] shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to

five thousand rupees, or with both, and where the contravention is a continuing one, with further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

## Comments on sub-section (1) and sub- section (2):

The original section "25-O procedure for closing down an undertaking" was struck down by the Supreme Court in *Excel Wear vs Union of India*,[16] being violative of the fundamental right to carry on business guaranteed by article 19 (1) (g) of the Constitution of India. The Court discountenanced both the extreme contentions put forward by the parties as to the nature of the right to close down business. It rejected the contention of the employer that the right to close down business was at par with the right not to start a business at all. As a sequel to that, sub-section (1) of section 25R which provided penalty for closure without complying with the requirements of the section 25-O, was also struck down. But now since the original section 25-O has been substituted by the present one, sub-section (1) of section 25R has been revived in the self-same language as of the original sub-section. It provides a penalty of punishment of imprisonment up to six months or a fine up to rupees five thousand or both in case where an employer closes down his establishment without complying with the requirement of section 25-O (1).[17]

*IOL vs State of U P*[18] the one unit of industrial establishment was closed down without prior permission of the Appropriate Government. There were working 156 workmen. On this ground the Deputy Commissioner of Labour was started to prosecution against the employer. Under the U P Industrial Disputes Act, there must be 300 workmen were needed for prior permission. The Allahabad High Court has set aside the prosecution on the ground of Central Act. The numbers of workmen amended and replaced from 300 to 100.

The sub-section (2) of section 25R has been provided that if the employer refused the direction given under said section shall be punishable with imprisonment up to one year, or fine up to Rs 5000/-, or with both. Furthermore, continuing contravention of these provisions, after conviction of the first instance, has been made punishable with recurring fine extending up to Rs. 2000/- for every day of continuing contravention.

Sub-section (3) made null and void by the effect of judgment of Supreme Court in the case of *Excel wear vs Union of India*[19].

**[Section 30A. Penalty for Closure without notice.-** Any employer who closes down an

undertaking without complying with the provisions of section 25FFA, shall be punishable with imprisonment for term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.] [20]

**Comment:**

If any employer intended to close down his industrial establishment same time he is bounded by the provisions of the Act, to serve the notice on the Appropriate Government at least 60 days before the date on which the intended closure is to become effective. A notice, in the prescribed manner, shall be served on the Appropriate Government stating clearly the reason for the intended closure of the undertaking. Calcutta High Court held in the case of *Walford Transport Ltd vs State of West Bengal*[21] that the object of section 25FFA requiring the employer to give 60 days' notice, to the Government, of his intention to close down his undertaking is to prevent sudden closure and to give an opportunity to the Government to consider whether it should take any measure in respect of such intended closure in accordance with provisions of the Act such as making a reference.

**Section 34. Cognizance of offences.-**

- (1) No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate government.
- (2) No court inferior to that of [22] [a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act.

**CONCLUDING OBSERVATIONS:**

- (1) Penalty and procedure is based on deterrent theory of punishment. So that generally the employer is not intentionally wrong doing person. He performs his duty for the betterment of industrial establishment. If he fails his duty, liable to punishment that in the nature of extended up to and fine also extended up to, it means he can be less punished or quantum of imprisonment and fine be nominal or be maximum. It is also based on the perception of judge.
- (2) Penalty and procedure actually based on the default of employer to follow the legal measure as provided under various sections. It is well settled by the judgments of Supreme Court and High Court that employer has the fundamental rights to close down or restart his industrial establishment accordance with the rules of this Act. As the same way the employer, has the

fundamental under Article 19(1) (g) of the Constitution of India, to lay-off and retrench the workmen from his industrial establishment.

- (3) A lot of procedure has to follow to an employer to keep safe himself from the penalty procedure. It is clearly established that penalty procedure is statutory obligations. Prosecution can be started accordance with sections of penalty and cannot by any application under Art. 226 of the Constitution of India[23]
- (4) The Labour commissioner shall make the complaint before the First Class Magistrate or Metropolitan Magistrate as the case may be.

**REFERENCE**

1. Ins by Act 43 of 1953, sec 2 (wef 24.10.1953).
2. Id.
3. Ins by Act 46 of 1982, sec 2 (wef 21.08.1984).
4. Subs by Act 46 of 1982, Sec 12, for "three hundred" (wef 21.08.1984).
5. Andhra Pradesh Federation of ILTD Workers vs Government of Andhra Pradesh 1983 Lab I C (NOC) 91 A P.
6. Chapter VB- Special provisions relating to lay-off, retrenchment and closure in certain establishment.
7. 1990 Lab I C 1378 (Ori).
8. 1998 Supp (3) SCR 343.
9. (2001) (2) SCR 462.
10. (2000) 4 LLN 986 (Bom).
11. Subs by Act 49 of 1984, Sec 4, for certain words (wef 18.08.1984)
12. Subs by Act 49 of 1984, Sec 4, for Sub-section (2) and (5) (wef 18.08.1984).
13. Sub-section (6) re-numbered as Section (10) by Act of 49 of 1984, Sec 4 (wef 18.08.1984).
14. Manju Saxena vs Union of India (2019) 2 SCC 628.

15. Sub-section (3) omitted by Act of 46 of 1982, Section 15 (wef 21-08-1984)
16. AIR 1979 SC 25.
17. Malhotra, O.P.: The Law of Industrial Disputes, Vol. 2 Pp. 1740-1741.
18. 2004 (1) AWC.
19. AIR 1979 SC 25.
20. Ins by Act 32 of 1972, Section 3 (wef 14.06.1972)
21. (1978) II LLJ 110 Cal.
22. Subs by Act 46 of 1982 (wef 21.08.1984).
23. Vinay Nath vs Bihar Journal Ltd. (1953) II LLJ 633 (Pat).

---

#### **Corresponding Author**

**Dr. Harishchandra Ram\***

Assistant Professor of Law, University of Lucknow,  
Lucknow, UP