



LAY-OFF COMPENSATION AND LABOUR WELFARE LEGISLATION¹

Dr Harishchandra Ram

Abstract

Lay-off is the process where the workmen remove to work for short period but it is not termination of service of workman. There are reason must be existed to do lay-off without reason or provisions not followed by employer and commences the lay-off shall be punishable with fine and imprisonment². Basics of lay-off is provided in section 2(kkk) of the Act. The situation occurs where the employer is unable, failure or refusal to provide the work to his workmen due to shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or other connected reasons. In this conditions employer laid-off of his workmen. The workmen and employer are tied with the contract of employment, so, he cannot terminate the service of workmen on such incident. On occurs the natural calamity employer not requires prior permission to do lay-off, but other condition he has to obtain the prior permission to commence the lay-off. Section 25C and Section 2(kkk) itself has provision to give lay-off compensation.

Key-words: Lay-off, Compensation, Employer, Industrial establishment, Workmen, Badli workman, adjudication and continuous service.

1. Introduction and Legislative History of Lay-off Compensation:

Originally there were no provisions related to Lay-off in the I.D. Act, 1947. And other provisions *i.e.*, prohibition of lay-off and lay-off compensation was not originally incorporated in the Act. In year 1953 a huge stock had been accumulated in textile industries. Theses textile mills started to closed down one or more shifts accordance with their need and management. Due to this closure the workmen were being laid-off in large numbers. The Trade Unions of these textile mills started to agitation against the closure and laying-off of employees. In order to worst situation of laid-off of labours. Dr. Rajendra Prasad the then President of India promulgated the Industrial Disputes (Amendment) Ordinance, 1953, which was effected same year on 24th November. There was the main

¹. Dr Harishchandra Ram, Assistant Professor of Law, Faculty of Law, University of Lucknow, Lucknow, U.P.

². **Section 25Q**-penalty for lay-off and retrenchment without previous permission.- any employer who contravenes the provisions of section 25M or section 25N shall be punishable with imprisonment for a term which extent to one month, or fine which may extent to one thousand rupees, or with both.



emphasis of the same Ordinance to payment the laid-off and retrenchment compensation. The Ordinance of 1953 was replaced by the Industrial Disputes (Amendment) Act, 1953 on 23rd December, 1953. Sections 25A to 25J were added in the ID Act, 1947. Section 25C added by the Act 35 of 1965.

2. Jurisprudence of Lay-off:

If the various problems have been arisen before the employer like shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of the machinery or natural calamity or for any other connected reason, employer does not require the service of workers, it means he will acquire the way of lay-off to the non-required workers. In the mean time, on the one side, the employer expects to resume his normal work and on the other hand, the workmen want to continue to work, therefore, the issue of lay-off has been evolved. In such cases, the workmen are not discharged but they are not paid full wages.³

The right to lay-off compensation has been established by Standing Orders, contract, practice or statutory provisions. The workmen sometimes take the advantage of the existing legal provisions due to the introduction of industrial adjudication system on all India basis. Earlier, this system of laying-off the employees amounted to lock-out.⁴

In the case of *Workmen of Firestone Tyre and Rubber Co of India Ltd vs. Management*⁵ Justice Untawalia opined that the lay-off for shorter or longer periods, though result in involuntary unemployment caused by circumstances beyond the control of employer, does not amount to termination. A lay-off is neither a temporary discharge of a workman nor temporary suspension of his contract service. It is merely fact of temporary unemployment of the workmen in the work of the industrial establishment.

³. Salunkhe, S A: 'Emerging issues and Trends in Leadership' (1994) Pp 353-361, Indian Journal of Industrial Relations. Vol. 29 (3).

⁴. Dale, E. : 'Increasing Productivity through Labour Management Co-operation'(1959) Pp 49-50, Industrial and Labour Relations Review, Vol. 3(1).

⁵. (1976) 1 LL J 493 SC.



In the case of *MA Veiyra vs. CP Fernandez*⁶ Chief Justice of Bombay High Court Justice Chhagla said, “In ‘lay-off’, the *vinciculum juris* of the employment relationship is not broken, though for the time being it goes under suspended animation.”

In fact, it is the termination of service at temporary level but this action does not constitute termination of service of a workman. The contract of service is in existence. This temporary termination of service of workmen given in only compulsion of employer, cannot say to a workman to do work on broken machine etc., it does not end the employer-workmen relationship.

3. STATUTORY PROVISIONS OF LAY-OFF COMPENSATION

⁷[Section 25C. Right of workmen laid-off for compensation: Whenever a workman (other than a badly workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent, of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Provided that if during any period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first forty five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

Explanation: "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the

⁶. (1956) 1 LLJ 547 (Bom).

⁷. Subs by Act 35 of 1965, Section 5, for Section 25C (wef 01.12.1965).



purposes of this section, if he has completed one year of continuous service in the establishment.]

3.1 . Explanation for easy to understand to compensation payable to laid-off workmen:

This Section provides the right to laid-off workmen that they claim to compensation accordance with said provisions. The badli and casual workmen has been kept a side for claiming the lay-off compensation. The workmen who are laid-off, their name must be borne on muster rolls of an industrial establishment. Laid-off workmen must be completed 240 days in a calendar year and under an employer who has laid-off to them. Below the ground or mine workmen have to complete 190 days in a calendar year. The duration of 240 or 190 days may be completed in the form of continuously or intermittently. This Section enables to the laid-off workmen to get the compensation from the employer. He will get the payment of all days of fifty per cent of basic wages and dearness allowance except for such weekly holidays as may intervene. The said payment shall be given of any 45 days during any period of twelve months. After the completion of lay-off compensation period, the workmen have become disentitled to receive any compensation. If there an agreement is existed to that effect between the workman and the employer.

The lay-off compensation paid the laid-off workmen at the rate of fifty percent of basic wages and dearness allowance till 45 days. If the employer retrenches to the same workmen, who are already paid the lay-off compensation, it cannot be unlawful that this amount make set-off from the payable amount of retrenchment compensation.

‘Badli workman’ means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment. The status of Badli worker is not same as the workers who get the laid-off compensation. While, he has completed the conditions of muster rolls and continuous service.

3.2. Judicial observations: (i) lay-off compensation: In the case of *Zandu Pharmaceutical Works, Ltd vs. R N Kulkarni & Co and others*⁸ Justice A.N. Modi opined that he employer is, therefore, required to pay compensation to the workman who is laid-off, if the workman’s case falls within the provisions of Section 25C of the Act, which

⁸. (1966) 1 LLJ 560-562 (Bom).



entitles a workman to lay-off compensation equivalent to 50 percent of the total of basic wages and dearness allowance for the period of his lay-off, except for the intervening weekly holidays. In the case of *R S Rekchand Mohota, Spg and Weaving Mills Pvt Ltd vs. Labour Court*⁹ Bombay HC opined that the expression ‘he shall be paid by the employer for all days during which he is show laid-off’, necessarily indicates that the lay-off could be for less than a day or even half a day, otherwise the expression should have been ‘he shall be paid by the employer for all the day, of lay-off’ and not ‘all days during which he is so laid-off’. If the intention of legislature was to limit the lay-off to a period of full day or half day, there was nothing to prevent it from saying so.

In the case of *Steel and General Mills Co Ltd vs. Additional District Judge*¹⁰ P & H, HC held that the right to lay-off cannot be claimed as an inherent right of an employer if he cannot provide work for his workmen for a particular day or days during the continuance of his employment. This right has to be specifically provided for either by a statute or by the contract of service.

In the case of *Tatanagar Foundry Co vs. Their Workmen*¹¹ SC held that mala fides of the employer in declaring a lay-off really means that no lay-off, as contemplated by the definition, has taken place. In other words, a finding of mala fides of the employer in declaring a lay-off, takes the lay-off out of the definition of Section 2(KKK), and as such Section 25C cannot be held to be applicable to it so as to confine the workman’s right to the compensation prescribed therein.

In the case of *Workers of Dewan Tea Estate vs. Management*¹² SC held that besides the lay-off compensation referred to in Section 25C, is lay-off as defined in Section 2(KKK), and so the workmen who can claim the benefit of Section 25C must be those workmen who are laid-off for reasons contemplated in Section 2(KKK) of the Act.

3.3. Payment of Compensation in the form of Wages: In the case of *Payment of Wages Inspector vs. Suraj Mal Mehta*¹³ the SC held that the payment of compensation under Sections 25F, 25FF and 25FFF is wages within the meaning of Section 2 (vi) (d) of the

⁹. (1968) 1 LLJ 610 (Bom).

¹⁰. (1971) Lab IC 1356 (P&H).

¹¹. (1962) 1 LLJ 382 (SC).

¹². AIR 1964 SC 1458.

¹³. AIR 1969 SC 590.



Payment of Wages Act, 1936. The same principles will apply to lay-off compensation under Section 25C.

3.4. Compensation of 45 Days: In the case of *Automobiles Product of India vs. Workmen*¹⁴ the object of this proviso is to make provision that the lay-off compensation should become payable for all the days of lay-off beyond the first 45 days, whether the period is continuous for a week or not, unless there is an agreement to the contrary. There was a lacuna in the previous provisos, the effect of which was that if lay-off was for an unbroken period of a whole year, the concerned employees were entitled to compensation for 45 days only, but if it was for broken periods, they might receive more compensation.

In the case of *Modi Food Products Co Ltd vs. Faqir Chand Sharma*¹⁵ Venkatarama Ayyar J observed, “if, as observed in the above decision, this conclusion leads to an anomalous position it is for the Legislature, if it think fit, to amend the section and not for the tribunal to construe it otherwise than what it plainly means.”

In the case of *A Satyanaryanan Reddy vs. Labour Court*¹⁶ SC held that sub-section (2) of Section 33C of the ID Act, 1947, claim for lay-off compensation after availing VRS does not cover past dues like lay-off compensation, substance allowances, etc., workmen would be entitled to approach Labour Court under Section 33C where the same are specifically covered or language of the VRS shows that it covers such claims under schemes, no forum would have jurisdiction to grant the same.

3.5. Employer enabled to set-off the amount of Lay-off Compensation into retrenchment compensation: In the case of *Ravikrishna Weaving Mills Pvt Ltd vs. State of Kerala*¹⁷ held that the employer exercises his right to retrench a workman laid-off under this proviso, he is bound to comply with provisions of Section 25F, i.e., ‘condition precedent to retrenchment of workman’. In case of such retrenchment, the employer has been enabled to set-off the lay-off compensation paid by him to the workmen so retrenched during the last twelve months against the compensation payable to him under the second proviso.

¹⁴. (1955) 1 LLJ 67, 68 (LAT)

¹⁵. AIR 1956 SC 628.

¹⁶. (2016) 9 SCC 462.

¹⁷. (1959) 2 LLJ 760 (Ker).



3.6. Status of Badli Workman under the Explanation: In the case of *Vijayakumar Mills Ltd vs. Labour Court*¹⁸ Madras HC held that the explanation indicates that a worker in order to come win the purview of term badly workman should not be one whose name is found in the muster rolls. What therefore, decide the right to lay-off compensation to a badli workman is the effect his name being found in the muster rolls not how he is described therein.

In the case of *Management of Mahadev Textiles Mills vs. Additional IT*¹⁹ Karnataka HC held that badli is a workman appointed against a post, permanent or temporary, when the incumbent in that post is temporarily absent. Unless he has completed one year of continuous service in the establishment, a badli cannot claim the status of permanent workman even though the management has failed to satisfactory prove that the permanent incumbent was there in the respective place or was temporarily absent.

In the case of *Lakshmi Mills Co Ltd vs. Labour Court*²⁰ the presumption would apply when the whole of the industrial unit had ceased working and all its workmen were laid-off. In such circumstances, badli workman who fell within the explanation to Section 25C would be entitled to lay-off compensation.

In the case of *Girdharilal Laljibhai vs. M N Nagrashna*²¹ the Gujarat HC took the view that a badli workman was but a substitute and casual workman. Therefore, when no employment was given to him, no question of lay-off compensation would be involved.

In the case of *P Joseph vs. Management of Gopal Textile Mills*²² the Madras HC dissented from this view and held that the definition of “workman” does not exclude even a casual employees or substitute like a badly, there is nothing in Section 2 (KKK) which would allow by-passing of the definition and it cannot be implied into this provision that only a man who has got a right would come in the purview of Section 2 (KKK). The question is not one of right to get employment but one of the badli having completed 240 days of continuous service and having qualified himself as a workman under Section 2 (KKK) and Section 25C for compensation.

¹⁸. (1960) 2 LLJ 567 (Mad).

¹⁹. (1976) Lab IC 1284 (Kant).

²⁰. (1965) 1 LLJ 92 (Mad).

²¹. (1964) 2 LLJ 235 (Guj).

²². (1975) 1 LLJ 36-38 (Mad).



Actually in this case the Madras HC has expressed the objectives of legislature. This interpretation of statute is not influenced by the social welfare.

4. Recovery of Lay-off Compensation due from an Employer:

Section 33C (1), *inter alia*, provides for the mode of recovery of lay-off compensation namely:

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate government for the recovery of the money due to him, and if the appropriate government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

In the case of *Kays Construction Company vs. State of Uttar Pradesh*²³ the Supreme Court observed:

“The benefit contemplated in sub-section (2) is not ‘money due’ but some advantage or perquisite which can be reckoned in terms of money...For instance, loss of the benefit of free quarters is not loss of ‘money due’ though such loss can be reckoned in terms of money by inquiry and equation. The contrast between ‘money due’ on the one hand and a ‘benefit’ which is not ‘money due’ but which can become so after the money equivalent to determined on the other, marks out the areas of operation of two sub-

²³. (1965) 2 LLJ 429 (SC).



sections. If the word ‘benefit’ was taken to cover a case of mere arithmetical calculation of wages, sub-section (1) would hardly have any play. Every case of calculation, however simple, would have to go first before a Tribunal. In our judgment, a case such the present, where money due is back wages for the period of unemployment is covered by the first sub-section and not the second.”

5. Workmen not Entitled to Compensation in Certain Cases

Statutory Provisions:

Section 25E.- Workmen not entitled to compensation in certain cases.-No compensation shall be paid to a workman who has been laid-off-

(i) if he refuses to accept any alternative employment 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 a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;

(ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

5.1. Explanation for easy to understand to Clause (i): In the following cases the workman is disentitled to get lay-off compensation:

(a) If he refuses to accept any alternative employment in the same establishment from which he has been laid-off;

(b) Any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs;



- (c) In the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman; and
- (d) When employer offered to give employment in another establishment, he shall paid same wages as where he is employed in original industry.

5.2. Clause (ii): if laid-off workman does not present himself for work at the establishment at the appointed time during normal working hours at least once a day. Due to the absence from the establishment at the appointed time, it deemed to be, he refuses to accept the work after the termination of lay-off. In these cases this Section provides that employer is not liable to pay lay-off compensation.

In the case of *Nutan Mills Ltd vs. ESIC*²⁴ Chagla CJ observed:

“During the lay-off, the employee would be entitled to go serve another master. The only result of his doing so would be that he would be disentitled to receive compensation. But it is entirely a matter of his option whether he should present himself at the office of his employer and thus claim compensation or earn wages under a different employer and even though he may serve a different employer he would still have the right to be reinstated when the proper occasion arises.”

5.3. Clause (iii): If such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment. In the case of *India Radiators Ltd vs. Second Labour Court*²⁵ Madras HC opined that slowing –down of production by workmen deliberately with a view to coerce the management to concede to their demand disentitled those laid –off, as a consequence of such slowing down, from claiming lay-off compensation.

In the case of *Lonetree Estate vs. Industrial Tribunal*²⁶ Kerala HC held that a strike on the part of the workmen in another part of the establishment is thus made a justifiable reason for exonerating the employer from the liability to pay lay-off compensation.

In the case of *Kairbetta Tea Estate Pvt Ltd vs. Rajamanickam*²⁷ Justice Gajendragadkar opined that if therefore, on account of strike by some workmen in one part

²⁴. AIR 1956 336 (Bom).

²⁵. (1998) 3 LLN 411 (Mad).



of the establishment, the management refuses to give work to the workmen in another part of the establishment, and it will be quite justified in doing so.

In *Churakulam Tea Estate Pvt Ltd vs. Workmen*²⁸ the SC in the peculiar circumstances of the case affirmed the award of the Tribunal directing full wages for the period of lay-off.

In the case of *Management of India Radiators Ltd vs. PO, Second Labour Court*²⁹ the Madras HC held that when there was slowing down of production by workmen deliberately to pressurize the management to concede to their demands; they would not be entitled to lay-off compensation, as provided for in Section 25E.

In the case of *Management of KDCS Mills Ltd vs. PO, Industrial Tribunal*³⁰ Facts: the management had to stop operations one-by-one and lay-off the workmen because of refusal to work by the workmen of one section of the Mills. The Tribunal ordered payment of wages to the workmen on the ground that the lay-off, though bona fide, was illegal for failure to obtain permission under Section 25M. When the matter was taken to the High Court in a writ petition Madras HC held that there was factual justification for laying-off workmen and they were not entitled to entire wages, but curiously enough, he modified the award by directing the management to pay 75 percent of wages during the lay-off period, instead of full wages awarded by the Tribunal.

In the case of *Spencer & Co Ltd vs. PO, Additional Labour Court*³¹ facts: where a company having several manufacturing units, such as an aerated water factor, electrical department, drugs factory, soda factory, air conditioning departments, pharmaceuticals, consumer stores, etc., had closed down one of the units, namely, the 'House Furnishing Unit' in which a total of 9 workers were employed.

It was held that all the units should be taken together to arrive at the total number of employees which would work out to be more than 100 under the provisions of the Act, and

²⁶. (1962) 2 LLJ 319 (Ker).

²⁷. (1960) 2 LLJ 275 (SC).

²⁸. AIR 1969 SC 998.

²⁹. (1998) 3 LLN 411 (Mad).

³⁰. (2002) 3 LLN 329 (Mad).

³¹. (2000) 2 LLJ 1005 (Mad).



that the said unit which was closed could not be said to be a 'separate establishment' for the purpose of Section 25E. On this view of the matter, the HC held that the workmen retrenched as a consequence of said closure should be reinstated with full back wages.

In the case of *Zandu Pharmaceutical Works Ltd vs. R N Kulkarani & Co*³² the phrase 'on the part of workmen in another part of the establishment' qualifies both the expressions, *i.e.*, 'slowing down of production' as well as 'strike'. Therefore, the workmen who are laid-off due to strike on the part of the workmen in another part of the establishment would not be entitled to lay-off compensation.

CONCLUSION AND SUGGESTIONS:

In beginning there were no provisions of lay-off compensation but the lay-off like activities were utilised in the industrial establishment. The hire and fire theory was prevalent amongst the employers. They were applied accordance with their need and some progressive employer made some payment in the name of lay-off reliefs. There were no any norms fixed by the act or existed in any traditions of employers. After the independence the workmen were considered as the assets of industrial establishment. The concept of commodity was left out. The laissez faire theory converted into intervention by the State through the labour Legislation. By the effect of this changing jurisprudence of labour, the ideology to making any labour legislation the social equity, social security and welfare State revived and survived in the form of enacted labour laws. Lay-off compensation has been formulised by adding the Section 25C through the Amendment of 1965.³³ The rate of compensation which is payable by the employer is not more than less mitigation of loss of workmen while laid-off workmen are out of service. They must to fulfil the all requirements of workmen under section 25B of the Act.

Actual rate of lay-off compensation is 50% back wages and dearness allowances shall be payable to the laid-off compensation till maximum 45 days. When if the lay-off has been converted into the retrenchment the Act allowed to the employer that he set off the paid amount of lay-off compensation with the amount has to give in the form of retrenchment compensation.

³². (1966) 1 LLJ 560 (Bom).

³³. Subs. By Act 35 of 1965, Sec 5, for the Section 25C (w.e.f. 1-12-1965).



It is humble suggestions that firstly, the rate of compensation must be full back wages where the industrial establishment is in the nature of profit earning. Secondly, the if the laid-off commenced due to new and powers saving machine the lay-off compensation should be given to whole duration of lay-off not only for 45 days.