

LABOUR OFFENCES IN SERVICE RELATIONS

By

—A. MADHU SUDHAN RAO, B.A., LL.B., M.A., LL.M.
(Labour Law) Osmania University,
Advocate, Hyderabad

This article has the object of discussing the nature and scope of the provisions of Indian Penal Code, 1860, and the special laws in regard to offences concerned with service relations.

In service relations, the liability of the employer in the industrial sector arises in certain cases on account of breach of an obligation and in certain others on account of the violation of statutes or statutory rule¹. The following are some of the situations in which there is liability imposed on the employers under the statute and statutory rules when certain things are done by them in the context of service relations:

1 - Breach of duty to supply food: According to the general principles of criminal liability a master is liable for the acts of his domestic or menial servant whether it be one of omission or commission, whether negligent, fraudulent or deceitful or even if it be an act of positive misfeasance or misconduct if it be done in the course of his employment or with the express or implied permission or assent of his master².

Section 27 of the Indian Penal Code, 1860 explains the position of the master in relation to his servant when property of the master is in the possession of the clerk or the servant. It says, "When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code. "The explanation given underneath this section states, "a person employed temporarily or on a

particular occasion in the capacity of a clerk or servant is a clerk or servant within the meaning of this Section."

In *Chhotey v. Emperor*³, a pistol was discovered on the floor of the shop which could not reasonably be expected to be dealing in such articles. At the time of discovering the pistol, the shop was in the charge of the servant, the master having left the station. There was no proof that the servant was holding the pistol for his master. It was held that the master could not be convicted.

II- Employment of Children: The law in India prohibits the engagement of children in certain employments. A 'child' means a person who has not completed his fourteenth year of age.

The Motor Transport Workers Act, 1976 prohibits employment of children and prescribes punishment to those who contravene the provision of this Act. Section 21 says, "No child shall be required or allowed to work in any capacity in any motor transport undertaking." Section 22 is to the effect that no adolescent shall be required or allowed to work as a motor transport worker in any motor transport undertaking unless: (a) A certificate of fitness granted with reference to him under Section 23 is in custody of the employer, and (b) Such adolescent carries with him while he is at work a token giving a reference to such certificate. Under Section 31 of the Act or any rules made thereunder prohibiting, restricting or regulating the employment of person in a motor transport undertaking shall

1. C.B. Memoria and Supreme Court Memoria: "Dynamics of Industrial Relations" in India.

2. Atchuthan Pillai: "Principles of Criminal law"

3. 20 ALJ 854.

be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to seventy five rupees for every day during such contravention continues after convictions for the first such contravention.

Section 67 of Factories Act, 1948 prohibits employments of children in factories. It says, "No child who has not completed the fourteenth year of age shall be required or allowed to work in any factory.

Section 25 of the Beedi and Cigar Workers Act, 1866 prohibits the employment of children in any industrial premises. Section 24 the Act says, no child shall be required or allowed to work in industrial premises. Section 25 of the Act is to the effect that no woman or young person shall be required or allowed to work in any industrial premises except between 6 a.m. and 7 p.m.

Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 prohibits the employment of children in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on. Sub-section 1 the Section 14 prescribes penalty for contravention of the provisions of the Act. It says, "whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punished with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both. Sub-section 2 of Section 14 says, 'Whoever, having been convicted of an offence under Section 3 commits a like offence afterwards, he shall be punishable with imprisonment for term which shall not be less than six months but which may extend to two years'⁴.

4. Kapur. N.D. "Introduction to Commercial and Industrial Law".

Section 16 of the Andhra Pradesh Shops and Establishments Act prohibits employment of children in shops and establishments. Any employer who contravenes the provisions of Section 16 is liable to a punishment of fine which may extend to twenty five rupees, for a second offence with fine which shall not be less than fifty rupees and which may extend to one hundred rupees and for the third or subsequent offence with fine which shall not be less than one hundred rupees but which may extend to two hundred and fifty rupees.

III- The Pledging of Labour of Children: The Children (pledging of Labour) Act, 1933 prohibits the pledging of labour of children. Any agreement made by the parents or guardians of children or any person to pledge the labour of the children is void, and the making of such agreement has been punishable. Sections 4, 5 and 6 of the Act provide as follows:

Section 4. Penalty for parent or guardian making agreement to pledge the labour of a child: Whoever, being the parent or a guardian of a child, makes an agreement to pledge the labour of that child, shall be punished with fine which may extend to fifty rupees.

Section 5 Penalty for making with parent or guardian an agreement to pledge the labour of a child: Whoever makes with the parent or guardian of a child an agreement whereby such parent or guardian pledges the labour of the child shall be punished with fine which may extend to two hundred rupees.

Section 6. Penalty for employing a child whose labour has been pledged: Whoever, knowing or having reason to believe that an agreement has been made to pledge the labour of a child, in furtherance of such agreement employs such child or permits such child, to be employed in any premises or place under his control, shall be punished with

fine which may extend to two hundred rupees⁵.

IV- Payment of Wages: The Payment of Wages Act, 1936 regulates the payment of wages to certain classes of employed persons. It applies, in the first instance, to payment of wages to persons employed in any factory, to persons employed otherwise than in factory or in railways or in any other establishment. Every employer has the responsibility of paying to persons employed by him wages required to be paid under the law, and every person responsible for the payment of wages has to fix the periods in respect of which such wages shall be paid. No wage period shall be exceeding one month. Section 20 of the Payment of Wages Act, 1936 prescribes punishment to persons who being responsible for payment of wages to an employee contravene the provisions of the Act. In certain cases the punishment is of fine which shall not be less than two hundred rupees but which may extend to two thousand rupees, and in certain others the fine prescribed is five hundred rupees. Persons who are required to maintain the record or registers of payment with regard to wages are liable to punishment of fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

V- Payment of Bonus: The Payment of Bonus Act, 1965 provides for payment of bonus to persons employed in certain establishment and for matters connected therewith. Section 28 of the Act is to the effect that any person contravenes the provisions of the Act, or to whom a direction is given or a request is made under this Act fails to comply with the direction or requisition, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

VI- Payment of Provident Fund: The Employees Provident Fund and Miscellaneous

Provision Act, 1962 provides for the institution of provident fund for employees in factories and other establishments. Section 14 of the Act is to the effect that whoever for the purposes of avoiding any payment to be made by him under the Act or of enabling any other person to avoid such payment knowingly makes or causes to be made false statement or false representation shall be punishable, with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

VII- Payment of Gratuity: The Payment of Gratuity Act, 1972 provides for schemes for the payment of gratuity to employees engaged in factories, mines, oil-fields, plantations, ports, railways companies, shops and other establishments. Any person who contravenes or makes default in complying with the provisions of the Act, knowingly causes to be made any false statement or false representation is liable to punishment of imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.⁶

VIII- Equal Remuneration: The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers and for the prevention of discrimination on the grounds of sex in the matter of employment. If any employer makes payment of remuneration at unequal rates to men and women workers for the same work or for the work of a similar nature, he shall be liable to punishment of fine which may extend to five thousand rupees.

IX- Minimum Wages: The Minimum Wages Act, 1948 provides for fixing of wages for certain employments mentioned in the Schedule. The appropriate Governments may add new categories of employment to the

5. S.N. Mishra: "Labour and Industrial Law"

6. Mahesh Chandra: "Industrial Jurisprudence with imprisonment which may extend to six months.

Schedule. The Act also provides for periodical revision of the wages. A penalty is provided for the contravention of these provisions. If, therefore, an employer fails to pay less than the minimum rate of wages fixed for the employees there is prosecution and punishment prescribed by the Act. Section 22 of the Act says, "Any employer, who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act, or (b) contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both.

X- Breach of Settlement or Award:

The Industrial Disputes Act, 1947 provides for various methods of settlement of disputes, one such method is "reference" made to the Labour Court, Labour Tribunal or the National Tribunal, for an award or settlement of the dispute. The settlement thus arrived at and the award made by these institutions is binding on the parties. Any breach of the settlement or award is made punishable by law. Section 29 of the Act prescribes punishment for breach of settlement or award. It says, "Any person who commits a breach of any term or any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who in its opinion, has been injured by such breach⁷.

XI- Begar and Forced Labour:

Section 374 of the Indian Penal Code 1860

bans the system of forced labour. It proved thus, "Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both."

A large number of statutes passed by the provincial Government in pre-Independence days had proscribed the system of bonded of Labour. When the Constitution was adopted in the year 1950, traffic in human beings and Begar and other forms of forced labour were prohibited under Article 23 of the Constitution and any contravention of this provision had been declared an offence punishable in accordance with law. The State Legislation of the pre-Independence days did not deal effectively with the problems of Bonded Labour. Therefore, the Union Parliament felt it necessary to enact legislation, following the directive of the Constitution embodied in Article 23, and enacted a law known as the Bonded Labour System (Abolition) Act, 1976. Section 16 of the Act prescribes punishment to those who enforce bonded labour. It says, "Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees⁸.

XII- Failure to furnish copies of Standing Orders:

Section 3 of the Industrial Employment (Standing Orders) Act, 1946 lays down a duty upon the employers of industrial establishments to submit to the certifying officers within six months from the date on which the Act comes into force five copies of the Standing Orders proposed to be adopted in their industrial establishment. No modification can be made to the standing orders by an employer afterwards without the approval of the certifying officer and without following the procedure prescribed

7. V V Giri: "Labour Problems in Indian Industry".

8. B.R.Sharma: "Socio-Economic Justice under Indian Constitution."

by the Act. "An employer who fails to submit draft standing orders or modifies them without following the procedure laid down in this Act is liable to punishment which may extend to five thousand rupees and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues."

An employer who does any act in contravention of the standing orders finally certified under this Act for his Industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees every day after the first during which the offences continues.

XIII- Alteration of conditions of service during the pendency of proceedings: Section 33 of the Industrial Disputes Act, 1947 enjoins that no employer shall during the pendency of any conciliation proceedings before a Conciliation Officer or a Board or an Arbitrator or a Court or a Tribunal or National Tribunal alter the conditions of service applicable to the workmen when they pertain to any dispute pending before the said authorities. Any employer who contravenes the provisions of Section 33 shall be liable to punishment of imprisonment for a term which may extend to six months or a fine which may extend to one thousand rupees or with both.

XIV- Prohibition of Strikes and Lock-outs: Section 22 of the Industrial Disputes Act, 1947 prohibits strikes and lock-outs in public utility services. Sub-section 2 of the same section prohibiting lock-outs says, "No employer carrying on any public utility service shall lock-out any of his workman (a) without giving them notice of lock-out as hereinafter provided within six weeks before locking-out; or (b) within fourteen days of giving such notice; or (c) before the expiry of the date of lock-out specified in any such notice

as aforesaid; or (d) during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings. The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the Government ..." Section 26(2) of the Act prescribes penalty for illegal lock-outs. It says, "Any workman who commences, continues or otherwise acts in furtherance of a lock-out which is illegal under this Act, 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."

XV- Prohibition of Lay-off and retrenchment: Section 25-M of the Industrial Disputes Act, 1947 prohibits lay-off of the workmen whose name is borne on the muster rolls of an industrial establishment except with prior permission of the appropriate Government or such authority as may be specified by the Government by notification in the Official Gazette.

Section 25-Q of the Act prescribes punishment for lay-off and retrenchment without previous permission. It says, "Any employer who contravenes the provision of Section 25-M or Section 25-N shall be punishable with imprisonment for term which may extend to one month or with fine which may extend to one thousand rupees, or with both."

XVI- Unfair Labour Practices: Certain actions on the part of the employers and the trade unions have been specified in the Fifth Schedule of the Industrial Disputes Act, 1947 as 'unfair labour practice'. Section 25-T of the Act prohibits unfair labour practices by an employer, workman or a trade union. Section 25-U penalizes the persons who resort

to unfair labour practices. It says, "Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to six months or with fine which may extend to one thousand rupees or with both."

XVII- Closure of an Undertaking: Under the provisions of Section 25-o of the Industrial Disputes Act, 1947 an employer has to follow a long-drawn procedure for closing down an industrial establishment. By

following the procedure he has to obtain prior permission of the appropriate Government atleast ninety days before the intended closure of the establishment. Section 25-R penalizes the employer who closes down an undertaking without complying with the procedure laid down in sub-section (1) of Section 25-O of the Act. An employer, according to this provision, is liable to punishment of imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

INSUFFICIENTLY STAMPED DOCUMENTS - A BRIEF NOTE

By

—VIRUPAKSHA D. GOUDA, M.A., L.L.B.,
Principal Senior Civil Judge,
Anantapur, A.P.

The Presiding Officers of the Trial Courts often come across serious issues concerning (1) impounding of insufficiently stamped documents (2) Permissibility of using such documents before evidence-collecting stage (3) legal effect of such insufficiently stamped documents which are admitted in evidence by inadvertence.

If there is any error or inadvertence in dealing with such issues, the *lis* may proceed in a wrong track. In fact in a decision 2001 (2) A.L.D. SC 114, *Chilamakuri Gangulappa v. R.D.O.Madanapally*, the Hon'ble Supreme Court has made the following observations:

"When a document was found to be insufficiently stamped, further proceedings were unwittingly diverted through a wrong track. After it covered a long distance, everybody concerned realized that the *lis* was proceeding through a wrong course."

In a recent decision, AIR 2001 SC 1158, *Bipin Shanthilal Panchal v. State of Gujarath* it is

laid down that whenever an objection is raised during the evidence-taking stage regarding the admissibility of any material or item of oral evidence the Trial Court can make note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. However, it has been made clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further. Therefore, in respect of any objection relating to insufficiency of stamp duty, the Court has to decide the objection then and there without postponing the issue until the date of judgment. In a decision reported in 2000 (4) A.L.D. 203, *P.Lakshmi Surya Subramanyam v. P.Somaraju*, it is laid down that the Presiding Officer has to independently decide the stamp duty and penalty leviable on an instrument filed in Court and that the Presiding Officer cannot simply act on the