UNIT – III

Strikes, Lock-outs & Regulation of Job Losses

Illegal Strikes • Lay-off • Retrenchment • Closure • Standing Orders

Including Landmark Supreme Court Judgments

Unit Structure

01

Strikes & Lock-outs

Definitions, regulation under Ss. 22, 23, 10(3), 10A(4A), illegal strikes & penalties

02

Lay-off & Retrenchment

Statutory definitions, conditions, compensation under Chapters V-A & V-B

03

Closure & Transfer

Regulation of closure and transfer of undertakings with judicial interpretations

04

Managerial Prerogatives & Standing Orders

Ss. 9A, 11A, 33, 33A and Certified Standing Orders

Definition of Strike and Lock-out

Strike – S. 2(q)

“Strike” means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.

Essential ingredients:

- Cessation of work
- By a body of persons
- Acting in combination / concerted / common understanding

Lock-out – S. 2(l)

“Lock-out” means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

It is the counterpart of a strike – a weapon in the hands of the employer.

A lock-out declared in consequence of an illegal strike is not illegal (S. 24(3)).

Prohibition of Strikes in Public Utility Services (S. 22)

No person employed in a public utility service shall go on strike:

(a) without giving to the employer notice of strike, within six weeks before striking; or
(b) within fourteen days of giving such notice; or
(c) before the expiry of the date of strike specified in any such notice; or
(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Similar restrictions apply to lock-outs by the employer.

Public utility services are listed in the First Schedule (railways, transport, postal, water, electricity, sanitation, etc.) and can be declared by notification.

General Prohibition of Strikes and Lock-outs (S. 23)

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer shall declare a lock-out:

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
(c) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings (where notification under S. 10A(3A) has been issued);
(d) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

Illegal Strikes and Lock-outs & Penalties

A strike or lock-out shall be illegal if:
• It is commenced or declared in contravention of S. 22 or S. 23; or
• It is continued in contravention of an order made under S. 10(3) or S. 10A(4A).

Penalties (S. 26):
• Any workman who commences, continues or otherwise acts in furtherance of an illegal strike shall be punishable with imprisonment up to one month or fine up to ₹50 or both.
• Any employer who commences, continues or otherwise acts in furtherance of an illegal lock-out shall be punishable with imprisonment up to one month or fine up to ₹1,000 or both.

Financial aid to illegal strikes/lock-outs is also prohibited (S. 25).

Landmark Cases on Strikes & Lock-outs

India General Navigation & Railway Co. v. Their Workmen (1960)

A strike may be legal but unjustified, or illegal but justified. Justification is relevant for relief.

Express Newspapers (P) Ltd. v. Michael Mark (1963)

Mere participation in an illegal strike does not automatically justify dismissal; circumstances matter.

Syndicate Bank v. K. Umesh Nayak (1994)

Right to strike is a legal right but not a fundamental right. Illegal strikes attract consequences.

T.K. Rangarajan v. Government of Tamil Nadu (2003)

Government employees have no fundamental, statutory or equitable right to strike.

Lay-off – Definition & Concept

"Lay-off" 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 breakdown 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.

Key points:
• Temporary inability to give employment
• Workman remains on the muster roll
• Not a termination of service
• Compensation payable under Chapter V-A / V-B

Landmark: Workmen of Firestone Tyre v. Firestone Tyre (1976) – Distinction between lay-off and lock-out explained.

Retrenchment – Definition & Conditions

"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;
(b) retirement on reaching age of superannuation;
(c) termination as a result of non-renewal of contract;
(d) termination on ground of continued ill-health.

Conditions precedent (S. 25F – Chapter V-A):
• One month's notice or wages in lieu
• Retrenchment compensation @ 15 days' average pay for every completed year of continuous service
• Notice to appropriate Government

Landmark: Punjab Land Development & Reclamation Corpn. v. Presiding Officer (1990) – Wide meaning of "for any reason whatsoever".

COMPARATIVE

Chapter V-A vs Chapter V-B

Chapter V-A (Ss. 25A–25J)

Applies to industrial establishments (except those to which V-B applies) employing 50 or more workmen on average.

• Lay-off compensation (S. 25C)
• Retrenchment conditions (S. 25F)
• Closure compensation (S. 25FFF)
• Continuous service definition (S. 25B)

No prior permission of Government required for lay-off, retrenchment or closure.

Chapter V-B (Ss. 25K–25S)

Applies to factories, mines and plantations employing 100 or more workmen (threshold reduced to 100 by many States; originally 300).

• Prior permission of appropriate Government mandatory for lay-off (S. 25M), retrenchment (S. 25N) and closure (S. 25O).
• Higher procedural safeguards.
• Excel Wear v. Union of India (1979) – S. 25O (as it then stood) held unconstitutional; later amended.

Closure of Undertaking

"Closure" means the permanent closing down of a place of employment or part thereof.

Under Chapter V-A (S. 25FFF): Employer must give 60 days' notice to Government and pay compensation equivalent to retrenchment compensation.

Under Chapter V-B (S. 25O): Prior permission of appropriate Government is mandatory for establishments covered. Application must be made 90 days before intended closure. Government may grant or refuse permission after inquiry.

Landmark: Excel Wear v. Union of India (1979) – Original S. 25O held violative of Art. 19(1)(g). Section was subsequently amended to provide a more balanced procedure with time-bound decision and deemed permission.

Transfer of Undertakings

Where the ownership or management of an undertaking is transferred, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation as if the workman had been retrenched (S. 25FF).

Exception: No compensation if –
(a) the service of the workman has not been interrupted by such transfer;
(b) the terms and conditions of service are not less favourable; and
(c) the new employer is under the terms of transfer legally liable to pay compensation in the event of retrenchment on the basis of continuous service.

Landmark: Management of R.S. Madhoram & Sons v. Workmen – Principles governing continuity of service on transfer.

Regulation of Managerial Prerogatives

Section 9A – Notice of Change

No employer shall make any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule without giving 21 days' notice. Exception for emergent situations.

Section 33 – Conditions during Pendency

During pendency of any conciliation / adjudication / arbitration proceeding, employer shall not alter conditions of service or discharge/punish any workman concerned in the dispute without express permission of the authority (or approval under S. 33(2)(b) for misconduct not connected with the dispute).

Section 33A – Special Proceedings

Where an employer contravenes S. 33, the workman may make a complaint to the authority before which the proceeding is pending. The authority shall adjudicate as if it were a dispute referred to it.

Section 11A – Power to give Appropriate Relief

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred, the Labour Court / Tribunal / National Tribunal may:

• Set aside the order of discharge or dismissal; and
• Direct reinstatement of the workman on such terms and conditions as it thinks fit; or
• Give such other relief including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

The authority can reappraise the evidence and come to its own conclusion. It is not bound by the findings of the domestic enquiry if those findings are perverse or based on no evidence.

Landmark: Workmen of Firestone Tyre & Rubber Co. of India v. Management (1973) – Detailed exposition of the scope of S. 11A.

Certified Standing Orders – Meaning & Procedure

Standing Orders define the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc. and make them known to workmen.

Procedure for Certification:
1. Employer submits draft Standing Orders to the Certifying Officer within six months of the Act becoming applicable.
2. Certifying Officer forwards a copy to the trade union (or workmen) for objections.
3. After hearing both parties, the Certifying Officer certifies the Standing Orders with such modifications as he deems necessary.
4. Certified Standing Orders come into operation on the expiry of 30 days from certification (or after disposal of appeal).

Certifying Officer and appellate authority have powers of a Civil Court for certain purposes.

Certified Standing Orders have statutory force and bind both employer and workmen.

Certifying Officers – Powers and Functions

- Examine whether the draft Standing Orders are in conformity with the Model Standing Orders and the Act.
- Make modifications if necessary after giving opportunity of hearing.
- Decide whether any provision is fair and reasonable.
- Adjudicate disputes regarding the application or interpretation of Standing Orders (S. 13A of the Standing Orders Act).
- Powers of Civil Court for enforcing attendance, examining on oath, compelling production of documents.

Appeal lies to the Appellate Authority against the order of the Certifying Officer.

Once certified, Standing Orders can be modified only by agreement or through the prescribed procedure.

Landmark Cases on Job Losses & Prerogatives

Excel Wear v. Union of India (1979)

Original S. 25O held unconstitutional as violative of Art. 19(1)(g). Led to legislative amendment.

Workmen of Firestone Tyre v. Management (1973)

Scope of S. 11A – Tribunal’s power to interfere with dismissal and quantum of punishment.

Punjab Land Development Corpn. (1990)

Wide interpretation of “retrenchment” – termination for any reason whatsoever (subject to exceptions).

Management of Indian Oil Corpn. v. Workmen

Principles governing lay-off compensation and continuous service.

Quick Reference – Key Provisions

Strike / Lock-out	Ss. 22, 23, 24, 26
Lay-off	S. 2(kkk), Ss. 25C, 25M
Retrenchment	S. 2(oo), Ss. 25F, 25N
Closure	S. 2(cc), Ss. 25FFF, 25O
Transfer	S. 25FF
Notice of Change	S. 9A
Pendency Protection	Ss. 33, 33A
Standing Orders	Industrial Employment (SO) Act, 1946

Key Takeaways – Unit III

- Strike and lock-out are regulated weapons; illegal ones attract penalties and may affect relief.
- Lay-off is temporary inability to give work; retrenchment is termination for any reason (subject to exceptions).
- Chapter V-B imposes prior-permission requirements for larger establishments – a major restriction on managerial freedom.
- S. 11A empowers adjudicators to reappraise evidence and mould relief in discharge/dismissal cases.
- Ss. 33 & 33A protect workmen during pendency of proceedings from unilateral adverse action.
- Certified Standing Orders have statutory force and govern day-to-day service conditions.

End of Unit – III

Strikes • Lock-outs • Lay-off • Retrenchment • Closure • Standing Orders

Proceed to Unit-IV: Social Security – EC Act & ESI Act