



Aatma Capital
Nurturing Relationships



Industrial Relations Code, 2020

Part III

CS Meenakshi Jayaraman

A member of



Independent legal & accounting firms

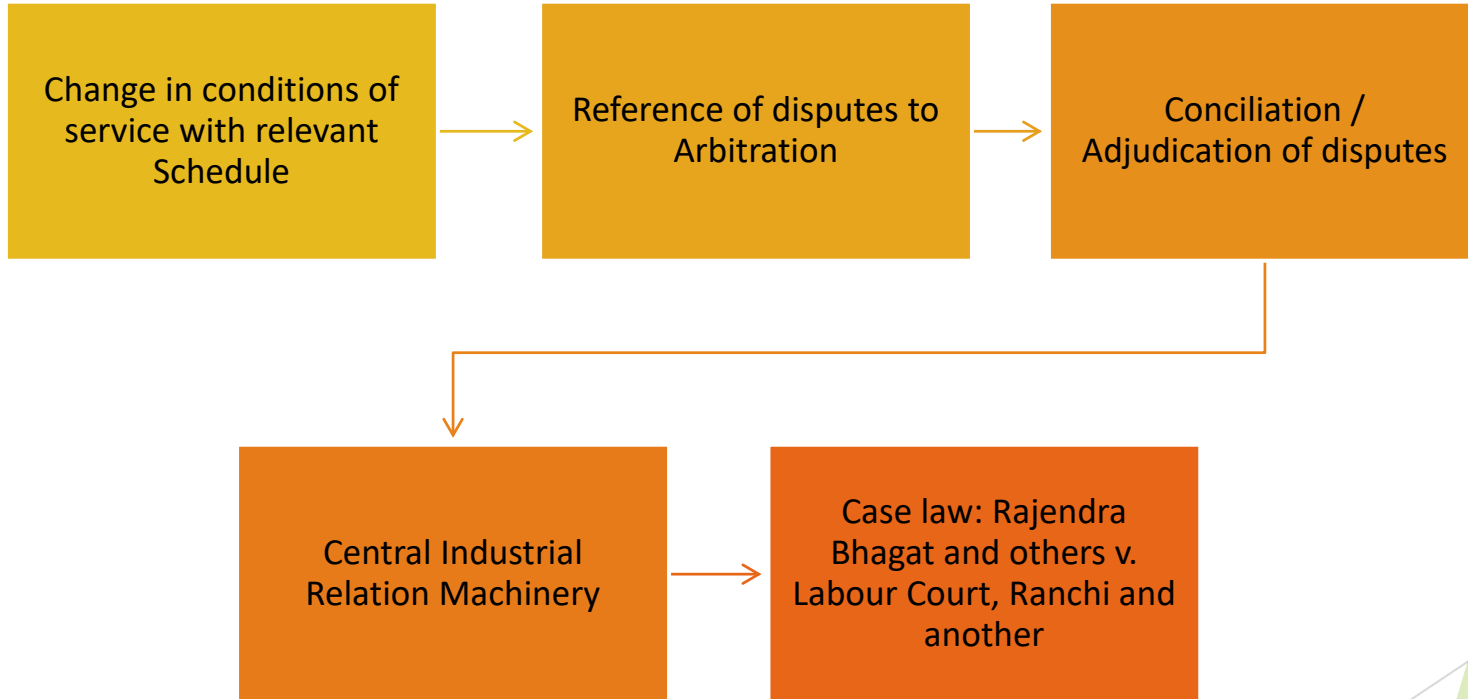
Credits and Acknowledgments

Iswariya BS

Legends used in the Presentation

CG	Central Government	NC	Negotiating Council
CIRM	Central Industrial Relation Machinery	NU	Negotiating Union
Code	Industrial Relations Code	PSU	Public Sector Undertaking
CPC	Civil Procedure Code	Rep.	Representative
Govt.	Government	SG	State Government
HC	High Court	SC	Supreme Court
IPC	Indian Penal Code	TU	Trade Union

Presentation Schema



Definition

Appropriate Government means

For an industrial establishment / undertaking carried on by / under the authority of CG / established by the Central Act / central PSU – **CG**

For an industrial establishment / undertaking, including state PSU and bodies owned and controlled by the SG – **SG**

Award means an interim / a final determination of any industrial dispute / of any question relating thereto by any Industrial Tribunal / National Industrial Tribunal and includes an arbitration award

Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and worker arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and to the conciliation officer

Chapter V-Notice of Change

Any change in the conditions of service of a worker as specified in 3rd Schedule shall be made by employer only after-

Giving a notice of such change to the worker or

Within 21 days of giving such notice

No requirement of notice

- Settlement / award
- Worker affected to whom certain Rules / Regulations shall apply
- Emergency situations for change in shift
- Order of Appropriate Government

Exemption: Appropriate Government may exempt by notification any class of industrial establishment / workers

III Schedule

Matters for which notice to be given

Wages, its period and mode of payment

Contribution by Employer to PF / pension / for benefit of workers

Compensatory and other allowances

Working hours and rest intervals

Leave with wages and holidays

Working shift
except standing orders

Grade classification

Withdrawal of any customary concession / privilege / change in usage

Introduction / alteration of rules
except standing orders

Rationalisation, standardization / improvement of plant technique which is likely to lead to retrenchment of workers

Increase / reduction (other than casual) in the no. of persons employed / to be employed, not occasioned by circumstances over which the employer has no control

Chapter VI - Voluntary reference of disputes to Arbitration

Employer & worker can **refer the existing industrial dispute / dispute that is apprehended to arbitration** by a written agreement

If the appropriate Govt. is satisfied that the dispute involves representation of majority of each party, notification may be issued and persons who are not parties to the agreement may be given an opportunity of presenting their cases

In case of reference of industrial dispute to arbitration, the appropriate Govt. may also order to **prohibit the strike / lock-outs** existing on the date of reference in connection with the dispute

Representation before the Arbitrator by NU / NC / TU / representative of workers. If the dispute relates to termination of individual worker – concerned worker / his authorised representative

Arbitration and Conciliation Act, 1996 shall not apply

Chapter VII- Mechanism for resolution of Industrial Dispute

Essence of the Chapter

Conciliation officer & Tribunal

- Appropriate Govt. can appoint conciliation officers and constitute Industrial tribunal / national Industrial Tribunal with Judicial and Administrative members

Finality of constitution

- Terms of appointment, salaries, allowances and such other matters will be decided by the appropriate Govt. and the appointment of members made by the appropriate Govt. shall be final

Decision of Tribunal

- Decision of Tribunal shall be by consensus of the members. If the members have difference opinion in the decision of Tribunal, they can make reference of the same to the appropriate Govt. for final decision

Powers of civil court

- Conciliation officer and Tribunals shall have the same powers of Civil Court as specified in CPC, 1908 and inquiry / investigations by the Tribunal shall deemed to be the judicial proceedings under IPC, 1860

Distinguish

Arbitration

- Is a process in which the conflicting parties agree to refer their dispute to a neutral third party known as 'Arbitrator'.
- In arbitration the arbitrator gives his judgment on a dispute

Conciliation

- Means reconciliation of differences between persons. It is a process by which representatives of workers and employers are brought together before a third party known as "Conciliator" to arrive an agreement by mutual understanding
- Conciliator makes the disputing parties to reach at a decision

Adjudication

- Referring the dispute to an independent third party with or without the consent of the disputing parties

Transfer of cases / officers

Before the commencement of the Code

- Cases that are pending in the Labour Court / Tribunal / National Tribunal constituted under Industrial Disputes Act, 1947 shall be **transferred** to the appropriate Tribunals
- And it shall be dealt with de novo / stage at which it is pending before the transfer

- Presiding officer of Labour Court / Tribunal / National Tribunal, who is holding the office and satisfies the qualification of officer under the Code shall be the **Judicial member** of Tribunal / National tribunal and they can continue as such for the remaining period

Fairness to the worker under the Code

- If Tribunal / National Industrial Tribunal by its award directs reinstatement of any worker
- and the employer prefers any proceedings against such award in a HC / SC,
- the employer shall be liable to pay during the period of pendency of such proceedings, **full wages last drawn** by him, **including any maintenance allowance**,
- if the worker had **not been employed in any establishment** during such period
- and **an affidavit** by such worker had been filed to that effect in such Court

- Any money due to a worker from an employer under a settlement / award / lay-off / retrenchment / closure, the worker himself / any other person authorised by him in writing can make an application to the appropriate Govt. for the recovery of the money due to him
- **Time period** within which the application can be made: 1 year from the date on which money became due. After 1 year sufficient cause has to be shown
- Workers employed under the same employer can make a single application for recovery of due

Central Industrial Relation Machinery (CIRM)

Chief labour Commissioner's (Central) Organisation also known as CIRM is an office attached to Ministry of labour and Employment with the task of maintaining the Industrial Relations, enforcement of labour laws and verification of Central TU Organisation

It ensures
harmonious
Industrial Relations
by-

Monitoring of Industrial Relations in Central Sphere

Intervention, mediation and conciliation in Industrial Disputes in order to bring about settlement of disputes

Intervention in situations of threatened strikes and lockouts with a view to avert the strikes and lockouts

Implementation of settlements and awards

Enforcement of other provisions in Industrial Disputes Act, 1947 relating to: Works Committee, Recovery of Dues, Lay Off, Retrenchment, Unfair Labour Practices etc.

Contd.

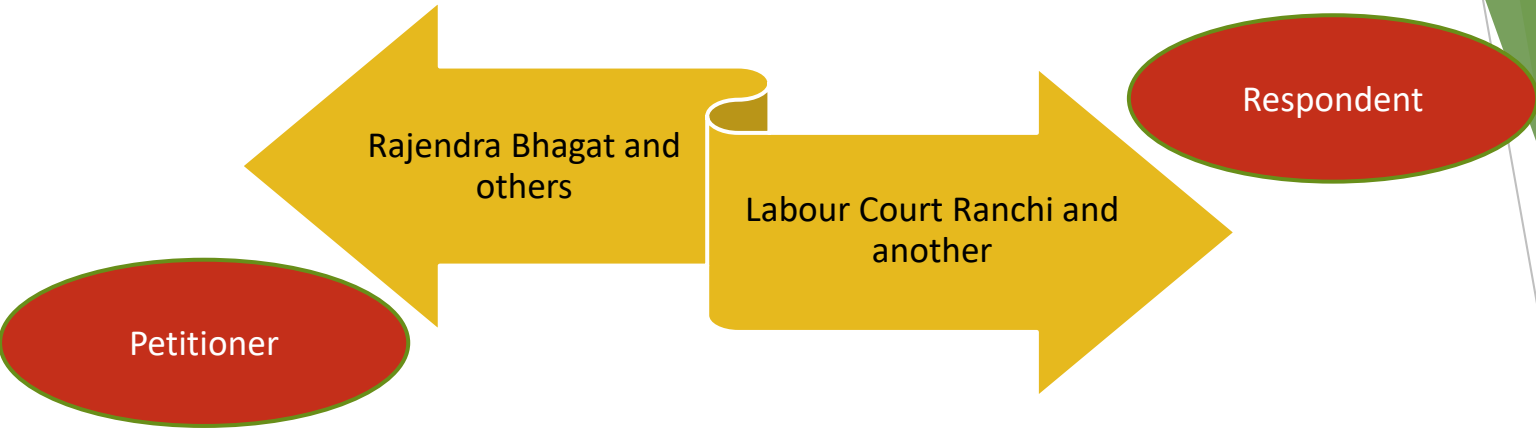
Statistics of Industrial disputes handled / disposed of / strikes averted by CIRM

Particulars	2019 (April to October)	2018-2019
Industrial disputes handled	9823	12427
Industrial disputes disposed of	5006	7976
Strikes averted	283	461

Benefit to workers due to intervention by CIRM

Particulars	2019 (April to October)	2018-2019
No. of workers benefited	98613	127577
Amount of relief to the above workers	Rs. 682 crores	Rs. 1323 crores
No. of workers regularised / re-instated	243	2693

Case law



Facts of the case

Petitioners being permanent employees were not getting bonus and other reliefs. As a result of which, they made continuous demands.

Being displeased, the management did not allow the petitioners to attend their duties and finally terminated their services by striking off their names from the employment register w.e.f. 13/14.03.1988

A dispute was raised and the matter was referred for adjudication before the Labour Court, Ranchi

Contd.

- The management took various plea including that the petitioners were seasonal / casual labourers and they used to render services during loading & unloading seasons as daily rated casual labourers

- Labour Court on its award dated 10/03/1997 pronounced the following:
 - a) Concerned workmen were workmen as per the definition of Industrial Disputes Act
 - b) Order of termination was not justified and it was against the principles of Industrial law and violation of Section 25F of Industrial Disputes Act

- Labour Court awarded reinstatement, but declined to grant the relief of back wages for the following reasons-
 - a) Concerned Workmen did not perform any duties from the date of termination
 - b) Petitioners were involved in running a betel ship / plying rickshaw / cultivation and except 2 workers none of them had been examined by the Court

- On applying the principles of “no work no pay”, it granted only reinstatement but did not grant back wages

Appeal to Jharkhand HC

Learned counsel of petitioner prayed before the Jharkhand HC to make necessary correction in the cause title of the writ application

Learned counsel of respondent submitted that no relief should be granted to the petitioners as they were only casual workers

But, the HC rejected the same on the fact that there is a clear finding by the Labour Court that concerned workmen were permanent labourers

As the termination was found to be in violation of the Act, the workmen concerned will always be deemed to be in service throughout and once that conclusion is reached and unless there is a clear evidence of gainful employment in the meantime, the concerned workmen cannot be deprived of their back wages to any extent

Learned counsel of respondent submitted that the concerned workmen were gainfully employed and did not perform any work

Contd.

The act of not performing any duty cannot be said to be on account of own violation by the petitioners

Petitioners were involved in self employment to earn livelihood for self and family and it cannot be equated with gainful employment

In the case of, **Ranchi Electric Supply Company Limited v. Suresh Sahu**, it was held that the concept of employment in the Industrial sense involved 3 ingredients- employer, employee and contract of employment

Contd.

Analysis of Jharkhand HC

HC made the following order on 18/06/2003:

- ✓ As the order of termination was contrary to the provisions of Industrial Disputes Act and unjustified. It would be deemed that the petitioners were always in service and therefore, they would be entitled to all benefits that are associated with continuous service
- ✓ The petitioners, having already been held to be permanent employees of the management, the denial of back wages to them was neither fair nor proper
- ✓ The writ application was therefore allowed and the portion of award which declined to grant the relief of back wages was set aside
- ✓ The award was accordingly and appropriately modified to the extent that besides restatement, the concerned workmen be entitled to back wages.



Aatma Capital
Nurturing Relationships



Scan the QR Code to Join our
Research Group on WhatsApp

Thank You!



Scan the QR Code to explore more
Research from our Website

DVS Advisors LLP

India-Singapore-London-Dubai-Malaysia-Africa

www.dvsca.com

Copyrights © 2020 DVS Advisors LLP

A member of



Independent legal & accounting firms