

TCS case may throw spotlight on job termination in IT industry

Synopsis

"Awareness of workers' rights keeps increasing as we come across more judgments of similar nature. As this order involves one of the largest Indian IT companies, it will create an impact on the industry with respect to employment termination cases," said Vikram Shroff, head, human resource laws (employment and labour) at Nishith Desai Associates.

The spotlight is on [unlawful terminations](#) in the country after a [Chennai labour court](#) recently asked [Tata Consultancy Services \(TCS\)](#) to reinstate with back wages an employee who was asked to leave over seven years ago.

This case, they added, may be used as a reference point in future whenever there are [mass layoffs](#) or performance-related unlawful terminations of employees.

"Awareness of workers' rights keeps increasing as we come across more judgments of similar nature. As this order involves one of the largest Indian IT companies, it will create an impact on the industry with respect to employment termination cases," said Vikram Shroff, head, human resource laws (employment and labour) at Nishith Desai Associates.

"The definition of workman under the law is fairly wide and does not change under the new labour codes. There are limited exclusions on who can't be considered as a workman. Employers should be wary of adopting a one-size-fits-all approach and instead make a determination on a case-specific basis," Shroff said.

India's common law system considers case laws for judgements and it is necessary to take cognisance of such developments with respect to job termination, which remains the most litigated aspect in labour law, he added.

Earlier this month, the Principal Labour Court in Chennai, under presiding officer C Kumarappan, asked India's largest IT services provider by revenue to reinstate Thirumalai Selvan Shanmugam with continuity of service, back wages and all other attendant benefits after a seven-year trial.

It set aside his performance-linked termination in 2015, following a plea by Shanmugam.

The court did not accept the TCS counsel's argument that Shanmugam was not covered under the 'workman' definition of the Industrial Disputes Act, as he was performing a role of supervisory nature.

"One of the clear implications of this ruling is that the IT sector cannot be under any misconception whatsoever that its employees are automatically exempt from the Industrial Disputes Act," said Sowmya Kumar, partner, IndusLaw.

TCS did not comment on the matter as it is sub judice.

The Forum for IT Employees was part of the litigation and it reflects the growing involvement of IT sector unions of late and the influence of unions is no longer limited to traditional industries, Kumar said. "This is another factor

that must be taken into account in any scenario involving termination of the workforce,” she added.

The judgments in such cases are “always” fact-driven, said Atul Gupta, partner at law firm Trilegal.

“Due to the counterparty involved, there might be added focus on this ruling as there are fewer significant rulings in relation to IT workers. It does not result in any new or special law. But IT organizations should certainly be better prepared and structured in their approach for performance-related or large-scale exits due to increased awareness and greater chances of employees questioning their actions,” Gupta said.

There is at present no mechanism under labour law to calculate or award monetary damages in case of unlawful termination of employment. As a thumb rule, labour courts generally grant reinstatement with back wages and continuity of service, legal experts said.

TCS could go on appeal in this case, they added.

“Normally, one can go to the High Court to challenge the ruling. The basis will again be fact specific – it would depend on whether the employer views the ruling as flawed enough to approach the Court under its writ jurisdiction. But the matter can be disputed,” Gupta of Trilegal said.

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