

HR Law Hotline

January 16, 2015

EMPLOYMENT TERMINATION IN INDIA - HIGH COURT INJUNCTION AGAINST IT SECTOR EMPLOYER

The Madras High Court has restrained India's leading information technology ("IT") company from terminating the employment of a software analyst. Though the facts are still awaited, such a development appears to be the first of its kind for the Indian IT industry, which is one of the largest employers of organized labour.

Newspaper reports¹ suggest that the employee has claimed to be a 'workman' and has contended that the termination of her employment is in violation of the statute. The Industrial Disputes Act, 1947 ("ID Act"), India's most important labour law governing employer-employee relationships, prescribes the mechanism to be followed by employers for retrenchment (termination) of 'workmen' and the compensation payable upon such termination.

In light of the development, we have set out below some important provisions of law to be considered by employers in the software services sector with respect to employment termination.

- **Workman under the ID Act:** The ID Act protects only those employees who are categorized as 'workmen'. A 'workman', as per the statute, is any person employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. The definition however excludes an employee employed in the managerial or administrative capacity; or in a supervisory capacity drawing wages exceeding INR 10,000 (approx. US\$ 167) per month. The scope of the term 'workman' has been highly litigated in India
- **Concept of Retrenchment:** The ID Act defines 'retrenchment' as termination of employment by the employer for any reason other than as a punishment inflicted by way of disciplinary action. Retrenchment does not include: (i) voluntary retirement of the workman; (ii) retirement of the workman upon superannuation; (iii) termination as a result of the non-renewal of the contract of employment on its expiry; or (iv) termination on the ground of continued ill-health.
- **Employer Obligations:** The ID Act provides that a workman who has been in continuous service for at least one year can be retrenched only if the workman has been given at least one month's notice in writing indicating the reasons for retrenchment, or payment of wages in lieu thereof. In addition, the workman is entitled to receiving retrenchment compensation (severance) equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. Employers are also required to notify the labour authorities about the retrenchment, in the prescribed manner and within the prescribed timeline. In addition to these provisions, the employment termination provisions under the state-specific statutes applicable to shops and establishments, standing orders, the employment contract and HR policies also need to be complied with. In case of a conflict, the provision that is more favourable to the employee would need to be adhered to.
- **Termination sequence:** The ID Act requires an employer to follow the last-in-first-out sequence while terminating employment. Accordingly, the employer is to terminate the workman who was the last person to be employed in that category. Such a sequence for termination may not be followed in situations where (i) there is an agreement between the employer and the workman to the contrary; or (ii) the employer can provide adequate reasons for terminating any other workman.
- **Re-employment of terminated workers:** The ID Act obligates an employer to allow an opportunity to the terminated workmen to offer themselves for re-employment and such terminated workmen who apply for re-employment are to be given preference over others.

While this specific case could involve dimensions under statutes other than the ID Act, including protection of the employee under the Maternity Benefit Act, 1961, considering the repercussions, including the negative publicity and reputational risks, it is probably time for companies in the IT sector to re-evaluate and ensure their compliance with applicable employment laws.

Recent news articles² also indicate the beginning of unionisation in the IT sector. Traditionally, union activity was limited to manufacturing and allied sectors. IT sector employees are now engaging with labour unions such as the Forum for IT Employees³ and the Young Tamil Nadu Movement. In addition to traditional forms of collective bargaining, labour unions are initiating online campaigns and resorting to social media with a view to secure employees their statutory rights.

– Preetha S, Veena Gopalakrishnan & Vikram Shroff
You can direct your queries or comments to the authors

¹ <http://timesofindia.indiatimes.com/city/chennai/Madras-high-court-stays-termination-of-TCS-employee/articleshow/45870194.cms>;
<http://www.thehindubusinessline.com/features/smartbuy/tech-news/court-stays-termination-of-tcs-staff/article6785746.ece>;
<http://www.outlookindia.com/news/article/HC-Restrains-TCS-From-Retrenching-Its-Analyst/877174>;
http://thefirstmail.in/news/news-details/50925-hc_restrains_tcs_from_retrenching_its_analyst#sthash.1S5FDUP8.dpbs

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² <http://timesofindia.indiatimes.com/city/chennai/Trade-union-starts-IT-employees-wing-asks-techies-to-join/articleshow/45838832.cms>
<http://www.thehindu.com/news/cities/chennai/trade-unions-urge-it-employees-to-sign-up/article6773788.ece>
<http://www.livemint.com/Industry/nIE4J9rb53vz3FVAQFP/Are-trade-unions-gaining-a-foothold-in-IT-sector.html>
³ <http://fite.org.in/2015/01/13/madras-hc-stays-tcs-to-terminate-a-women-employee-a-ray-of-hope-for-many/>

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