

# BULLETIN

## Management Consultants on Industrial Relations and Personnel Management

# 587, 1st Cross, III Block, Sarjapur Road, Koramangala, Bangalore-560034.  
Phone : 25502304, 25502415, 25502416 Telefax : 25502439

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### UNBELIEVABLE BUT TRUE

*"That almost 48% of IT professionals believe their enterprises lose more than Rs. 50,000 per employee who shops online using a work issued device".*

*-L L R - January / 2011.*

### LAY-OFF

Lay-off is defined in Section 2(kkk) of the Industrial Disputes Act, 1947, reproduced below:

**"Section 2. Definition.** (kkk) "lay-off" (with its grammatical variations and cognate expressions) 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.

**Explanation:** Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have

been laid-off only for one-half of that day:

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;”

Section 25A states that Section 25-C to E is not applicable to an industrial establishments which employs less than 50 workmen during the last **one month**.

25-C. Right of workmen laid-off for compensation

25-D. Duty of an employer to maintain muster rolls of workmen

25-E. Workmen not entitled to compensation in certain cases

This means that if an industrial establishment employs less than 50 workers during the last one month, they need not pay lay-off compensation as laid down under Section 25-C. However, as per the Supreme Court interpretation and as suggested by us to be incorporated in each worker’s appointment letter that in the event of an industrial establishment employing less than 50 workmen and in the event of their being laid off, such laid off workers will not be eligible to be paid any lay-off compensation or will be paid 25% of their wages as lay-off compensation – this should be incorporated in their appointment letters. Draft of such appointment letters are already with us.

If no such appointment letter is given, an industrial establishment employing less than 50 workmen is liable to pay full wages for the period of lay-off.

We have advised our client companies time and again in this matter and prepared appropriate appointment letters to be issued. But in our experience we see that either the employers have not understood this subtle variation in law or they have taken it lightly.

Lay-off compensation shall be at 50% of the basic wages and dearness allowance.

Proportionate bonus has to be paid on lay-off compensation. EPF and ESI contributions are also payable on lay-off compensation.

Form 01 – notice of commencement of lay-off, has to be sent to the authorities, within 7 days of commencement of lay-off and Form 02 – notice of termination of lay -off, within 7 days of lifting of lay off.

No seniority need be considered while laying off workmen.

The Management also should put up a notice announcing lay-off, containing the list of workmen who will be laid off, on the notice board or the gates of the Company.

If the workmen are not required to sign the lay-off register in the opinion of the Management, arrangements should be made to obtain their last postal address, to communicate them the lifting of lay-off.

Section 25C provides for payment of lay-off compensation @ 50% of total of basic wages and dearness allowance of the workmen for the period of lay-off. It is also provided that if a worker is laid off for more than 45 days during any period of 12 months, no compensation is payable for the period of lay-off beyond 45 days, if there is an agreement to that effect between the workman and the employer.

It is further provided that it would be lawful for the employer in any case where the lay-off has been for more than 45 days in a period of 12 months, to retrench the employees as though in Section 25F and in such cases, lay off compensation paid can be set off against the retrenchment compensation payable.

Section 25E states that a worker who refuses to accept any alternate employment in the industrial establishment where he has been laid off or in any other establishment belonging to the employer, situated in the same town within a radius of 8 kms., and if the alternate employment does not call for any special skill or previous experience and without reducing his normal wages, then on such refusal to do the alternate employment, such worker will not be eligible to be paid any lay-off compensation.

Secondly, if the laid off worker does not present him for work during working hours atleast once in a day.

Thirdly, if the lay off is due to slowing down of production or strike in another section of the establishment, then the said worker could be laid off without compensation.

## CONSUMER PRICE INDEX NUMBER

The Consumer Price Index Number for the Working class of Bangalore Centre, Simla Series  
(Base Year 1960=100) for **May 2011 = 4901 Points**

## BANGALORE EMPLOYERS' ASSOCIATION - BULLETIN

### **A TEMPORARY EMPLOYEE NOT APPOINTED TO A SANCTIONED POST CANNOT HAVE ANY RIGHT TO THE POST - SUPREME COURT.**

Smt. Rekha Rani had a degree in Bachelor of Ayurvedic Medicine and Surgery. She was appointed on 1.8.1987 under a temporary scheme of the State Government as medical officer and was posted at Government Hospital, Bulandshahar. She worked from 1.8.1987 to 31.7.1988, 3.8.1988 to 2.8.1989 and from 4.8.1989 to 3.8.1990 and for another one year from 7.8.1990. She was given service certificates for satisfactory work by the Chief Medical Officer. She had been given artificial breaks in service as indicated above.

The temporary doctors filed writ petition in 1990 before the Allahabad High Court about artificial break in service which was allowed on 11.2.1992. The High Court also directed to consider their regularization within six months. The appeal filed by the State Government in the Supreme Court was dismissed on 19.2.1996.

In the meantime, Smt. Rekha Rani was not continued in the State service from 16.4.1991. Though she made several representations to the Government the same was not considered. She claimed that as per the orders of the High Court dated 11.2.1992 in respect of temporary doctors and confirmed by the Hon'ble Supreme Court on 19.2.1996 she is entitled for regularization. The High Court allowed the writ petition. The State Government filed Appeal to the Hon'ble Supreme Court.

The Apex Court found that Smt. Rekha Rani was not continued after 16.4.1991 whereas other temporary doctors continued upto 1996 were regularized as per the orders of the High Court and Supreme Court. In the meantime the appointment of medical officers in Government Service was brought under the purview of U.P. Public Service Commission. The Apex Court also found that the temporary employee had no right to the post. Further held that merely because some other temporary doctors had been regularized it does not give any right to her. An illegality cannot be perpetuated.

Therefore, the Apex Court allowed the appeal of the State Government and set aside the order of the High Court and the writ petition filed by Smt. Rekha Rani was dismissed.

This is a decision pertaining to employment in Government service and the status of a temporary employee. Whereas in Industrial Employment also though a temporary worker has no right to the post but if he is continued for 3 to 4 years, the provisions of I.D. Act would be attracted.

The judgment is reported in **2011 II CLR 17** in the case of State of **U.P. vs. Rekha Rani**.

**The judgment is rendered by Hon'ble Mr. Justice Markandey Katju and Justice Smt. Gyan Sudha Misra.**

**- SOMASHEKAR**  
*Treasurer*  
*Bangalore Employers' Association*