

PROGRAMME REPORT (P-1143)

NATIONAL JUDICIAL ACADEMY



REFRESHER COURSE FOR LABOUR COURTS

7 to 9 December, 2018

At the National Judicial Academy, Bhopal

PREPARED BY
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The National Judicial Academy (NJA) organized a three day “Refresher Course for Labour Courts” from 07 – 09 December, 2018 at the NJA, Bhopal.

The objective of the course was to provide a forum for sharing experiences with regard to impediments to speedy and efficacious dispensation of cases and for identifying optimal solutions to contentious issues which retard efficacious and speedy disposal of cases. The course also aimed at facilitating discussions on evolving norms and jurisprudence in respect of labour disputes. The course involved discussions on labour & management; evolving perspectives; constitutional signals, the role of courts, contract labour, unfair labour practices, reinstatement, back wages, retrenchment, lay off, dismissal, discharge, strikes and lockouts as well.

About 25 judicial officers nominated by different High Courts participated in the course. The course was divided into eight sessions over the duration of 3 days on *following themes*.

**SESSION -1-LABOUR & MANAGEMENT: EVOLVING PERSPECTIVES:
CONSTITUTIONAL SIGNALS, THE ROLE OF COURTS**

SESSION -2-CONTRACT LABOUR: ISSUES AND CHALLENGES

SESSION -3-UNFAIR LABOUR PRACTICES

SESSION- 4-DISMISSAL AND DISCHARGE

**SESSION -5-RETRENCHMENT AND LAY OFF: BALANCING RIGHTS OF LABOUR AND
INTEREST OF EMPLOYER**

SESSION- 6 -REINSTATEMENT AND BACK WAGES

SESSION -7-STRIKES AND LOCKOUT

**SESSION -8-IMPROVING THE EFFICIENCY OF LABOUR COURTS: CONSTRAINTS
AND SOLUTIONS**

PROGRAMME SCHEDULE (P-1143)

REFRESHER COURSE FOR LABOUR COURTS

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TIMING	SESSION(S)
Friday	DAY-1: 07.12.2018
10:00AM - 11:30AM	SESSION 1 Labour & Management : Evolving Perspectives: Constitutional Signals, The Role of Courts Speakers: Prof. (Dr.) B.T. Kaul & Prof. (Dr.) R. K. Murali
11:30AM - 12:00PM	Tea Break
12:00PM - 13:30PM	SESSION 2 Contract Labour: Issues and Challenges Chair: Prof. (Dr.) B.T. Kaul Speaker: Prof. (Dr.) R. K. Murali
13:30PM - 14:30PM	Lunch
14:30PM - 16:00PM (In house tea at 15:30 PM)	SESSION 3 Unfair Labour Practices Speakers: Prof. (Dr.) B.T. Kaul & Prof. (Dr.) R. K. Murali
Saturday	DAY-2: 08.12.2018
10:00AM - 11:30AM	SESSION 4 Dismissal and Discharge Speakers: Justice R.V. Ghuge & Mr. Sunil Kumar Tripathi Co-Chair: Prof. (Dr.) S. C. Srivastava & Justice Rajashekhar Mantha
11:30AM - 12:00PM	Tea Break
12:00PM - 13:30PM	SESSION 5 Retrenchment and Lay Off : Balancing Rights of Labour and Interests of Employer Speakers: Justice Rajashekhar Mantha & Prof. (Dr.) B.T. Kaul Co-Chair: : Prof. (Dr.) S. C. Srivastava & Justice R.V. Ghuge
13:30PM - 14:30PM	Lunch
14:30PM - 16:00PM (In house tea at 15:30 PM)	SESSION 6 Reinstatement and Back Wages Speakers: Justice R.V. Ghuge & Justice Rajashekhar Mantha Co-Chair: : Prof. (Dr.) S. C. Srivastava & Prof. (Dr.) B.T. Kaul
Sunday	DAY-3: 09.12.2018

10:00AM - 11:30AM	<p style="text-align: center;">SESSION 7 Strike, Lockout and Closure Speaker: Mr. Sunil Kumar Tripathi Chair: Prof. (Dr.) S. C. Srivastava</p>
11:30AM - 12:00PM	<i>Tea Break</i>
12:00PM-13:25PM	<p style="text-align: center;">SESSION 8 Improving the Efficiency of Labour Courts: Constraints and Solutions Speakers: Prof. (Dr.) B.T. Kaul & Mr. Sunil Kumar Tripathi Chair: Prof. (Dr.) S. C. Srivastava</p>
13:25PM - 13:30PM	<i>Audit of the Course by Participant Judges</i>
13.30PM - 14.30PM	<i>Lunch</i>

SESSION 1

Labour & Management: Evolving Perspectives: Constitutional Signals, The Role of Courts

Speakers: Prof. (Dr.) B.T. Kaul & Prof. (Dr.) R. K. Murali

- The session began with discussion on the concept of socio-economic justice in context of labour law in India. Constitutional provisions with respect to protection to weaker and disadvantaged section of labour were highlighted during the sessions. The schemes of the labour laws covered under various Acts were briefly explained to the participants.
- The contribution of the Supreme Court of India in developing labour law jurisprudence was also highlighted to the participants. The landmark judgements such as BALCO Employees Union Registered v. Union of India (2002) 2 SCC 333 and National Textile Workers Union v. P.R. Ramakrishnan (1983) 1 SCC 228 were discussed in detail.
- Various important aspects under legislative measures regulating industrial relations in India and development of labour jurisprudence were discussed in the session.

SESSION 2

Contract Labour: Issues & Challenges

Chair: Prof. (Dr.) B.T. Kaul & Speaker: Prof. (Dr.) R. K. Murali

- Session began with explaining scheme of The Contract Labour (Regulation & Abolition) Act, 1970; important provisions under the Act such as prohibition of employment of contract labour, penalties and procedure were highlighted and explained to the participants. The landmark judgement of Standard Vacuum Refining Co. AIR 1960 SC 948, Steel Authority of India v. National Union Water Front Workers, LLJ 2001 SC 239, Secretary State of Karnataka and others v. Umadevi & ors, AIR 2006 SC 1806 and State of Punjab and others v Jagjit Singh and others (2017) 1 SCC 148 were also discussed during the session.

SESSION 3

Unfair Labour Practices

Speakers: Prof. (Dr.) B.T. Kaul & Prof. (Dr.) R. K. Murali

- The evolution and development of the concept of unfair labour practices from historical point of view was discussed. It was emphasized that the expression ‘unfair labour practices’ in context of India has not always been used to mean only activities which hinder the smooth functioning of collective bargaining.
- It was stressed that the expression as used in legislation and in the decisions of the courts is used in a wider and looser sense to cover unjust dismissals, unmerited promotions and every form of victimization.
- Landmark cases such as Mackinnon Mackenzie and Company Limited v Mackinnon Employees (2015) 4 SCC 544, Union Umrula Gram Panchayat v Secretary, Municipal Employees Union and others 2015(4) SCALE 334 and Bajaj Auto Limited v Rajendra Kumar Jagannath Kathar and others (2013) 5 SCC 691 were referred during the discussion.

SESSION 4

Dismissal and Discharge

Speakers: Justice R.V. Ghuge & Mr. Sunil Kumar Tripathi

Co-Chair: Prof. (Dr.) S. C. Srivastava & Justice Rajashekhar Mantha

SESSION 5

Retrenchment and Lay Off : Balancing Rights of Labour and Interests of Employer

Speakers: Justice Rajashekhar Mantha & Prof. (Dr.) B.T. Kaul

Co-Chair: Prof. (Dr.) S. C. Srivastava & Justice R.V. Ghuge

SESSION 6

Reinstatement and Back Wages

Speakers: Justice R.V. Ghuge & Justice Rajashekhar Mantha

Co-Chair: Prof. (Dr.) S. C. Srivastava & Prof. (Dr.) B.T. Kaul

- The session began with a question, what is dismissal and discharge? The meaning of dismissal and discharge with the help of landmark judgements and illustrations was explained to the participants. It was stressed that both discharge and dismissal are forms of termination of service. Dismissal is termination by way of punishment for misconduct, whereas discharge is classically a termination not by way of punishment and involving no stigma against the terminated employee.
- The expression discharge and dismissal was further explained through landmark judgements.
- The philosophy behind retrenchment, its meaning under 2(oo) and lay off was explained to the participants. While elaborating the scope of section 25 (F) of the Act through

landmark judgements, it was stressed that in catena of decisions it is held that where the termination is illegal, and especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits.

- It was further emphasized that the normal rule on the grant of reinstatement pursuant to an illegal termination was that it should be done with full backwages, except to the extent that the workman was gainfully employed in the interregnum, with the burden on the employer to establish the circumstances necessitating departure from the rule.
- Scope of section 11A was also discussed with the participants in the sessions.
- Some important judgements that discussed during the sessions were

State Bank of India vs. Workmen of State Bank of India 1991 1 SCC 13

State Bank of India vs. T.J. Paul AIR 1999 SC 1994

Hirakud Dam v. State of Orissa, (1971) 1 SCC 583

Union of India v. Ghulam Mohammed Bhat, (2005) 13 SCC 228

Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma, (2002) 2 SCC 244

Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813

Mazdoor Sangh v. Usha Breco Ltd., (2008) 5 SCC 554

Cipla Ltd. and Others v. Ripu Daman Bhanot and another, 1999 LLR 534

Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union and Others,
1999 LLR 180 (SC)

Mohan Lal v. Management, Bharat Electronics Ltd (1981 LAB I.C. 806)

State of Bombay V/s. Hospital Mazdoor Sabha (1960 2 SCR 866)

Surendra Kumar Verma V/s. Central Government Industrial Tribunal–cum–Labour

Court, New Delhi (1980 4 SCC 443)

Safdarjung Hospital v. Kuldeed Singh (1970 1 SCC 735)

Mulin Sharma v State of Assam and others AIR 2016 SC 3225

Jasmer Singh v State of Haryana and another (2015) 4 SCC 458

B.S.N.L. v Bhurumal (2014) 7 SCC 177

Hari Nandan Prasad and another v Employer I/R to Management of FCI and another
(2014) 7 SCC 190

Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others
(2013) 10 SCC 324

Asst. Engineer, Rajasthan Development Corporation &Anr. v Gitam Singh (2013) 5 SCC

SESSION 7

Strike, Lockout and Closure

Speaker: Mr. Sunil Kumar Tripathi

Chair: Prof. (Dr.) S. C. Srivastava

- Session began with discussion on relevant provisions under Industrial Dispute Act on strike, lockout and closure. Meaning of strike under 2 (q), lockout under 2(1) and closure under 2(cc) of the Act was also explained to the participants, thereafter, attention was drawn to the ingredients, types of strike and leading case laws.
- Following landmark judgements were discussed and explained during the session
Hindustan Steel Ltd. Vs. Workmen (1973) 3 SCC 564,
Workmen Vs. Indian Leaf Tobacco Dev. Co. (1969) 2SCR 282
General Labour Union Vs. B.V. Chavan 1985 LIC 726 SC
Syndicate Bank v. K. Umesh Nayak (1994) 5 SCC 572
Maruti Udyog Ltd. Vs. Ram Lal (2005)2 SCC 638
M/S. Empire Industries Limited v State Of Maharashtra And Others (2010) 4 SCC 272
- Provisions with respect to prohibition of strikes & lock-out, general prohibition for strikes & lock-out, Illegal strikes & lock –out, prohibition of financial aid to illegal strike & lock-out, prohibition of unfair labour practice, penalty for illegal strike & lock-out, Penalty for giving financial aid for illegal strike & lock-out, protection of person and representation of parties were also discussed in the session.

SESSION 8

Improving the Efficiency of Labour Courts: Constraints and Solutions

Speakers: Prof. (Dr.) B.T. Kaul & Mr. Sunil Kumar Tripathi

Chair: Prof. (Dr.) S. C. Srivastava

- It was an interactive session. Speakers discussed various challenges faced by labour Courts on day to day basis with their effective solutions. Many queries and questions with respect to practical problems were also raised and discussed during this session.