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Topic- What would constitute continuous services of workman under Industrial Dispute Act 1947?

The concept of workman is central to the concept of an industrial dispute as an industrial dispute can be raised either by a "workman" or an "employer." Since the Industrial Disputes Act, 1947 ("**ID Act**") is a piece of beneficial legislation, the courts have enlarged the scope and applicability of this Act by giving wide interpretation to the term "workman." Section 2(s) defines workman as any person (including an apprentice) **employed in any industry** to do any **manual, unskilled, skilled, technical, operational, clerical or supervisory work**, for **hire or reward**, terms of employment be express or implied and includes any such **person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute**. It excludes persons employed in army/Navy/Air Force/Police and those employed in *mainly managerial or administrative, supervisory capacity* and drawing wages of more than INR 6500.

The Courts have interpreted this definition and have identified various determining factors to know whether a person is "workman" or not. The factors which should be considered are **(a)** whether there is a Master-Servant relationship;¹ **(b)** when a person is performing various functions which overlap in their characteristics, the nature of main function for which the claimant is employed should be considered;² **(c)** work is either manual, skilled, unskilled, technical operational, clerical or supervisory in nature, the mere fact that it does not fall within the exception would not render a person to be workman; and **(d)** that the exceptions are not applicable.³ Further, designation, source of employment, method of recruitment, terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment should not be considered while determining whether a person can be termed as "workman."

Over a period of time, courts have interpreted specific points of contention in the definition under the ID Act which has enlarged the scope of the legislation. This note discusses some of the important components of section 2(s) and their interpretation by the courts below.

1. Supervisory and Managerial work

1.1 A person working in purely managerial and/or supervisory capacity does not fall within the definition of workman under ID Act. However, when a person performs multifarious functions, the nature of the main function performed by the person has to be considered to determine if the person is a "workman." The designation of a person is not a conclusive factor in determining the nature of work. Even if a person is designated as supervisor, the employer has to prove that his work and his duties were in nature of a supervisor.⁵

1.2 To squarely fall within the exception, the person must be (a) employed in a supervisory capacity; (b) draw more than INR 6500 as wages; and (c) primarily perform the functions of managerial nature. The emphasis really is to exclude those persons who are performing mainly managerial work and are employed in supervisory capacity i.e. evaluating the work of their subordinates. A managerial work includes powers and duties related to hiring and firing of new employees, grant of leave to employees and actual participation in the policy of the business. The managerial functions may not be performed as a consequence of a written contract but may be implied from the powers vested in a person or the nature of his duties. A mere leader of a team who makes checks and forwards it to seniors for consideration cannot be said to be covered within the exception.⁶ Further, a supervisor earning less than 6,500/- may also raise an industrial dispute for an increment in wages which may eventually exclude him from the definition of workman.⁷

2. Skilled and Unskilled manual and operational work

2.1 Courts have not formulated an explanation as to who are considered as people employed in "manual and operational work." Manual or operational work may be classified as one that requires no special set of skills. It is mostly associated with physical labour. By way of exception, the courts have excluded such works which need **imaginative or creative quotient**. A work that requires training would imply that the work is of special nature and requires a distinct application of mind. It is not considered a manual/clerical/operational work or technical work. However, in a few cases the courts have deviated from strict interpretation and excluded ancillary creative works while considering the definition of "workman." A person suggesting ways to increase sale is using an imaginative minds and therefore, is out of the scope of this definition. However, a person carrying out such ideas by distributing pamphlets or engaging in door-to-door publicity will be covered as a "workman" under the ID Act.

2.2 A salesperson may use various techniques to convince the consumers but that is not considered as use of creative or imaginative faculty and such sales person, even if he goes through a training to acquire knowledge about the product, will not be excluded from the definition of a workman.⁸

3. Part Time and Full Time workman

The number of working hours is not considered while determining whether a person qualifies as "workman" or not. However, there must exist a master-servant relationship between the employee and his employer. An independent contractor cannot be termed as a workman. The employer must be in a position to control the manner of employee's work.

The ID Act does not differentiate between part-time, full time, casual, daily wage,⁹ regular or permanent workman. All such individuals are subject to ID Act if they fulfill the ingredients as provided in section.

The End