# Q & A

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**We are a factory engaged in the manufacture of textiles registered under the Factories Act. On account of cost reduction, we wish to terminate certain workers. Would such termination be considered as retrenchment or lay-off. Also, please let us know about the requirements relating to notification to government authorities if we terminate the service of certain workers?**

Please note that termination of workmen on account of cost efficiency would be considered retrenchment under the Industrial Disputes Act, 1947 ("ID Act") and not lay-off.

Please note that the ID Act defines lay-off to mean the failure, refusal or inability of an employer to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and who has not been retrenched. Such failure, refusal or inability of the employer to give employment to workmen should be on account of shortage of coal, power or raw materials, or the accumulation of stocks, or the break-down of machinery, or natural calamity, or for any other connected reason.

Lay-off signifies a temporary inability of the employer to give employment to the workmen on account of shortage of coal, power or raw materials or because of accumulation of stocks or breakdown of machinery. Further, lay-off may or may not lead to cessation of relationship of employment. Thus, termination of employment of certain workmen by your establishment on account of cost efficiency would not be considered lay-off of such workmen. However, such termination would fall within the purview of retrenchment. Please note that the term 'retrenchment' has been defined under the ID Act to mean termination by the employer of the service of a workman for any reasons whatsoever, otherwise as a punishment inflicted by way of disciplinary action. However, retrenchment does not include the following:

(a) voluntary retirement of the workman;

(b) the retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or,

(c) termination of the service of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on expiry of such contract or on such contract being terminated under a stipulation in that behalf contained therein; or,

(d) termination of the service of a workman on the ground of continued ill-heath.

**We are a company based in Maharashtra. Currently, in our employment agreements, an employee is required to give two months notice at the time of his resignation. Similarly, we can terminate an employee after giving him two months notice. However, our higher management feels that the notice period should be reduced to one month, for all employees, whether they are in agreement or not. As employers, can we change our policy on notice period? Will it be sufficient to paste a notice on the common notice boards or should every employee be given a copy of the same? Please clarify.**

Please note that while a company is generally free to streamline, modify, or amend its employee policies, where specific terms have been agreed in the contract, any change in such terms may require prior consent or concurrence of the employee concerned. In other words, a unilateral action on the part of the employer may not be binding since a contract can only be amended by the consent of the parties thereto or in terms thereof. Thus, the employees should be duly informed regarding the proposed changes in the notice period requirements and the reasons for the change must also be explained to them. Further, the consent of the employee's concerned should also be obtained in writing. Instead of pasting a common notice, you may consider obtaining such consent separately from each affected employee.

**Abandoning or NCNS (No call No show) is a very common phenomenon in call centers and BPOs in India. Most of our attrition constitutes absconding cases. Though the employee abandons us, we still pay the salary up to the last working day and incentives earned in the previous month. As per statutory compliances, we need to process and pay the Provident Fund. Are we legally required to pay the employee his salary and incentives even if he absconds from work?**

Please note that in case of 'no call no show', the employer may treat the employment of the employee in question as terminated on and from the date the employee ceases to come to work. There is no obligation on the part of the employer to pay wages to the employee in question from the day the employee has abandoned work. Accordingly, after due enquiry and determination that the employee has quit without notice from a given date, you may re-determine the amount of provident fund contribution payable with respect to the employee for the month in which his / her employment is deemed to have been terminated. However, you may note that the incentives that an employee had earned during the period in which he / she actually was employed would be payable to such employee. HC

# Claim After VRS: The Bird In The Bush!

- BY **K.V.SINGH AND ANKITA RAI**

A learned Single Judge of the High Court of Andhra Pradesh had held in Satyanarayana Reddy v. Labour Court [W.P No. 4196 of 2005, order dated 21.03.2005] that once a workman has availed Voluntary Retirement Scheme ("VRS") and received the special compensation package, he is not entitled to put forth a claim for lay-off compensation before the labour court/industrial tribunal under Section 33-C(2) of ID Act. The Ld. Single Judge had relied upon the judgment of the Apex Court in A.K. Bindal v. Union of India . The court held that:

"Once the employees opt for voluntary retirement scheme and receive all the benefits, they are not entitled to agitate for any right to claim any benefits existed prior to their voluntary

retirement and hence rejected the petition. Since the exercise of jurisdiction is involved, the tribunal has rightly exercised its jurisdiction in rejecting the petition since the petitioners do not come within the meaning of workmen under Section 2(s) of the I.D. Act..."

It may be noted that Section 33-C(2) of the Industrial Disputes Act, 1947 ("ID Act") provides the following:

"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any Rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months]:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

The division bench of the High Court of Andhra Pradesh concurred with the decision of the Ld. Single Judge.

An SLP was filed against the said order of the division bench. A two judge bench of the Supreme Court noticed that the conclusion arrived at

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by the division bench of the High Court whereby it had given the stamp of approval to the judgment and order dated 21/3/2005 passed by the Ld. Single Judge of the said Court holding inter alia that once the workmen had availed the VRS and received the special compensation package, they could not have put forth a claim for lay off compensation under Sec 33C(2) of ID Act, and, in that context perceived a discordant note in National Buildings Construction Corporation v. Pritam Singh Gill and A.K Bindal, and thereafter scanning the anatomy of the Act referred the matter to a larger bench by observing the following:

"The right of the workman to claim payment of lay off compensation is not denied or disputed. If the said claim has no nexus with the Voluntary Retirement Scheme, in our opinion, in a given case, like the present one, it is possible to hold that a proceeding Under Section 33C(2) of the Act would be maintainable. We are, therefore, of the opinion that the question being one of some importance should be considered by the larger Bench as there exists an apparent conflict in the said decisions in National Buildings Construction Corporation and A.K. Bindal".

Thereafter, the matter was placed before the three-judge bench of the Supreme Court wherein the apex court distinguished between the cases of Pritam Singh Gill and A.K Bindal and observed that there is no conflict between these two cases. The Supreme Court held that while Pritam Singh Gill's case refers to a situation where the maintainability of application under Section 33-C(2) of ID Act in case of suspension allowance was challenged, the dispute in the matter of A.K Bindal is different in as much as it considers an issue, whether an employee could claim revision of past wages after acceptance of VRS and availing benefits under the same.

In view of the above, the Hon'ble Supreme Court in A. Satyanarayana Reddy and Ors. v. Presiding Officer, Labour Court and Ors. [(2016 )9SCC 462] overruled the decision of division bench of the High Court of Andhra Pradesh and held as follows:

"Though there is cessation of relationship between the employer and employee in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workman would be entitled to approach the Labour Court under Section 33-C(2) of ID Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction."

The legal position which emerges from the decisions discussed above is that in the event lay-off compensation is not covered in VRS, the Labour Court/Industrial Court may, in appropriate facts and circumstances, have the jurisdiction to adjudicate such dispute under Section 33-C(2) ID Act. It needs to be understood that where a VRS does not incorporate the provisions regarding any lay-off compensation dues, subsistence allowance due, etc. and therefore, a claim in this regard is preferred by a workman after he ceases to be under the employment of the company or undertaking, the same may be maintainable under Section 33-C(2) of ID Act in respect of the lay-off compensation due to him for the period of employment prior to his dismissal. HC

[1] (2003) 5 SCC 163

[2] (1972) 2 SCC 1