

Q & A

- BY K V SINGH

The company with which I am working has not paid wages to me and to some of my colleagues from the past 4 months because of business losses. However, the company has promised to clear all the dues by next month. Further, we are also expected to work despite non-payment of salary. Please let me know if I resign now, will I lose my salary dues. Kindly, also advise any action that can be taken against the company in the event the company fails to pay the dues.

Given that you have not received your wages for the past four months, you may make an application to the Competent Authority under Section 15 of the Payment of Wages Act, 1936 ("the Act") for the delay in payment of your wages. In this regard, kindly note that Section 16 of the Act provides that a single application may be presented under Section 15 on behalf of any number of employed persons belonging to the same unpaid group.

Employees under Section 16 are said to belong to the same unpaid group if their wages have remained unpaid for the same wage period. Since you and as well as your colleagues have not been paid for the same wage-period, a single application on behalf of all of you may suffice.

Please note that the application should be presented within twelve months from the date on which the payment of wages was due to be made. In addition to the wages, you and your colleagues may also be entitled to compensation.

Additionally, also note that even if you resign now, the company has no right to withhold the salary due to you for the period for which you actually worked for the company and the same shall be payable to you.

I am a part time employee working in a company for several years. Recently, my employer terminated services of some regular employees as well as part time employees on account of surplus work force. However, the retrenchment compensation was only paid to the regular employees. Can you let us know whether part time workers are entitled to retrenchment compensation?

Please note that the Industrial Disputes Act, 1947 ("ID Act") does not address this issue explicitly. A closer analysis of the definition of 'workman' and 'continuous service' under the ID Act would reveal that there is no mention of the number of working hours per day as a qualifying criterion. Perhaps one of the most important judicial precedent leading to a determining decision on this point is the case of Divisional Manager, New India Assurance Co. Ltd. v. A. Sankaralinga; AIR 2009 SC 309. In the said case the High Court relied on the definitions of 'workman' and 'continuous service' under Section 2(s) and Section 25B of the ID Act to hold that these two definitions were not restricted in applicability to only full time employees as the all embracing tenor of the definition took within its ambit part time employees as well. Accordingly, the award of the Industrial Tribunal was quashed and reinstatement of the workman with full back wages was ordered leaving the matter of regularization of service to be considered by the employer in accordance with law. This judgment was further confirmed in appeal by the Division Bench. Subsequently, the Hon'ble Supreme Court of India upheld the judgment of Madras High Court and concluded that a workman



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working even on a part time basis would be entitled to the benefit of Section 25-F of the ID Act.

Therefore, it is clear from the aforesaid judgments that there is no distinction between a part time employee and a full time employee for the purposes of Section 25-F of the ID Act. Therefore, we are of the view that you may also be entitled to compensation for retrenchment under Section 25-F of the ID Act. **HC**