

Q & A:



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I am a civil servant. My wife is expecting our first child next month. Please let me know if there is any provision available for me to take an official leave to take care of my wife and child.

The Government of India provides for paternity leaves under the Central Civil Services (Leave) Rules, 1972 ("Rules"). Rule-43 A of the said Rules provides for the following allowance:

"(1) A male Government staff (including an apprentice) with less than two surviving children, may be granted Paternity Leave by an authority competent to grant leave for a period of 15 days, during the confinement of his wife for childbirth, i.e., up to 15 days before, or up to six months from the date of delivery of the child."

The Rule further entitles you to be "paid leave salary equal to the pay drawn immediately before proceeding on leave." It is important to note that the leave cannot be debited from your leave account, and under ordinary circumstances, shall not be refused.

However, sub-rule 1.4 of Rule-43 A mandates that "If Paternity Leave is not availed of within the period specified in sub-rule (1), such leave shall be treated as lapsed". In view of the aforesaid, you will not be entitled to apply for the said leave over and beyond the 15 days prior to childbirth or within six months post the delivery.

We are engaged in repair of radios and televisions. Are we covered under Apprentices Act

1961? Which establishments are covered under this Act? What are the obligations for an establishment under Apprentices Act?

The Apprentices Act, 1961 ("Apprentices Act") applies to any area or to an industry in any area only if the Central Government, by notification in the Official Gazette, specifies that the provisions of the Act will apply to such area or industry. Kindly note that the nature of trade carried out by your company has been specified by the Central Government as a designated trade to which the Apprentices Act applies.

The Act defines an apprentice to mean a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. The Act also contemplates that an apprentice is a trainee and not a worker and the provisions of any law with respect to labor will not apply to or in relation to an apprentice.

The Apprentices Act requires the employer to provide the apprentice with training in his trade and if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice. The employer is also liable towards the apprentice with respect to the minimum stipend to be paid, hours of work, leave, health, safety, welfare, compensation for injury, etc. The employer is also required to maintain records of progress of training of each apprentice and to furnish the prescribed information and returns. **(HC)**

Wrongful Dismissal - How the Law has Evolved

The law on remedies available to a workman, where the services of the workman have been terminated invalidly or illegally, has changed substantially in the last 40 years.

Earlier, the prevalent view of the courts was that reinstatement with continuity of service and full back wages was an automatic relief if the termination of service of a workman, whether by dismissal, removal, discharge or retrenchment, was found to be invalid or illegal. The Supreme Court observed in the matter of Hindustan Tin Works (P) Ltd. v. Employees ((1979) 2 SCC 80) that if the service of an employee is terminated illegally and owing to unfair practice, reinstatement with full back wages should be a normal rule. On the issue of full back wages, the court observed that "Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour".

The aforesaid view of the courts was based on certain premises concerning employer employee relationship which found greater favor with the courts at the relevant time. It was felt that by illegally terminating the services of an employee, the employer has taken away the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. Thus, reinstatement was

considered an obvious remedy which restored to the workman his right to earn a living. Further, the courts felt that not paying an employee full back wages would be akin to subjecting a workman to a penalty for a wrong committed by the employer. Therefore, it was felt that, ordinarily, a workman whose termination of service is found to be illegal or wrongful, would be entitled to continuity of service as well as full back wages as not awarding him full



back wages would tantamount to asking the workman to make a sacrifice for no fault of his.

With growth, and consequently greater employment opportunities, the level of empathy towards the plight of an employee who has been wrongfully or illegally terminated, and the remedies available to such employee, has also seen a change as reflected in the more recent judgments. The courts are now consistently following the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. In certain cases, compensation instead of reinstatement has been held to meet the ends of justice.

The Supreme Court in the matter of U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey ((2006) 1 SCC 479), observed that, "Industrial Courts, while adjudicating on

disputes between the management and the workmen, therefore, must take decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law". The Court further emphasised that application of mind is imperative while granting relief and therefore, in case of wrongful termination, reinstatement with payment of full back wages cannot be a natural consequence.

Thus, the current law is that relief of reinstatement with back wages is not an automatic conclusion and may even prove to be entirely irrelevant in certain facts and circumstances. One of the important factors, which should be taken into consideration, is the length of service which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, may not be appropriate. Further, the nature of employment also needs to be taken into account. For instance, a regular service of permanent character has to be viewed differently from a short or intermittent daily wage employment though it may be for 240 days in a calendar year. **(HC)**