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UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination – December, 2017

Program/course: B.A.LL.B./BB.A.LL.B./B.Com. LL.B.

Semester –VII

Subject: Labour Law - I

Max. Marks : 100

Code : LLBL 251

Duration : 3 Hrs

No. of page/s: 5

(Attempt all questions. Each questions carry equal marks)

General Question- subject matter

Section A (10 Marks)

Write **short notes on any two** of the following:

- Q. No. 1. Standing Order
- Q. No. 2. Unfair Labour Praticce
- Q. No. 3. Retrenchment
- Q.No. 4. Lockout

Section B (20 marks)- Conceptual Question

(Attempt all questions. Each questions carry equal marks)

- Q. N0.5. Define 'Trade dispute' and discuss its concept w.r.t. its reference regarding immunities for TU, its office bearers and members. Answer with help of case-law.
- Q. N0.6. Define Strike. Whether workmen have right to strike; if yes, what type of right is it? Answer with help of case-laws.

Section C (20 marks)- Analytical question
(Attempt all questions. Each questions carry equal marks)

Q. N0.7. Deal with the development of law regarding the definition of industry as per the Industrial Dispute Act, 1946 from fifties to early twenty first century. Is profit a ground for deciding whether a particular activity is industry? Whether welfare functions of the government is beyond the scope of definition of 'industry' in India? Answer in the light of State of UP v Jai Bir Singh judgment.

Q. N0.8. Analyse the situations in which strike could be legal and justified. What are the benefits of legal and justified strike? In which case "no work, no pay" rule was propounded, is it applicable today? Discuss relevant provisions, concepts and case-law.

Section D (50 marks)
(Attempt all questions)
- Application Based Question

Q. No. 9.(a) On what grounds the domestic inquiry can be challenged. Answer with help of case-laws.

(b) After clearing the grounds on principles, coming to the facts of the present case the eight respondents were charged for misconduct in that they along with other outsiders, in all numbering about twenty-five persons, assaulted three temporary workers of the company, namely, Ram Lal, Shyam Lal and Jivan Lal, on October 11, 1972, as they were coming out of Hotel That Café, a public Hotel, where they went to take their midday meal with coupons from the company. The Hotel was about one hundred meters away from the factory. The assault was of some significance, as those who were assaulted were new workers employed by the company after its decision to discharge the temporary employees and to lay off the permanent workers. It was not as if the incident was absolutely unconnected with work or service in the company. It is stated in course of the evidence in the domestic enquiry that two persons threatened the assaulted workers saying "why we were going on work, go away from here immediately leaving the work or else you would be beaten". Assault followed this threat.

The respondents were charged by the management on October 28, 2015, and they denied the charges as false and pleaded victimisation on account of trade union activity. A domestic enquiry was held on December 24, 2015. Orders of dismissal were passed on March 12, 2016 and as certain industrial dispute was apparently pending the

management made the eight requisite applications under section 33(2) and 33(3), Industrial Disputes Act. Three of the workmen were protected workmen.

The Tribunal did not find any defect in the domestic enquiry. Since the workmen repeated the plea of victimisation before the Tribunal, evidence of both parties was recorded only with regard to that plea. Evidence was not given before the Tribunal with regard to the actual incident. A large number of documents were filed by the union. The management filed the proceedings of the domestic enquiry and also certain other documents. The Tribunal after examining the evidence of the domestic enquiry held that no prima facie case was made out against the workmen concerned and that the findings of the enquiry officer were perverse and not bona fide. The Tribunal further held on the evidence produced before it that it was a case of victimisation for trade union activity. The Tribunal, therefore, refused to grant approval and permission prayed for by the management. The management filed an application under Article 226 of the Constitution in the High Court of Gujarat which was summarily dismissed. Leave to appeal to the Supreme Court was refused by the High Court and hence special leave petition was filed in the Supreme Court. Decide the case with help of relevant provisions and case-laws.

(16 Marks)

Qn. 10. Define Lay-off. Whether the employer has common law right to lay-off its workmen?

This is a special leave petition before the Supreme Court of India. The respondent company in this appeal has its Head office at Bombay. It manufactures cars at its Bombay factory and sells them and other accessories in the markets throughout the country. The company has a Distribution office at Takle Road, Dehradun. There was a strike in the Bombay factory from 3rd March, 2017 to 16th May, 2017 and again from 4th October, 2017. As a result of the strike there was a short supply of cars etc. to the Distribution office. In the Dehradun office, there were 49 employees at the relevant time. 17 workmen out of 49 were laid-off by the management as per their notice dated the 3rd November, 2017, which was to the following effect:

"Management is unable to give employment to the following workmen due to much reduced production in the company's factory resulting from strike in one of the factory departments.

These workmen are, therefore, laid-off in accordance with law with effect from 5th November, 2017. "

The lay-off of the 17 workmen whose names were mentioned in the notice was recalled by the management on the 20th November, 2017. The workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and

referred by the Uttarakhand state on the 30th November, 2017 even when the layoff was in operation. The reference was in the following terms:

"Whether the action of the management to 'lay-off' 17 workmen with effect from 5th Dec. 2017 is illegal and/or unjustified, and if so, to what relief are these workmen entitled? The Presiding officer of the Additional Industrial Tribunal, Dehradun has held that the workmen are not entitled to any lay-off compensation. Hence this is an appeal by their Union.

The question which is due for determination is whether the management had a right to lay-off their workmen and whether the workmen are entitled to claim wages or compensation. In this regard firstly discuss the application of various laws w.r.t. establishments of different sizes ranging from zero to 1000 workers regarding lay-off and then answer the mixed question of law and fact in the given case. (17 Marks)

Qn. 11. (a) Describe the concept and legality of gherao; also briefly discuss the pre-requisites for the type of immunities the trade union could seek under the TU Act. Refer relevant case-laws.

(b) In the instant case, following allegations were made: The petitioner No. 1 is a limited company, known as the Bell Electrical Works. Its principal business consists of the manufacture of Washing machines and Refrigerators. It has a sales office known as the 'Jisha Corporation' at No. 26, Mukherjee Nagar Road in Delhi. The said office employs, apart from the management staff, approximately 300 workmen. The petitioner No. 1 Raman is the manager of the said office the petitioner No 3 Anand is the office superintendent, the petitioner No 4. Sriresh is the Area Supervisor and the petitioner No. 5 Sudha is also an Area Supervisor and the petitioners Nos. 6 and 7, Baijnath and Babulal are supervisors, in the said office The respondent No 8, the Bell Electrical Workers Union is registered under the Trade Unions Act, 1926. The respondent No. 17 Raghunath is the executive member of the said union, while the respondents Nos. 9 to 16 and 18 to 28 are members of the said union. On or about 17th January, 1967, 18 employees of the sales office, including respondents No. 9 to 12 and 18 to 22 were retrenched. We are not concerned in this case with the legality of the retrenchment. On the 27th January 1967, at about 1 p.m. the retrenched employees along with 70 others, blockaded the said corporation's premises, completely obstructing the passage of personnel and goods, including food stuffs for the barricaded persons inside, who were wrongfully confined therein. The blockade was lifted at 3 A.M. on 28th January 1967 after police intervention, On the 1st March 1967, the present Government in West Bengal, came into office. On 2nd March, 1967 the retrenched workers, together with other employees numbering about

200 persons gheroad the manager (petitioner No. 2) and other officers at the office premises from 1 P.M., and the gherao continued for 33 hours, being lifted at 10 P.M. on 3rd March 1967. It is said that the said persons confined the manager, the petitioner No. 2 and the other officers, namely the petitioners Nos. 3 to 7, tampered with the company's property spoilt the walls and continuously shouted insulting and humiliating slogans against the confined persons. Supply of food to those confined was not permitted except for a nominal quantity at the will of the beseigers. Information was given to the police authorities at Hare Street Police Station, but no action was taken.

On the 17th April, 1967 at 11 A.M. the said retrenched workers, together with other employees numbering about 100 to 150 persons gheroad the manager and other officials at the said office and kept them under wrongful confinement. The beseigers, trespassed into the office, tampered with property and shouted insulting and humiliating slogans against the confined persons. Only a minimal amount of food was allowed to be taken in, at the will of the besiegers. Information was given to the police but no action was taken Subsequently, an application was made before the Chief Presidency Magistrate. Calcutta under Section 100 of the Criminal Procedure Code, who ordered the officer-in-charge, Hare Street Police Station to search and rescue the confined persons and produce them before him, The confined persons were accordingly rescued at about 10 P.M. on 18th April 1967.

Again on 29th May 1967, the Manager and other officers were gheroad and wrongfully confined in the office for over 5 hours, from 10-30 A.M. to 3-30 P. M. Information was given to the police but no action was taken.

The rule in this case was issued on 8th June 1967 and an interim injunction was issued directing that no effect should be given to a circular issued by Government dated 27th March 1967. It is the common case of the petitioners in this series of gherao cases that the primary reason for the total inaction of the police, lies in the fact that the State Government, through its Joint Secretary, in its Home and Political Department, has issued two circulars with that effect.

Regarding these incidents Criminal complaints were filed against the concerned workers and civil suit for injunction and compensation amount of Rs. 100 crores was sought from the Trade Union and its member workers by the Bell Electrical Works. The matter could not be negotiated upon and after submission of failure report by the Conciliation Officer the State Government referred the matter to Labour Court. The Court held the Union liable towards the company. Even the Industrial Appellate Tribunal decided in favour of company. Now the trade union has filed an appeal in the High Court.

(17 Marks)

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Section A (10 Marks)

(Attempt all questions. Each questions carry equal marks)

General Question- subject matter

Write short notes on any four of the following:

Q. No. 1. Notice of Change

Q. No. 2. Lay off

Q. No. 3. Closure

Q.No. 4. Victimization

Section B (20 marks)- Conceptual Question

(Attempt all questions. Each questions carry equal marks)

Q. No. 5. Discuss right to form association. Compare right to register a trade union and right to recognition on one hand with right to form association on the other.

Q. No. 6. Lock-out is anti-thesis to Strike, elaborate. Discuss the pre-requisites for a legal and justified lock-out? Answer with help of case-laws.

Section C (20 marks)- Analytical question

(Attempt all questions. Each questions carry equal marks)

Q. No. 7. Discuss nature and scope of Standing Order. What is the role of Model Standing Order with respect to establishments covered under the Industrial Establishment Standing Order Act? Answer with help of relevant case-law.

Q. No. 8. What is Victimization, is it related with Misconduct? If yes, please answer with help of case-laws.

Section D (50 marks)

(Attempt all questions) Application Based Question

Q. No. 9. "The (Industrial Dispute) Act under consideration has a historical background of industrial revolution inspired by the philosophy of Karl Marx. It is a piece of social legislation. Opposed to the traditional industrial culture of open competition or laissez faire, the present structure of industrial law is an outcome of long term agitation and struggle of the working class for participation on equal footing with the employers in industries for its growth and profits. In interpreting, therefore, the industrial law, which aims at promoting social justice, interests both of employers and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view." Do you agree with statement? Kindly answer with help of case-laws, especially the cases decided before and after Bangalore Water Supply Case. (16 Marks)

Q. No. 10. a. Define Trade Union.

b. T, an IPS Officer, U, a Supervisor, v, a research student, w, a security guard and X, Y and Z three clerks from the WBC Hospital form an association known as Hospital Workers Association with the objective of regulating relations between the Hospital and its employees. Can this association be registered as Trade Union under the Trade Union Act, 1926? Discuss with help of case-law. (17 Marks)

Q. No. 11. a. Define Workman under the ID Act.

b. Decide whether following are workmen, with help of relevant laws:

- i. Collection Agent in a Bank,
- ii. Teacher in a school run by a charitable trust,
- iii. Supervisor performing supervisory function without any control on the appointment, promotion, etc. (17 Marks)