

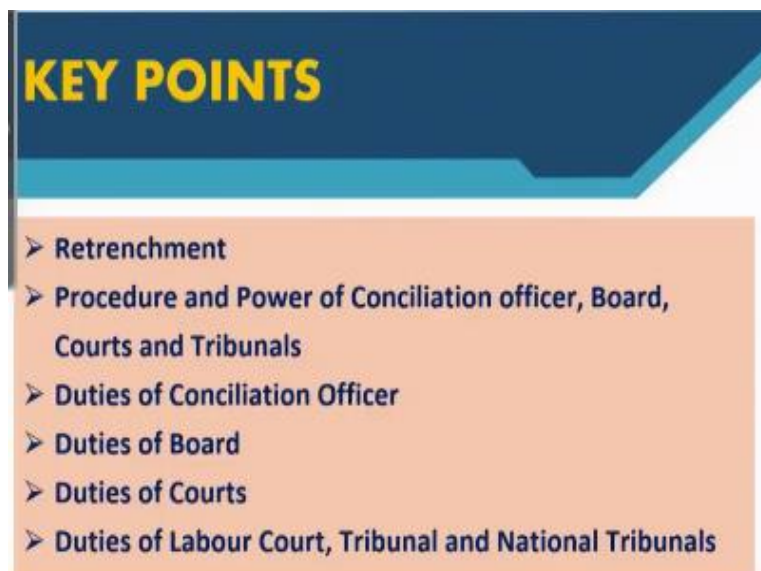
Business Law for Managers
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Lecture - 40
Procedure, Power and Duties of Authorities

Welcome to lecture number 40. This is the final lecture of this particular module. And the previous lecture we discussed about various machineries, which are available to settle the dispute between the parties. In today's lecture we are going to talk about certain procedure which related to retrenchment practices or a closure of the factory or an establishment what one has to do, what type of compensation to be provided.

And we will also discuss about the power and duties of various authorities. Various authorities we will be talking about conciliation officer, Board of Conciliators and we will also discuss about Labor Court Industrial Tribunal and National Tribunal, what are their powers and duties with respect to handling the industrial dispute.

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So what we are essentially going to see? We are going to discuss about retrenchment and the, what are the procedure to be followed if a factory sought to go for retrenching their group of employees and also we are going to discuss about the procedures and the power of conciliation officer, board, court and tribunals.

And we will also talk about the duties of conciliation officer, board, courts and national and you know Industrial Tribunal and National Tribunal.

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Industrial Dispute Act, 1947

Retrenchment

Termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include termination due to :

- Voluntary retirement ✓
- Superannuation ✓ (Retirement)
- Non-renewal of service contract ✓
- Continued ill health ✓

Handwritten notes: 3 years / Does not qualify as retrenchment

Let us get into the lecture in detail. Now, first we are going to talk about retrenchment. What is this retrenchment being defined as previous legislations? This is, a retrenchment is referring to a termination. Meaning that you know terminating an employee from the organization. The termination by the employer of a service of an employee for any reason, not what was ever not including the disciplinary actions.

And also that do not include the termination due to voluntary retirement. It does not include, the termination is we are referring to is termination of the employee, not due to the disciplinary reason and also does not include any termination due to voluntary retirement. Somebody is voluntarily retiring, that does not include voluntary retirement. It does not include superannuation.

Superannuation is nothing but retirement, okay. Superannuation is retirement, okay. So retirement, volunteer retirement does not include this. And non-renewal of service contract. Maybe you would have hired them on a defined contract. Let us say hired for three years, then you have not renewed it. That will not be considered as retrenchment.

And if in case an employee has a continued ill health and you are terminating the service, this cannot be treated as retrenchment. It does not qualify as retrenchment. Why we are talking about you know does not qualify as retrenchment? Because there are associated compensation to be provided if you are retrenching the employees not including all these you know voluntary retirement or retirement from a service, non-renewal of the contract or employees being in a continuous ill health.

And if somebody has been resigned due to the disciplinary actions, then that will not be qualified as a retrenchment. Otherwise, in case for your you know you do not have a proper business happening due to economic meltdown for various reasons, then if you are retrenching the employees, terminating the employees then you have to pay them the compensation.

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The slide is titled "Industrial Dispute Act, 1947" and "Retrenchment". It lists conditions precedent to retrenchment: "No workman employed in an industry who has cont. service of at least one year, can be retrenched unless". The conditions are:

- served 1 month notice indicating reasons for retrenchment or wages in lieu of it.
- has been paid compensation @ 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months.
- Notice to the app. Govt. ✓

Handwritten notes on the right side of the slide include: "240 days" and "7 years" with a box containing "7 x 15 =".

Now let us look at what is the requirement if you are retrenching employees. See when you are retrenching employees no workmen employed in an industry in any organization who at least had one year of continuous service, if a person worked for at least one year of continuous service, he or she cannot be retrenched. So one year of continuous service we are referring to 240 days a year.

If you remember, for the gratuity we are referring to continuous year referring to at least 240 days and if it is in a mine or under the earth then 190 days. Now okay, coming back here. So if a person worked for at least one continuous year he or she

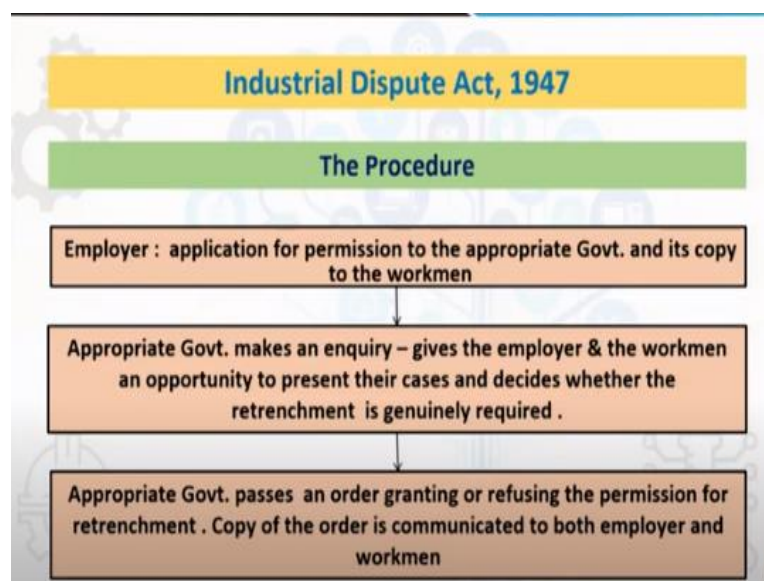
cannot be retrenched unless otherwise you serve one-month notice indicating the reason stating that this is the reason that we are going to terminate you.

Or at least in lieu of one month's salary, providing one month's salary in advance and state the reason that why you are terminating. And also you have to pay the compensation of 15 days' average pay for every completed years' of service. For example, then one employee x worked for 7 years, okay. So 7 into 15 days of average pay to be provided as a compensation when you are retrenching from the organization.

And there should be a notice to the appropriate government should be provided from the management about this retrenchment. Who are those employees who is going to be retrenched from the organization meaning that who are going to be terminated from the organizations.

If the those set of employees work for at least one year you need to give them one-month notice or otherwise one month's salary and also on top of it, you have to provide for every completed year 15 days of average pay to be provided as a compensation because of the termination from the service.

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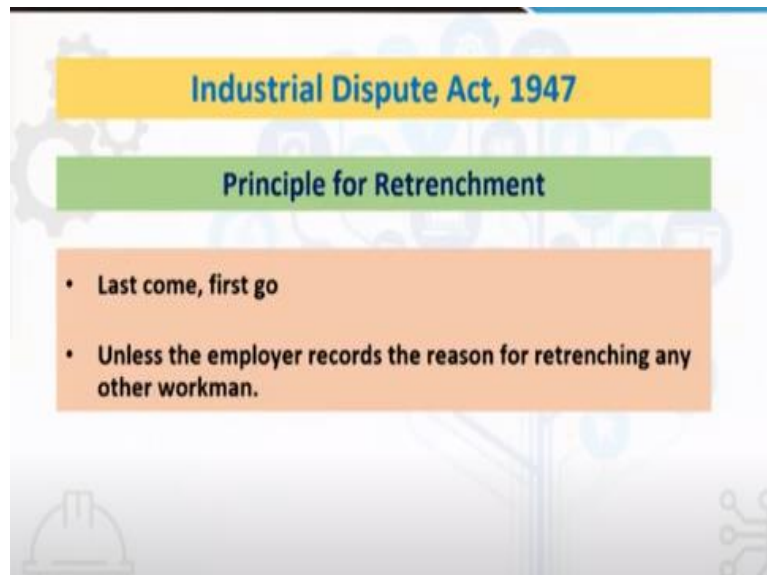
Now what is the procedure to be followed? You have to provide the application for permission to the appropriate government, as we already discussed who is the

appropriate government and provide this copy to the employees or at least display who are those employees who are going to be retrenched.

The application made to the, you know appropriate government should be displayed or provided to the workman who is going to be retrenched from the service. The appropriate government will assess the application and make an inquiry and they give the employer and workman an opportunity to present their cases, hear from those workmen and the management why do they go for retrenching the employees or terminating the employees.

Once they satisfy the, from the management and hearing from both parties, then they will pass an order granting or refusing these retrenchment practices. In case if you are granting the permission then yes of course, the factory or a management or any other organization has to provide the compensation as described in the previous slide that yes, at least one-month notice and then 15 days for every completed year of service to be provided as a compensation.

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Now comes what is the principle of retrenchment? This is always like this, last come first go. If a company decides to retrench a group of workers, then they always retrench the last come will be the first go. So people who have been working for several years they will be the last one to be retrenched from the factory for whatever the reason so.

In case if they decide to go against this principle, unless otherwise employee has to, the organization has to clearly state the reasons for why they are retrenching some section of the workers, not the last come employees to be retrenched. Or maybe one particular process may be closed.

Or maybe one particular product, maybe service or maybe closed that there is no more operation no more business on the particular thing, then maybe if employees who are working earlier also or the senior employee may also be retrenched. In that case the factory management or an organization has to clearly state the reason why they are going to retrench this section of the employees, okay.

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Industrial Dispute Act, 1947

Closure

- Permanent closing of a place of employment or part thereof
- Provisions applicable under chapter VA – (51 to 99 workmen)
- Sec. 25 FF A : Sixty days notice
 - Notice of the intention to close down an undertaking is to be given to the app. Govt. 60 days before the intended date of closure.
 - This condition is not applicable to undertakings :
 - employing less than 50 workmen on an average / day during the past 12 months or
 - engaged in construction of roads, bridges, canals or other construction work.
- Govt. can grant exemption from the requirement of notice period , under exceptional circumstances (e.g a major accident in the undertaking requiring it to close down)

Now comes to the next aspect is closure. When we talked about the retrenchment, termination, now we are coming to the closure. So what is closure? It is a permanent closing of a place of an employment. Meaning that I am going to completely shut my business activity. That is called a closure. So what are the provisions being available?

So factory or an organization has to provide 60 day notice you know the intention to close down the undertaking should be provided to the appropriate government before 60 days that why I am going to close down my company. So they say yes I am intended to close down my, shutdown my factory or my organization, then they have to give a notice to the appropriate government.

And what is the condition? Who has to provide this? If an organization which employs at least 50 workmen on an average during the last 12 months, then those organizations when they decide to shut down, they have to intimate the appropriate government through the application saying that intending to close your factory or your facilities or your organization.

Now this may be amended coming up with a new Labor Court coming up, they are trying to increase to instead of 50 they are trying to increase to 300 workers. Even the factories or facilities or any organization which employs you know around 300 employees also are exempted not to give these notice to the appropriate government, which is an effort towards ease of doing business, supporting more you know business to come up as the legal binding is lowered.

And then there is more opportunity for people to come up and start the business. That is what government is looking at it. So but of course, government can grant exemptions from the requirement of notice period under certain you know exceptional conditions. You know, for example major accident, so that is leading to a close down. That, government can make an exemption.

It is not always automatically exempted, they have to make unless otherwise government is with this special exemption if they give you do not give a notice then they are allowed, okay.

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Industrial Dispute Act, 1947

Compensation on Closure of an Undertaking

- Every workman who has been in cont. service of not less than one year shall be paid compensation as per sec. 25 F as if he had been retrenched.
- Further, if an undertaking is closed down due to exceptional circumstances beyond the control of employer the total amount of compensation shall NOT exceed 3 months' avg. pay.

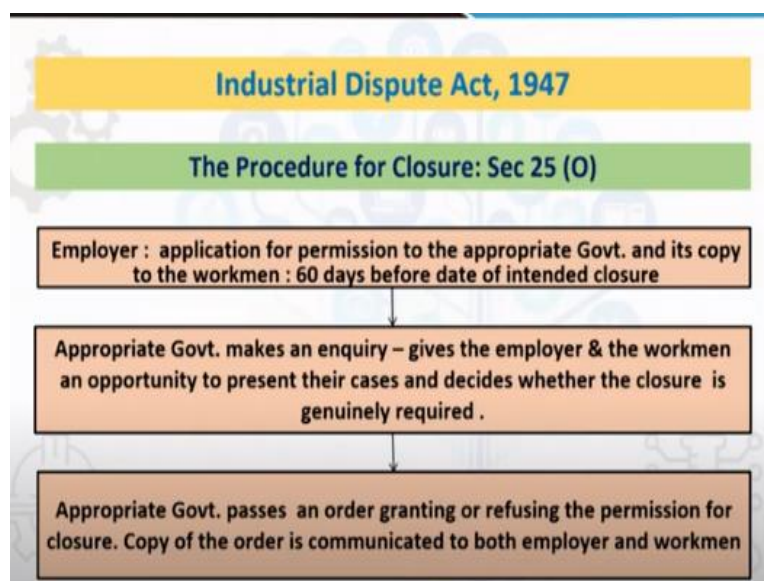
Handwritten notes on the slide: $20 \times 15 = 300 \text{ days}$ and 90 days .

Now what is the compensation if a factory is closing or a company is closing down the operations? It is same as the case in terms of a termination. You have to provide at least 15 days of you know average pay for every completed years of service. And also you should note down that in case due to an exceptional circumstance if an organization is closing down their operations, they can pay compensation not exceeding three months' average pay.

For example, there you see employee work for 20 years. Now every 15 days, there are 300 days of salary to be paid, right? So in this case, if you are closing down for exceptional circumstances beyond the control of the employer, then the compensation is just to favoring the management that yes, you are already suffered. So not exceeding three months' average pay.

Meaning that the 300 you are allowed to only pay 90 days. Otherwise, you have to pay 15 days of average pay for every completed years of service if you are closing down your operation. Unless otherwise, if an appropriate government accepts or agrees that yes, you are closing down due to exceptional circumstances, then they will exempt you that you will be asked to pay the average, three months' average as a compensation to all your employees when you are shutting down your business.

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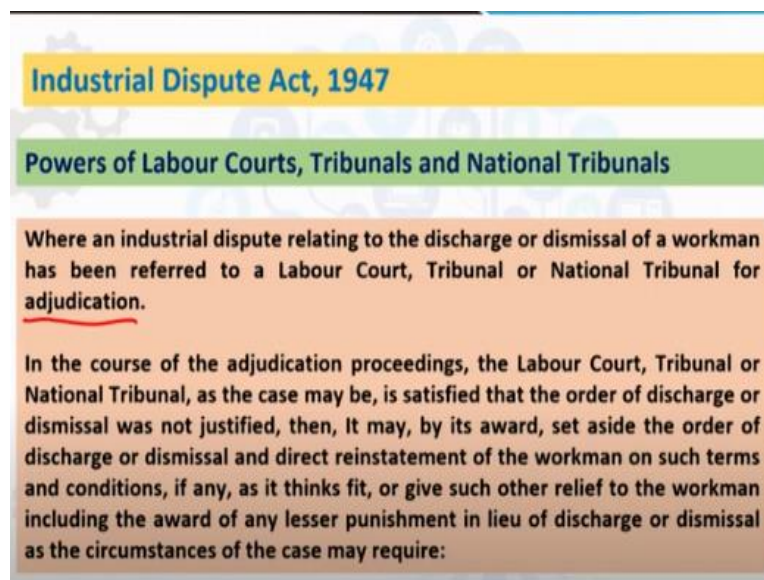


What is the procedure? So as similar to the retrenchment, you have to make an application 60 days before intending your intention to close. Again an appropriate government will make an enquiry and hear from both the employer and the workman

what is the case, whether there is a genuinely in this particular application or is maybe a malicious nature that there are vested interest from the management.

They wanted to just shut down the operation and maybe restart in a different name so that you no appropriate government will enquire from all the sources and if they feel deems fit, and then they will allow, grant the permission to closure of the facility or maybe they even refuse to close down the facility. This copy of the order will be communicated to both the employer and workman.

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Now we are going to discuss about the powers of Labor Courts. What are the powers of Labor Courts, Tribunals and Industrial Tribunal when there is an industrial dispute relating to the discharge or dismissal of an employee, okay? So that will be referred to Labor Court or Industrial Tribunal or to a National Tribunal for adjudication. Adjudication as I said you know; it is a legal process.

Now generally, this is a case when they you know somebody is dismissed, a group of workers have been dismissed or terminated for you know for a different reason, then they can approach the labor court or a Tribunal for this settlement.

So in this course of the adjudication proceedings, in case of a Labor Court or a Tribunal or a National Tribunal, if they satisfied that yes, the factory will who dismissed the employee, it is not satisfying, they are not able to find a very logical

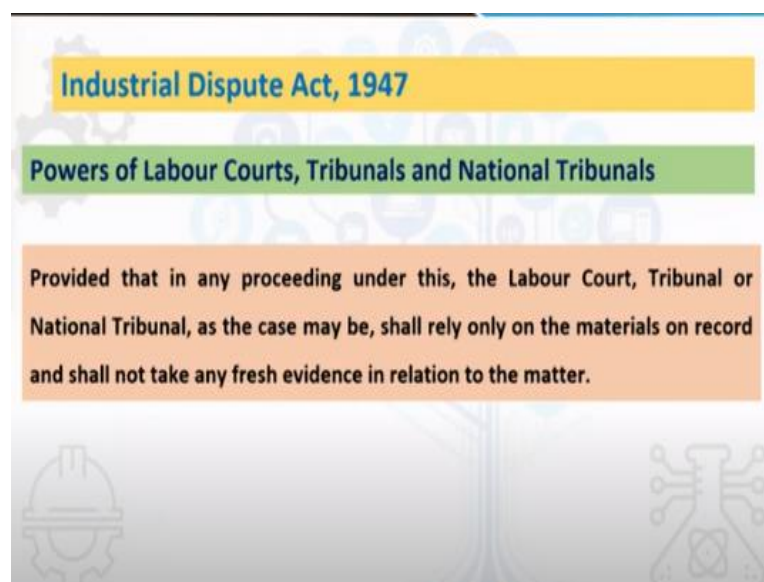
reasons or within evidences to prove that yes, they what they have done from the management's side is right. Unless otherwise, what do they do?

They will set aside the order means dismissal or the termination of the employee, and they say the back wages they will demand the factory management to reinstate the service of the employee and ask them to provide the back wages and provide all the seniority whatever the person lost during the period of this court proceedings. So this is the power of the Labor Court, Industrial Tribunal and National Tribunal.

There were many precedence and also many case laws which have stating that yes, many people who fought in the Labor Court and Labor Court set aside the dismissal of the management, even after 15, 20 years and then reinstated the service and then asked them to, you know match whatever the service they lost and the salaries and the increments to be reinstated considering all the last 20 years of service.

So this is the power of a Labor Court, Industrial Tribunal and National Tribunal in this case.

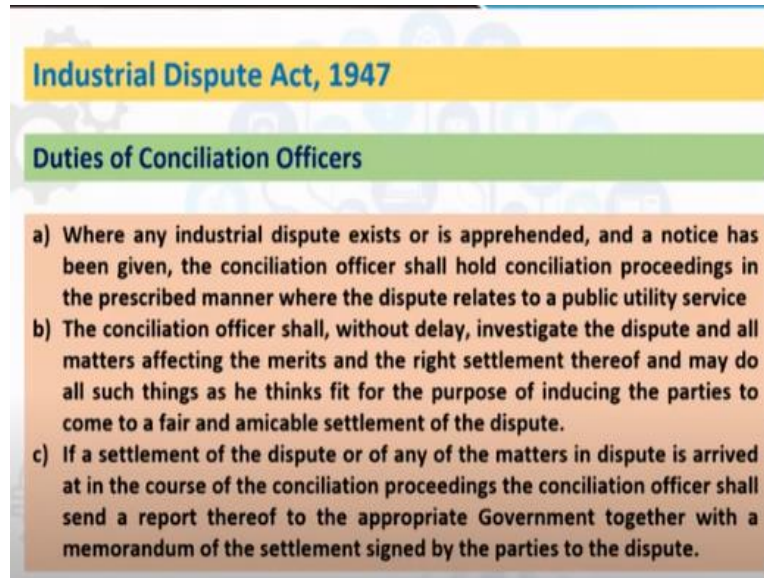
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Now also provided that in any proceeding under this Labor Court, Tribunal or National Tribunal, if they rely they should rely only on materials on record. Shall not take any fresh evidence in relation to the matter.

You know, it is always possible that management may come up with a new set of records, they always take to the materials record, which are already provided, they try to investigate and find out on the looking at the evidences to see whether the fact which are under the dispute is true or not and whose it is going to favor.

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Now comes duties of the Conciliation Officer. What is the duty of the Conciliation Officer? If an industrial dispute is existing are apparent, I mean, they are anticipating that yes, it is there and they shall be you no notice shall be given to the Conciliation Officer to hold conciliation proceedings.

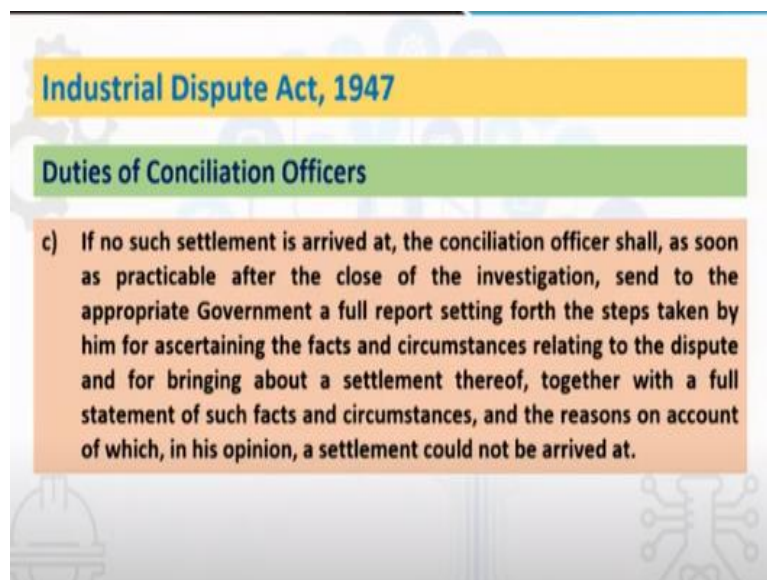
So the Conciliation Officer, as I said the Labor Officer or a Labor Commissioner or Deputy Labor Commissioner as a Conciliation Officer, and then he or she will be asked to initiate the conciliation proceedings. The Conciliation Officer without any delay, investigate the dispute in all matters relating to the merits and rights of the settlement thereof.

And when they think fit so for purpose of inducing the parties to you know discuss on the dispute and try to resolve the dispute or come up for a settlement. If the settlement of the dispute or any matters is arrived at the course of conciliation proceedings, they will send the report to the appropriate government with the memorandum of settlement signed by parties.

So the Conciliation Officer will also facilitate that, yes, both the parties please discuss and let us resolve the dispute. In case if they were successful during the conciliation process, they will send the report along with the both the parties signing the settlement agreement.

So let us say salary, on the salary both the parties will sign along with the memorandum these conciliation officer will send to the appropriate government yes, this is what the settlement arrived at and that will go to the appropriate government.

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In case if there is no settlement arrived, in that case also Conciliation Officer will send the report to the appropriate government and stating that whatsoever the reason that why the settlement was not able to be arrived, so that the future due course of action will be initiated by the appropriate government.

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Industrial Dispute Act, 1947

Duties of Conciliation Officers

- e) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.
- f) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.


Now comes the other duties of the Conciliation Officer. If on the consideration of the report referred under this appropriate government if they satisfied, there is a case for reference to the board and it may make such reference. Let us say you know the settlement is not made, and there is a potential reason that it can be referred to a board of conciliations and then they will make so and then they will appoint a board of conciliations.

So a report on this section shall be submitted within 14 days of the commencement of the conciliations proceeding so that they do not want to drag it along and there is no settlement arriving. So within the 14 days the report has to be given so that the subsequent settlement measures can be initiated. We are concerned about sooner the settlement to be dissolved, so that best for the industry, okay.

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Industrial Dispute Act, 1947

Duties of the Board



- i. Where a dispute has been referred to a Board it shall be the duty of the Board to, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- ii. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

Now comes the duties of the board. When the settlement is not arrived through the Conciliation Officer then it will be referred to the Board of Conciliators. So the board, when a dispute has been referred to the board, it shall be the duty of the board to investigate the dispute, whatever the merits and demerits and then also look at the possible settlements and they will also facilitate between the parties for a fair and amicable settlement of dispute.

And both the parties will say okay, discuss about a demand why is your demand here, the other parties can you think of coming up with an amicable solution that wherein both parties can get benefited by settling the dispute. If the settlement of the dispute on any matter is arrived at the course of the conciliation proceeding of a board, they will send a report along with the same as I mentioned in the Conciliation Officer they will send along with the settlement signed by both parties to the appropriate government.

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Industrial Dispute Act, 1947

Duties of the Board

- iii. If no such settlement is arrived at, the Board shall, after the close of the investigation, give report to government, for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.
- iv. If, on the receipt of a report in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal, it shall record and communicate to the parties concerned its reasons therefor.

Now in case you know no settlement will be arrived that also they will send a detailed report to the appropriate government so that after reading this report of the board, then the appropriate government will take a decision to see how this dispute can be resolved. They will refer the dispute either to the Labor Court or a Tribunal, Industrial Tribunal or a National tribunal, so that this can be settled.

And that same decision will also be communicated to the parties concerned with the reason why it has been referred because they will state that yes the dispute, there is no the settlement is not able to be released or no award has been made during the course of the conciliation with the effort from the board of the conciliations. Then they will refer the matter to the Labor Court or an Industrial Tribunal or a National Tribunal.

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Industrial Dispute Act, 1947

Duties of the Board

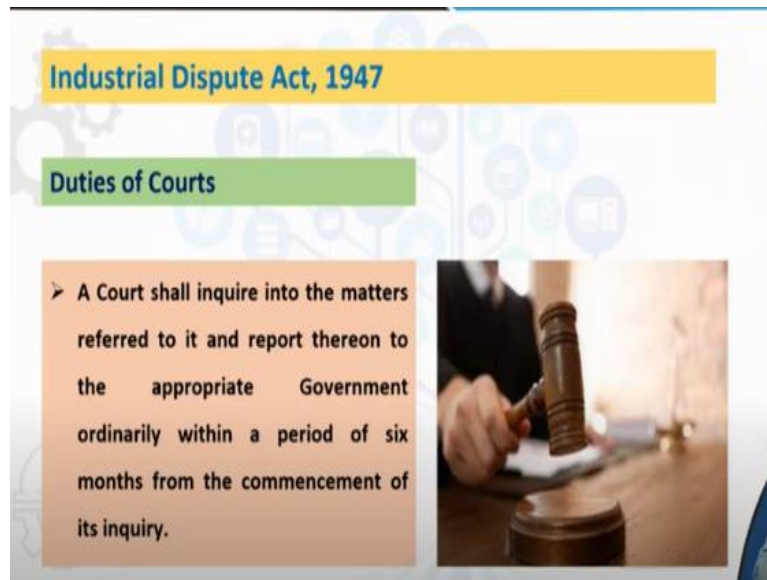
- v. The Board shall submit its report under this section within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate:

Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

Now, so this already been discussed.


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Industrial Dispute Act, 1947

Duties of Courts

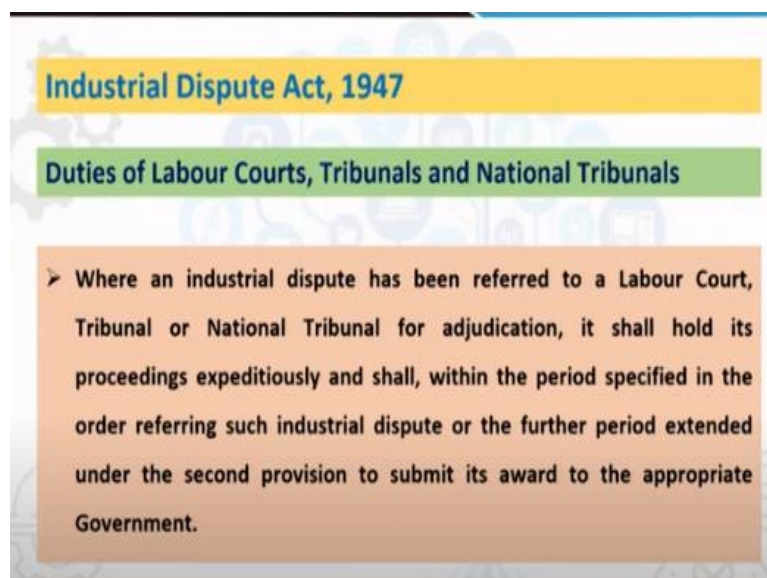
- A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.



Now let us discuss about the duties of the court. What are the labor court will do? Now there is an adjudication process. So adjudication process I mean here referring to the, at the court of law. So the court shall inquire into the matters referred to it and the report provided by the Conciliation Officer, Board of Conciliator and the appropriate government and they will also provide within the period of six months from the commencement of its inquiry.

So they will also conduct the inquiry and then send the report to the appropriate government.

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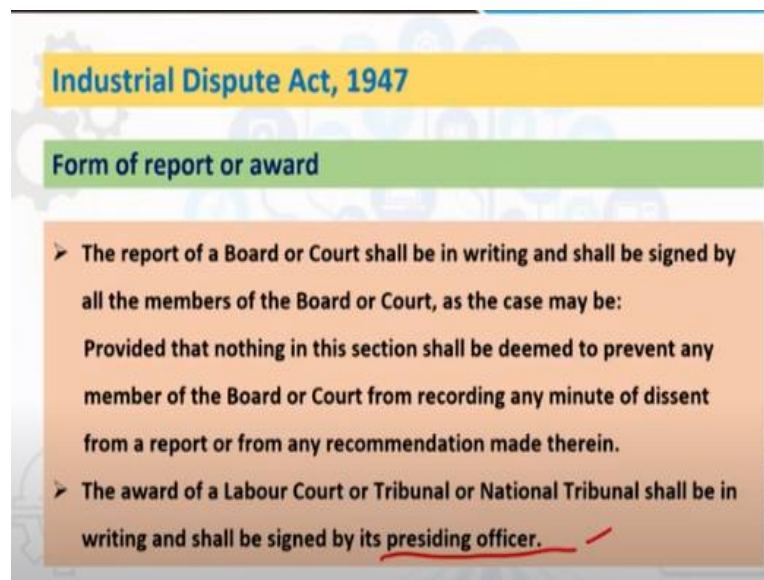
Industrial Dispute Act, 1947

Duties of Labour Courts, Tribunals and National Tribunals

- Where an industrial dispute has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, within the period specified in the order referring such industrial dispute or the further period extended under the second provision to submit its award to the appropriate Government.

Now let us look at the industrial tribunal or a Labor Court, what do they do? So it shall hold proceedings expeditiously and within this period specified in the order such dispute will be exempted under the provision to submit its award to the appropriate government. They will also make an effort to try to settle the dispute at the stipulated period so that these disputes can be settled at the earliest, okay.

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And they will also, the form of report or an award. The report of a board or a court shall be made in writing and shall be signed by all the members of a board of conciliators or the court as the case may be. They provide nothing in this section shall be deemed to prevent any member of the court recording any minute of dissent from a report from any recommendation made therein.

So for example, there were previous report from the Board of Conciliation that has been referred to the court and there are there can be a dissent, the disagreement on certain aspects from the report they will also record it here. So they will send a writing report on the settlement or a dispute. So the award of a Labor Court Tribunal shall be in writing. It will be signed by the Presiding Officer.

The Presiding Officer we refer to either a high court judge or a person with three years of experience as a district judge or an additional district judge. In case of a National Tribunal, it is only with the position of a high court judge will only be a Presiding Officer. The Presiding Officer will be signing the award either for a Labor

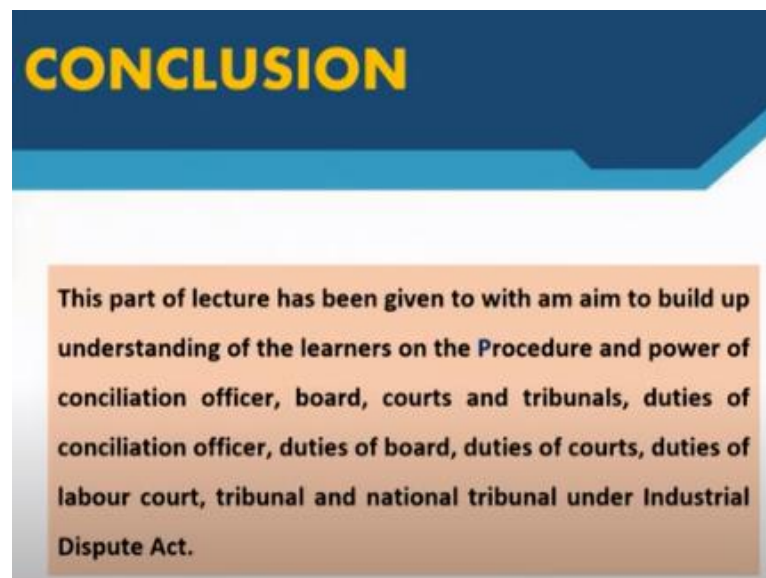
Court or a National Tribunal or an Industrial Tribunal with a settlement and award, okay.

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So these are the references.

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And this lecture we were able to understand the process of retrenchment. What will happen in case of employment organization or the industrial establishment terminating a group of employees? What is the compensation to be provided to the workers? What is the procedure to be followed? Similarly, we also learnt about the closure.

In case a company decides to close down a company, what is the procedure to be followed, what is the compensation to be followed? And we also discussed about what are the duties of the machineries which we were talking about, conciliation officers, Board of Conciliator and we also discussed about powers and duties of a Labor Court, Tribunal and Industrial Tribunal.

As we have said the adjudication process which is a court of law can investigate the dismissal of the workman and then they can also ask the employer to reinstate the worker in case they find that you know the action or a dismissal is found to be deemed not to be fit. So with this we are concluding this particular module.

We learned about various machineries available to how to amicably settle the industrial dispute between the employee and employer. Thank you.