

L.3. CHANDRASEKHARAN, N.S.—Dismissal in Industrial Employment—1983—Dr. P. Leelakrishnan

The thesis is a study in Labour Law. The area of study is the law relating to dismissal of workman in industry.

Dismissal is a serious matter. It carries a stigma. With this stigma attached to him, a dismissed employee may find it difficult to obtain alternative employment, especially in a land where the problem of unemployment is acute. The need for law, with built-in safeguards, taking care of arbitrary dismissal cannot be overemphasized. The study from this perspective, examines to what extent the Industrial Disputes Act 1947 protects the interest of workman in industry, what restrictions on dismissal are placed by the Act and how far the remedies are adequate.

A host of issues other than dismissal may also arise between workmen and employer. They may give rise to industrial disputes. Raising of an industrial dispute may worsen the relations between workmen and employer. Bitter feelings are aroused. Antagonism develops. This may be the inarticulate major premise on which the employer be tempted to resort to the extreme step of dismissing some workmen against whom he has prejudice. With a view to preventing this eventuality the Industrial Disputes Act imposes certain significant restrictions on dismissal. The scope of these restrictions is examined in detail.

Service may be terminated in the form of simple discharge although in effect the termination is dismissal for a misconduct. The availability of protection to such cases is examined. The study assesses critically the jurisdiction of the authority in granting or refusing permission for and approval of dismissal. When the employer does not comply with the requirements of permission or approval the Industrial Disputes Act provides the workman with a remedy. He can file a complaint before the Labour Court or Tribunal. Does the jurisdiction of these adjudicatory authorities go to the extent of examining not only the question of legality but also merits of dismissal? The scope of this remedy is critically examined.

Before a workman is dismissed a domestic enquiry may be held against him. The law in this area is examined critically to see whether it ensures that the workman gets an adequate opportunity for defence. The process of domestic enquiry is analysed and infirmities brought to light.

Does the workman have an effective remedy within the statutory framework against unjustified dismissal? This issue is intertwined with the problems of reference to adjudication and arbitration provided in the Industrial Disputes Act. The scope and extent of the jurisdiction of the adjudicatory authorities are analysed and the areas which require further improvements identified.

The restrictions of permission and approval in pendency operate as a safeguard only for the workmen concerned in the dispute. The protection should be made available to all workmen who stand against the management in a pending dispute. Application for permission filed during pendency should not lapse when the pendency ceases. The authority should continue to have jurisdiction in disposing such application even after pendency.

The limited jurisdiction of the authority in the case of permission or approval has resulted in duplication of proceedings. A dismissal effected with permission or approval of a tribunal may become again the subject matter of an industrial dispute. It may be referred for adjudication. To avoid this duplication, the tribunal should be given wider jurisdiction. It should have power to examine the merits even in a case of permission or approval. It should also have the power, at this stage, to examine the question whether or not the punishment is excessive.

The employer should be compelled to strictly observe the statutory requirements. When a workman is dismissed in violation of the law the authority should order reinstatement.

Pitted against competent managerial personnel, the workman, often illiterate and ignorant, is seldom equipoised. He should have the right to be represented by competent persons in the domestic enquiry. The right to representation should form part of the rules in domestic enquiries. A mechanism has to be evolved in which domestic enquiries are held not by managerial personnel but by an independent agency or atleast by a person agreeable to both parties.