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LEGAL ANALYSIS OF MULTINATIONAL CORPORATION LAYOFFS, INCLUDING RETRENCHMENTS.

BY

Praveen Kumar Pandey

Research Scholar (Law) DDU Gorakhpur University, Gorakhpur

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Dr. Abhay Chand Mall 'Visen'

Assistant Professor, Law Department DD.U Gorakhpur University Gorakhpur

Abstract: Large-scale "layoffs" occurred in 2023 for a variety of causes, including cost-cutting, a shortage of jobs, a move in the company's location, etc. Most of the "lay-off" situations aim to stop the company's working connection with its employees permanently. In order to avoid paying compensation and facing legal challenges, this study contends that they are actually layoffs that are a cover for fiscal retrenchment. This paper examines the legislative roots of "lay-off" and "retrenchment," as well as the varying jurisprudential expositions of these concepts. Legally, there is a significant contrast between retrenchment and lay-offs. Lay-offs need special obligations regarding salary and notification periods. This research paper tries to show that lay-offs are 'fiscal' retrenchments with permanent severance of the employer-employee connection, not 'lay-offs', which are temporary unemployment with the intention of hiring back once the industry reaches fiscal stability. Multinational firms, or MNCs, are crucial to the dynamics of employment across different jurisdictions in the modern global economy. Staff restructuring, which can take the form of layoffs and retrenchments, is frequently a crucial component of their operational strategy. With an emphasis on the nuances and consequences under both domestic and international legal systems, this abstract examines the legal aspects of these MNC actions. Retrenchments and layoffs frequently lead to disagreements and legal actions, even in spite of laws meant to safeguard workers. The challenges encompass claims of inequitable treatment, prejudice, and insufficient communication with impacted workers or their delegates. Additionally, for multinational corporations (MNCs) operating in several countries, disparities between local laws and international norms may result in contradictory interpretations and difficult enforcement. Future studies can examine the newest developments in international labor law, how well regulatory frameworks safeguard employee rights throughout business reorganizations, and how transnational agreements are changing the way that legal norms are standardized across borders.

KEYWORDS: Legal analysis, Multinational Corporation, Layoffs, Retrenchments, Termination of employment

I INTRODUCTION

Recently, a large number of tech personnel have been laid off globally. After the epidemic, business faces a new challenges including as over-hiring, cost concerns, and finance issues. Several prominent firms have been announced layoffs of huge staff groupings since January

2023. Employees suffered greatly from 'zoom call lay-offs' or 'virtual lay-offs'. Employees were laid off by two-minute Zoom conversations or pre-recorded messages, with no explanation provided. ***Isabel Bilotta,*** an organizational psychologist, considers remote lay-offs to be a violation of 'interactional justice', denying impacted individuals dignity and respect.[1]Initially, firms saw layoffs as a last resort, permissible only under conditions can include a lack of raw supplies, product accumulation, machine breakdown, or natural disasters.[2] as time passed, firms exercised section 2 (kkk) of the Industrial Disputes Act, 1947 (Id Act) allows for further flexibility in certain instances. Previously considered a last resort, corporations now use this strategy to minimize payroll and control losses during cost-cutting and automation efforts. This research aims to show that multinational firms misclassify terminations as 'lay-offs' instead of retrenchments to avoid compensation and legal problems. Legally, retrenchment and layoffs must be distinguished. Although layoffs are less regulated than retrenchments, they nonetheless involve specific legal obligations, such as salary and notification periods. India's labor regulations have been heavily influenced colonialism and the socialist aspirations of its founding fathers.

Labor rationalization and redundancies were policy challenges in the 1950s, particularly during closures in the cotton textile and leather industries. Several aspects were considered, including workload analysis, stress on natural separation, generous separation allowances, alternative employment opportunities, and retention plans.[4]The ID Act was revised in 1953 and 1976 with the notion of 'rationalization without tears' to reduce the impact of rationalization on workers. According to Chapters VA and VB of the ID Act, 1947, industrial establishments can lay- off, retrench, close, or transfer their operations if they follow the processes outlined. Employers in larger industrial operations are required to obtain government consent before implementing layoffs, retrenchments, or closures.[5]In accordance with Section 25C of the ID Act, a worker is entitled to layoff compensation at the amount of 55% of total basic pay and dearness allowance. Employers must provide retrenchment compensation of 15 days' income for every year of continuous service, as well as one month's notice before laying off employees.[6] This provision provides workers with a subsistence allowance to help them transition to their next job after losing their current one.

Constitutional challenges have been faced by the introduction of Chapter VA in 1953 and Chapter VB in 1976 in the Industrial Disputes (Amendment) Acts.[7] The recommendation from the Second National Commission on Labour in 2002 was to expand the number of workers covered under Chapter V B to 300 in industrial enterprises and to remove smaller sectors from its application.[8] Chapter X of the proposed Industrial Relations Code, 2020 increased the number of workers to 300 workers in order to request government approval in cases of layoffs, retrenchments, and closures based on these recommendations. Similar changes to the I.D. Act have been suggested by a few states, which would relax restrictions on layoffs and retrenchments in accordance with the legislative goals of the planned Code on Industrial Relations, 2020.[9]

Political parties and labor unions are against these changes because they would lead to a rise in in formalization within the organized sector[10]. Employers' already vocal objection to the regulations under Chapters V A and V B is the backdrop against which the unthinkable extent of layoffs in industries is blamed for the COVID-19-related economic crisis. It casts doubt on multinational corporations' adherence to the law during mass layoffs by challenging the blurry line that separates temporary layoffs from covert retrenchments. This is indeed crucial for creating a just working environment. Here's a structured way to approach your analysis:

1. ***Fairness in Decision-Making***: Emphasize the need for decisions regarding workforce rationalization to be fair. This involves treating all employees equitably and avoiding any form of discrimination or bias.
2. ***Transparency in Procedures***: Highlight the importance of transparency throughout the process. Employees should understand the criteria used for selection, the reasons behind decisions, and the overall goals of the rationalization process.
3. ***Compliance with Laws and Regulations***: Stress the necessity of adhering to labor laws, employment regulations, and any contractual obligations during workforce rationalization. This ensures legal protection for both the organization and its employees.

4. ***Creating a Just Working Environment***: Discuss how adherence to these principles contributes to a just working environment. Employees feel valued and respected when decisions are made fairly and transparently, even in difficult circumstances like workforce reductions.
5. ***Long-Term Benefits:*** Consider the long-term benefits of maintaining a reputation for fairness and compliance. It can enhance employee morale, improve retention rates, and strengthen the organization's relationship with stakeholders.
6. ***Challenges and Solutions***: Acknowledge the challenges in achieving these goals, such as balancing business needs with ethical considerations. Propose solutions like implementing clear communication strategies, providing support to affected employees, and offering retraining or redeployment opportunities where possible.

II LEGISLATIVE BACKGROUND ON LAYOFF :

Definition of "lay-off"

Originally, there were no specific laws governing lay-offs in India. This meant that lay-offs were unregulated and could happen at the discretion of the employer. This is lack of regulation often resulted in hardships for workers. The issues arising from unregulated lay-offs, so an amendment was made to the Industrial Disputes Act of 1947 in 1953. This amendment was introduced Chapter VA, which likely provided some framework or guidelines for how lay-offs should be conducted and possibly addressed the rights of workers affected by lay-offs. Another significant amendment occurred in 1976, when the Chapter VB was added to the Industrial Disputes Act. This provided a separate set of rules specifically for larger industrial establishments regarding lay-offs, retrenchment (reducing the workforce), and closure of establishments. These amendments were likely to introduced and bring more clarity and fairness to the process of lay-offs. The aim is to protect the rights of workers by providing a legal framework that employers had to follow when implementing lay-offs. This would help mitigate the hardships faced by workers due to arbitrary lay-offs. The amendments to the Industrial Disputes Act in 1953 (Chapter VA) and 1976 (Chapter VB) were crucial steps in regulating lay-offs in India, ensuring that they were conducted fairly and with consideration for the rights of workers affected.

The **Industrial Relations Code of 2020** is the proposed changes to the law essential to layoffs, retrenchments, and closures. The definition of "lay-offs" is found in ***section 2(t) of the proposed Industrial Relations Code***, which is an exact replica of section 2(kkk) of the ID Act. The term "layoff" refers to an employer's inability to keep workers on staff due to a number of circumstances, such as a shortage of supplies, coal, or electricity, stockpiling, equipment breakdown, etc.

The Supreme Court has interpreted to clarify that it is not temporary discharge or temporary suspension of contract of service, but merely temporary unemployment of a few workmen on one of the grounds mentioned in ***section 2 (kkk) of the ID A***

The court further held that lay-off is the inability of the employer to provide employment and therefore no conferment of power on the employer to declare lay-off under the ID Act.[10]

Therefore, the definition was clarified to state that this temporary unemployment arises from the failure or inability of the employer to give employment for the reasons stated in section 2 (kkk). This was further made clear in *Central Spinning India Weaving v. Industrial Court,*[11] wherein it was held that the definition does not include the failure to employ for reasons not specified in the definition or their equivalents.The obligation of the employer to pay layoff compensation under section 25 C of the ID Act arises when the following conditions are complied with:

a) An employer must reject, refuse, or be incapable of hiring a candidate.

b) This abandonment, denial, or incapacity must result from a dearth of coal,electricity, or raw materials, an accumulation of inventories, a machinery malfunction, a natural calamity, or any other unrelated cause.

c) The identities of terminated employees must be included in the muster records of the business. (Must be on the payroll of the organization).

d) They should not be retrenched.

In Workmen of Firestone Tyre and Rubber Co., Ltd v. Management, [12]the Supreme Court held that either the term of the contract of service or provisions in the Standing Orders should empower the employer to declare layoff. In case, the employer is not empowered in such a manner, then "the employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen".[13] This reading of the court further clarifies that there is no legal right to lay off a workman unless the law, either in the contract of service or in the statute or the statutory rules or standing orders, provides so

No workmen of larger establishments can be terminated either temporarily or permanently without the prior approval of the appropriate authority.[14]Additionally, copies of the pertinent application must be distributed to workmen. If the workers were laid off due to a fire, flood, an excess of flammable gas, or an explosion, the employer must apply for permission within thirty days of the date of lay-off.[15]

lll LAW REGARDING LAYOFF COMPENSATION AND ITS EXEMPTIONS :

The compensation that workers are entitled to when layoffs is expressly addressed in Section 25 C of Chapter V-A of the Industrial Disputes Act, 1947. 50% of the total basic wage and dearness allowance for the duration of the layoff is the amount of layoff compensation. A list of terms and circumstances that are unchangeable without providing notification to the workers who will likely be impacted is included in the Fourth Schedule of the ID Act. According to Section 9 A read in conjunction with the Fourth Schedule, the employer must implement any standardization or rationalization efforts that could result in layoffs for a minimum of 21 days. The industrial establishments where more than 100 workmen are working, prior approval of the appropriate government is mandatory before lay-off. Section 25 E of Chapter V-A prohibits the employer from paying layoff compensation in specific circumstances. These include when workers decline to accept similar work at the same wage elsewhere within five miles of the original establishment, when workers fail to show up once a day during regular business hours, and when the layoff results from a strike by workers or another area of the business. If the employer is not satisfied with the proof of a worker's devotion to continue working for the same employer, they have the option to refuse payment (see sections 25 C and 25 E taken together)[16]. Therefore, even during the days of unemployment, the worker needs to ensure their presence at the workplace to become eligible for compensation. Though it is only 50% of the wages are paid as lay-off compensation, the worker cannot engage in any other work under a different employer to bridge the income gap due to lay-off.

IV DIFFERENTIATING BETWEEN "LEGAL" AND "JUSTIFIED" LAYOFF :

In judicial discussions centered on the grounds for layoffs, the procedural compliance under section 25 C provides an answer to the questions of legality and justifiability. The subject of legal compliance stemming from provisions reading together sections 9 A, 25 C, and 25 E of the Industrial Disputes Act, 1947, arises in relation to procedural compliance, such as payments of compensation and notification. The Supreme Court, in appeal, held that the tribunal had exceeded its jurisdiction by examining the prudence of the management in handling its affairs which is beyond the mandate of section 2 (kkk).

The question of whether there was sufficient justification for a layoff is where the investigation ends. In his decision in this matter**,** ***Gajendragadkar J.*** established the following guidelines: If the layoff is malafide in the sense that the employer willfully and maliciously created the circumstances that required the layoff, it is not a layoff that is justified under s. 2(kkkk), and the workers are entitled to additional remedies beyond what is offered under Sec. 25C. The situation remains the same if a layoff is announced with the intention of victimizing employees or for any other hidden motive.[17]

The litigation was on payment of wages for the period of lay-off declared on malicious grounds beyond "the failure, refusal or inability of an employer on account of the shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for a ny other connected reason".[18]

In the case *of Tatanagar Foundry Co. Ltd. v. Their Workmen,*[19] the Supreme Court examined the justifiability of lay-off. In this case, the tribunal found that the company was in financial difficulties and hence there was no malafide intention or ulterior motive in laying off the workmen. However, the tribunal stated that the efficient management could have avoided the instance of a lay-off of the workmen. Based on this reasoning, it was held that the lay-off could not be altogether justified and awarded compensation to the respondents over the amount fixed by the statutory provision under section 25C[20]In the case of *Workmen of Dewan Tea Estate v. The Management* the Supreme Court examined the question of whether 'financial position or trading reason' would fall within 'any other connected reason' under the definition of lay-off and hence the declaration of lay-off was justified. While deciding the matter, *Justice Gajendragadkar* did not refer to the *Tatanagar Foundry case*, and held that the financial, position disclosed cannot be described as constituting 'a cause beyond the control of the employer.'[20]

Justice Ramaswamy distinguished the case from *the Workmen of Dewan Tea Estate case* on the ground that in this case there was sudden slump in the world market contributing to financial difficulties and held that the lay-off on the ground of financial difficulties faced by the employer is justified.[21]

In the definition of lay-off, there is no specificity about the period for which lay-off can continue. However, the first proviso to section 25 (c) talks about 45 days of lay-off period in the last 12 months, for which lay-off compensation can be claimed if there is no agreement to the contrary. As the law is silent on the duration of lay-off, the employer can declare lay-off for an indefinite period and keep the employee on the expectation of continuation of employment. However, one relies upon justifiability tests in lay-off – malafide intention, malicious motive and ulterior purpose-if there is an intention not to retain the workmen, to call it a 'lay-off ' raises a justifiability question. In such cases, the workmen have to go without full wages or any wages for an indefinite period without joining any other work or service. Therefore, the lay-offs which are without any time period or indefinite in character, require particular inquiry and full wages for the period of lay-off, if there is a malafide intention to prolong the lay-off without any compensation.[22]

V RETRENCHMENT DUE TO LAY-OFFS:

The majority of lay-offs declared in the current context raise the 'question of lawfulness' as from the face of it there is an intentional permanent severance of employment relationship on the ground of 'cost-cutting' In popular human resources literature, mass lay-offs are explained as strategically planned elimination of the downsizing of workers to enhance organizational effectiveness. It is this synonymous use of 'lay-off' with firing, terminating, eliminating or permanent reduction in the workforce that brings a conflict with the well-defined legal categories of job losses such as retrenchment and closure, which are permanent in character[23.]

VI LEGAL STATUS CONCERNING LAYOFFS THAT END IN RETRENCHMENT:

Due to factors such as cost-cutting, reorganization, and shifts in business strategy, reduction in the work force has become common in many industries. Initially, they declare mass lay-off and later proceed to either indefinite lay-off or retrenchment. In the case of lay-off compensation, the provisos to section 25 C explain the connection between lay-off and retrenchment. The first proviso section 25 (c) states that the compensation shall be payable only for forty-five days during twelve months unless there is an agreement to the contrary. The second proviso to section 25 (c) states that if workers are laid down for more than forty-five days, it shall be lawful for the employer to retrench the workmen.[24] In the case of such a retrenchment, the retrenchment compensation under section 25 F shall be set off against the lay-off compensation that is already paid. To make this provision applicable, the proviso mandates that the retrenchment shall be legal as contemplated by section 2 (oo) and comply with the requirements under section 25F.

Indefinite lay-off and subsequent retrenchment or lack of clarity on the question of fiscal challenge leading to retrenchment of the workforce requires 'harm' analysis from the part of workers. Lay-off provides an expectation for the workmen to re-join employment and precludes workmen from doing alternate employment at their will for the duration of lay-off. There is complete dependency on the employer for sustenance. Temporary reduction of the workforce on account of surplusage or financial incapacity of the employer to provide

employment is a valid lay-off whereas it is not approached as a mere 'cost-cutting' measure through the lens of law against job losses contained under Chapter VA and Chapter VB of the ID Act, 1947.

The Supreme Court of India in principle hasn't entertained any 'sham' approach to eliminate a person from employment. *In Ranbir Singh v. Executive Engineer PWD* the court held that if an employer wishes to terminate an employee irrevocably, it must comply with the ID Act by providing retrenchment compensation. In the case of *Alok Kumar v. Oriental Bank of Commerce*, the High Court of Delhi ruled that an employee who was terminated under the guise of a "voluntary retirement scheme" (VRS) was eligible for retrenchment compensation because the circumstances suggested that the termination was not voluntary but rather a disguised retrenchment.[25]

A business may refer to a retrenchment as a "temporary lay-off " or a "furlough,"insinuating that the employee will be recalled once the situation improves. However, this would be considered a retrenchment if the company has no intentions to rehire the employee. MNCs have manipulated the legal framework in a variety of ways to avoid or minimize their obligation to compensate laid-off employees.

Convention 158 of the International Labour Organization (ILO) establishes 'termination of employment' standards or rules that member nations are required to incorporate into their labor law systems.48 Article 12 of ILO Convention 158 specifies the element of compensation to be granted to a worker whose employment is terminated due to exceptional circumstances.[26]

VII CONCLUSION

Corporate layoff practices in the present have not kept pace with the clarity in jurisprudence surrounding job losses, particularly on the distinction between layoffs and retrenchments. Businesses regularly ignore the domino impact on the workforce when they fire employees in an attempt to reduce costs and streamline processes. Moreover, while having access to legal recourse, employees' options are restricted. For cost-cutting reasons, businesses continue to fire people under the guise of "mass layoffs." This has far-reaching effects on both qualified and unskilled personnel. More than 30,000 people have lost their jobs in India's IT sector in the last two years, and this number is only expected to rise. To stop illegal layoffs that are actually retrenchments, there needs to be judicial involvement.[27], Employers must provide preference to laid-off workers who apply for new jobs under the ID Act.[28] Legislation pertaining to layoffs must be created to prevent legal manipulation in the event that employees are still being laid off on false pretenses. Laws should prevent layoffs from being utilized as a quick fix to escape the financial and legal requirements that result from retrenchment laws.When retrenchment occurs, employers are required to follow the "last in, first out" concept, pay severance, and give notice. If an employer want to lay off employees, they must first get consent from the relevant government agency, pay severance, and guarantee that the employee's termination was due to an uncontrollable circumstance. As the courts have concluded, interpreting the justifiability of layoffs becomes crucial legally since any uncertainty surrounding a specific term of layoffs is a covert means of keeping employees without regular work. As a result, when employer and employee ties are being severed, we demand more stringent adherence to the law. Layoffs are never a pleasant thing to do in business, especially for the employees.

The workers' lives would be less uncertain if they were informed in advance of the upcoming layoffs and given a set amount of time to address the deadlock. Retrenchment is not warranted from the beginning for any layoff that was announced with that goal in mind, which is why the latest round of layoffs has not demonstrated any desire to bring the laid-off employees back. Under the retrenchment law, the employer's liability is taken more seriously and the layoff procedures are subjected to greater scrutiny. In light of the fact that the employer-employee relationship is being permanently severed, remuneration is increased in accordance with the length of service. Since the purpose of the layoff is to permanently fire the employees, it cannot be justified because it lacks fairness. The specific reason for this is that Indian industrial relations laws lack any provisions that would facilitate the use of employment exchanges, collectives, trade unions, or solidarity networks to help workers return to the workforce by way of outplacement services and other forms of social support.[2]

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