REFRESHER COURSE FOR LABOUR COURTS

7 to 9 December, 2018

At the National Judicial Academy, Bhopal

PREPARED BY
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NATIONAL JUDICIAL ACADEMY
The National Judicial Academy (NJA) organized a three day “Refresher Course for Labour Courts” from 07 – 09 December, 2018 at the NJA, Bhopal.

The objective of the course was to provide a forum for sharing experiences with regard to impediments to speedy and efficacious dispensation of cases and for identifying optimal solutions to contentious issues which retard efficacious and speedy disposal of cases. The course also aimed at facilitating discussions on evolving norms and jurisprudence in respect of labour disputes. The course involved discussions on labour & management; evolving perspectives; constitutional signals, the role of courts, contract labour, unfair labour practices, reinstatement, back wages, retrenchment, lay off, dismissal, discharge, strikes and lockouts as well.

About 25 judicial officers nominated by different High Courts participated in the course. The course was divided into eight sessions over the duration of 3 days on following themes.

SESSION -1-LABOUR & MANAGEMENT: EVOLVING PERSPECTIVES: CONSTITUTIONAL SIGNALS, THE ROLE OF COURTS

SESSION -2-CONTRACT LABOUR: ISSUES AND CHALLENGES

SESSION -3-UNFAIR LABOUR PRACTICES

SESSION- 4-DISMISSAL AND DISCHARGE

SESSION -5-RETRENCHMENT AND LAY OFF: BALANCING RIGHTS OF LABOUR AND INTEREST OF EMPLOYER

SESSION- 6 -REINSTATEMENT AND BACK WAGES

SESSION -7-STRIKES AND LOCKOUT

SESSION -8-IMPROVING THE EFFICIENCY OF LABOUR COURTS: CONSTRAINTS AND SOLUTIONS
## REFRESHER COURSE FOR LABOUR COURTS

**7-9 December, 2018**

**National Judicial Academy, Bhopal**

### PROGRAMME SCHEDULE (P-1143)

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<td>10:00AM -11:30AM</td>
<td><strong>SESSION 1</strong></td>
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<td>Labour &amp; Management: Evolving Perspectives: Constitutional Signals, The Role of Courts</td>
<td><strong>Speakers</strong>: Prof. (Dr.) B.T. Kaul &amp; Prof. (Dr.) R. K. Murali</td>
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<tr>
<td>11:30AM - 12:00PM</td>
<td><strong>Tea Break</strong></td>
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<tr>
<td>12:00PM - 13:30PM</td>
<td><strong>SESSION 2</strong></td>
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<tr>
<td>Contract Labour: Issues and Challenges</td>
<td><strong>Chair</strong>: Prof. (Dr.) B.T. Kaul</td>
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<tr>
<td>13:30PM - 14:30PM</td>
<td><strong>Lunch</strong></td>
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<td>14:30PM - 16:00PM</td>
<td><strong>SESSION 3</strong></td>
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<tr>
<td><em>(In house tea at 15:30 PM)</em></td>
<td>Unfair Labour Practices</td>
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<tr>
<td><em>(In house tea at 15:30 PM)</em></td>
<td><strong>Speakers</strong>: Prof. (Dr.) B.T. Kaul &amp; Prof. (Dr.) R. K. Murali</td>
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<td>Dismissal and Discharge</td>
<td><strong>Speakers</strong>: Justice R.V. Ghuge &amp; Mr. Sunil Kumar Tripathi</td>
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<td><strong>Co-Chair</strong>: Prof. (Dr.) S. C. Srivastava &amp; Justice Rajashekhar Mantha</td>
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<td><strong>Tea Break</strong></td>
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<td>Retrenchment and Lay Off: Balancing Rights of Labour and Interests of Employer</td>
<td><strong>Speakers</strong>: Justice Rajashekhar Mantha &amp; Prof. (Dr.) B.T. Kaul</td>
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<td><strong>SESSION 6</strong></td>
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<td><em>(In house tea at 15:30 PM)</em></td>
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<tr>
<td>10:00AM - 11:30AM</td>
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<td><strong>Speaker:</strong> Mr. Sunil Kumar Tripathi</td>
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<td>12:00PM - 13:25PM</td>
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<td></td>
<td><strong>Speakers:</strong> Prof. (Dr.) B.T. Kaul &amp; Mr. Sunil Kumar Tripathi</td>
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<td>13:25PM - 13:30PM</td>
<td>Audit of the Course by Participant Judges</td>
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SESSION 1

Labour & Management: Evolving Perspectives: Constitutional Signals, The Role of Courts

Speakers: Prof. (Dr.) B.T. Kaul & Prof. (Dr.) R. K. Murali

- The session began with discussion on the concept of socio-economic justice in context of labour law in India. Constitutional provisions with respect to protection to weaker and disadvantaged section of labour were highlighted during the sessions. The schemes of the labour laws covered under various Acts were briefly explained to the participants.

- The contribution of the Supreme Court of India in developing labour law jurisprudence was also highlighted to the participants. The landmark judgements such as BALCO Employees Union Registered v. Union of India (2002) 2 SCC 333 and National Textile Workers Union v. P.R. Ramakrishnan (1983) 1 SCC 228 were discussed in detail.

- Various important aspects under legislative measures regulating industrial relations in India and development of labour jurisprudence were discussed in the session.
SESSION 2
Contract Labour: Issues & Challenges
Chair: Prof. (Dr.) B.T. Kaul & Speaker: Prof. (Dr.) R. K. Murali

- Session began with explaining scheme of The Contract Labour (Regulation & Abolition) Act, 1970; important provisions under the Act such as prohibition of employment of contract labour, penalties and procedure were highlighted and explained to the participants. The landmark judgement of Standard Vacuum Refining Co. AIR 1960 SC 948, Steel Authority of India v. National Union Water Front Workers, LLJ 2001 SC 239, Secretary State of Karnataka and others v. Umadevi & ors, AIR 2006 SC 1806 and State of Punjab and others v Jagjit Singh and others (2017) 1 SCC 148 were also discussed during the session.
SESSION 3

Unfair Labour Practices

Speakers: Prof. (Dr.) B.T. Kaul & Prof. (Dr.) R. K. Murali

- The evolution and development of the concept of unfair labour practices from historical point of view was discussed. It was emphasized that the expression ‘unfair labour practices’ in context of India has not always been used to mean only activities which hinder the smooth functioning of collective bargaining.

- It was stressed that the expression as used in legislation and in the decisions of the courts is used in a wider and looser sense to cover unjust dismissals, unmerited promotions and every form of victimization.

- Landmark cases such as Mackinon Mackenzie and Company Limited v Mackinnon Employees (2015) 4 SCC 544, Union Umrala Gram Panchayat v Secretary, Municipal Employees Union and others 2015(4) SCALE 334 and Bajaj Auto Limited v Rajendra Kumar Jagannath Kathar and others (2013) 5 SCC 691 were referred during the discussion.
SESSION 4
Dismissal and Discharge
Speakers: Justice R.V. Ghuge & Mr. Sunil Kumar Tripathi
Co-Chair: Prof. (Dr.) S. C. Srivastava & Justice Rajashekhar Mantha

SESSION 5
Retrenchment and Lay Off: Balancing Rights of Labour and Interests of Employer
Speakers: Justice Rajashekhar Mantha & Prof. (Dr.) B.T. Kaul
Co-Chair: Prof. (Dr.) S. C. Srivastava & Justice R.V. Ghuge

SESSION 6
Reinstatement and Back Wages
Speakers: Justice R.V. Ghuge & Justice Rajashekhar Mantha
Co-Chair: Prof. (Dr.) S. C. Srivastava & Prof. (Dr.) B.T. Kaul

- The session began with a question, what is dismissal and discharge? The meaning of dismissal and discharge with the help of landmark judgements and illustrations was explained to the participants. It was stressed that both discharge and dismissal are forms of termination of service. Dismissal is termination by way of punishment for misconduct, whereas discharge is classically a termination not by way of punishment and involving no stigma against the terminated employee.
- The expression discharge and dismissal was further explained though landmark judgements.
- The philosophy behind retrenchment, its meaning under 2(oo) and lay off was explained to the participants. While elaborating the scope of section 25 (F) of the Act through
landmark judgements, it was stressed that in catena of decisions it is held that where the termination is illegal, and especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits.

- It was further emphasized that the normal rule on the grant of reinstatement pursuant to an illegal termination was that it should be done with full backwages, except to the extent that the workman was gainfully employed in the interregnum, with the burden on the employer to establish the circumstances necessitating departure from the rule.

- Scope of section 11A was also discussed with the participants in the sessions.

- Some important judgements that discussed during the sessions were
  
  State Bank of India vs. Workmen of State Bank of India 1991 1 SCC 13

  State Bank of India vs. T.J. Paul AIR 1999 SC 1994

  Hirakud Dam v. State of Orissa, (1971) 1 SCC 583


  Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma, (2002) 2 SCC 244

  Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813


  Cipla Ltd. and Others v. Ripu Daman Bhanot and another, 1999 LLR 534

  Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union and Others, 1999 LLR 180 (SC)


  State of Bombay V/s. Hospital Mazdoor Sabha (1960 2 SCR 866)

  Surendra Kumar Verma V/s. Central Government Industrial Tribunal–cum–Labour
Court, New Delhi (1980 4 SCC 443)
Safdarjung Hospital v. Kuldeed Singh (1970 1 SCC 735)
Mulin Sharma v State of Assam and others AIR 2016 SC 3225
B.S.N.L. v Bhurumal (2014) 7 SCC 177
Hari Nandan Prasad and another v Employer I/R to Management of FCI and another (2014) 7 SCC 190
Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (2013) 10 SCC 324
Asst. Engineer, Rajasthan Development Corporation &Anr. v Gitam Singh (2013) 5 SCC 136
SESSION 7

Strike, Lockout and Closure

Speaker: Mr. Sunil Kumar Tripathi
Chair: Prof. (Dr.) S. C. Srivastava

- Session began with discussion on relevant provisions under Industrial Dispute Act on strike, lockout and closure. Meaning of strike under 2 (q), lockout under 2(1) and closure under 2(cc) of the Act was also explained to the participants, thereafter, attention was drawn to the ingredients, types of strike and leading case laws.

- Following landmark judgements were discussed and explained during the session

  Hindustan Steel Ltd. Vs. Workmen (1973) 3 SCC 564,
  General Labour Union Vs. B.V. Chavan 1985 LIC 726 SC
  Syndicate Bank v. K. Umesh Nayak (1994) 5 SCC 572
  Maruti Udyog Ltd. Vs. Ram Lal (2005)2 SCC 638
  M/S. Empire Industries Limited v State Of Maharashtra And Others (2010) 4 SCC 272

- Provisions with respect to prohibition of strikes & lock-out, general prohibition for strikes & lock-out, Illegal strikes & lock –out, prohibition of financial aid to illegal strike & lock-out, prohibition of unfair labour practice, penalty for illegal strike & lock-out, Penalty for giving financial aid for illegal strike & lock-out, protection of person and representation of parties were also discussed in the session.
SESSION 8
Improving the Efficiency of Labour Courts: Constraints and Solutions
Speakers: Prof. (Dr.) B.T. Kaul & Mr. Sunil Kumar Tripathi
Chair: Prof. (Dr.) S. C. Srivastava

- It was an interactive session. Speakers discussed various challenges faced by labour Courts on day to day basis with their effective solutions. Many queries and questions with respect to practical problems were also raised and discussed during this session.