

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Labour Law-I
Semester-VII (Batch: 2015-20)

End Semester Examination: Oct-Nov. 2018

Date: 22nd October, 2018

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Answer any five questions:

Marks

- Q.1 What is collective bargaining? Identify the causes for limited success of collective bargaining in India. (10)
- Q.2 'X' company is registered under the Companies Act, 2013 and is engaged in the business of manufacturing pharmaceutical and chemicals. It has got its factory at Renofi in Baroda District. 'Y' is a trade union registered under the Trade Unions Act, 1926 and commands membership of the majority of the workers employed in the factory of the company at the relevant time. According to the company, it has two divisions, namely-(i) Dyes and Chemical division including petro-chemicals, and (ii) pharmaceutical division. In the Dyes and Chemical division, the company employs on an average about 1000 workers, whereas in the Pharmaceutical Division, the company is employing about 700 workers. The company states that the process of manufacture being highly specialised, the workers are not transferred from one division to another, even for Badli work, and for all practical purposes, the two divisions are treated as independent divisions. Further, the company states that in the year 2014 there was accumulation of stock in the Dyes and Chemical Division of the company and there was non-availability of adequate sales orders with the result that the company was constrained to curtail its production in the Dyes and Chemical Division in the later part of 2014, and consequently the company had to lay off the workmen according to seniority in the Division. The company had accordingly put up three notices, dated 18th November 2014, 4th December 2014 and 27th December 2014, laying off 163 workmen, 30 workmen and 22 workmen respectively on each occasion. (5+5=10)
- 'Y' union challenged these notices of lay off put up by the company and it addressed two letters, dated 20th November 2014 and 22nd November 2014 to the company raising dispute regarding the validity of the concerned notices.
- The first objection raised by the union was that factually all the three lay-offs were not justified because there was no paucity of supply orders of goods as contended by the company and consequently, there was no valid or genuine reason for effecting the concerned lay-offs. The second objection raised on behalf of the union was that the principle of seniority was followed at the time of laying off the workmen concerned; that junior workmen were retained and were permitted to work while the senior workmen

were laid off and hence also the lay-offs were illegal and they were required to be declared as illegal and unjustified. The dispute was referred by the Government of Gujarat to the Industrial tribunal.

On the basis of the above stated facts, decide the following issues:

- (a) Whether the lay-offs declared by the company are legal?
- (b) What procedure is required to be followed by the employer in order to lay-off the workmen?

- Q.3 The MMG Sangh is a Trade Union of workers of O.N.G.C registered under the provisions of the Trade Unions Act, 1926. The members of the Union are spread over the entire region of Gujarat, i.e. in Ankleshwar, Vadodara, Khambhat, Ahmedabad and Mehsana and that the strength of the workers in Ahmedabad is 1500 and out of that, 1000 workers are the members of the MMG Union. It is further stated that in Ankleshwar, there are 1700 workers, out of which 1200 workers are members of this Union. So far as Vadodara is concerned, there are 350 workers, out of which 100 workers are members of the said Union and in Mehsana, there are 1500 workers, out of which, 700 workers are members of above stated Union. (5+5=10)

The O.N.G.C. has given recognition to the Unions of Vadodara and Mehsana. The company is also giving certain benefits to the Unions recognised by it, such as inviting the representatives of such recognised Unions in the matter of taking policy decisions, providing facilities of transportation, office, installation of telephones, giving telephone facility at the residences of the office-bearers of the Union, etc. and it seems that some privileges are given to the office-bearers of such recognised Union. The Unions at Ahmedabad and Ankleshwar has requested the O.N.G.C. to give recognition to it, the same was not given and the office bearers of the MMG Union at Ahmedabad and Ankleshwar are not called for any negotiations while taking policy decision nor they have been given any such facilities, which are given to the office-bearers of the recognised Unions.

The grievance of the Union is that even though the Union is having larger membership as compared to the Unions at Vadodara and Mehsana which are actually in minority, they are still enjoying the status of recognised Unions at the hands of O.N.G.C. The claim of the Union is that the process of verification of the membership of the Union had not taken place since long and lastly, the said verification was carried out as back as in the year 2008. If proper verification is carried out, the Union can prove the strength of its members. It is also alleged that the O.N.G.C. is deliberately sheltering the minority Unions in taking policy decision concerning the service conditions of the workmen and the consultation is made only with the office bearers of the aforesaid Unions, even though the Union is having more membership as compared to the aforesaid minority Unions.

The above-said action on the part of the O.N.G.C. in not verifying the membership since last 10 years is arbitrary and contrary to the provisions of Article 14 of the Constitution of India. On these averments, therefore, the Union, challenging the action of the O.N.G.C. in not carrying out the verification to find out the membership of the concerned Unions has filed a petition before the High Court.

On the basis of the above stated facts, decide the following issues:

- (a) Whether O.N.G.C has acted arbitrarily by not verifying the membership since last 10 years?
- (b) If you were the employer at O.N.G.C, what criteria you would have adopted to recognise the Union?

- Q.4 Mr. 'X' alleged in the complaint that he is working in the office of 'Y' company as Office Attendant/Assistant as a permanent workman. It is stated that he has been working at the same position from February 2011 at the office of 'Y' at Satara. However, the company appointed him on daily wage basis. It has been alleged specifically that although 'X' is appointed as Office Attendant/Assistant, yet he has been working as a Class-IV employee. He has the educational qualification of Higher Secondary and, therefore, he is carrying out all routine jobs. Thereafter, in 2016, the Satara Division Project was transferred to the Pune Greenery Zone, Pune Division and, therefore, from June 2016 'X' has been working at Pune Division. He was working at that position till 1st December 2017. He has completed 240 days of service in every year. It is stated that from 1st December 2017 he was terminated orally by the company. 'X' has challenged the order of termination on the ground that the act of the company amounts to an *Unfair Labour Practice* as mentioned in Schedule V of the Industrial Disputes Act, 1947. It is also alleged that there are 1,000 permanent workmen employed at various projects all over Maharashtra by the same company. They have been given benefits of all labour laws by the company. However, from the date 'X' was appointed he was paid Rs.165/- wage per day only. He has worked throughout and he has applied by several representations in writing from December 2016 till 31st October 2017 that he should be confirmed in service and be given all benefits. However, the company did not extend the benefits arising out of labour laws and instead orally terminated the services of 'X'.
(5+5=10)
- On the basis of the above stated facts, decide the following issues:
- Whether the act of the company amounts to unfair labour practice?
 - If you are appointed as the lawyer by the company, what will be your arguments on behalf of the company?
- Q.5 (a) The manager of a bricks factory had a contract with certain independent contractors for the supply of the bricks. The contractors undertook to supply the bricks by manufacturing them in their own factories or by entrusting the work to third parties, on a price to be paid by the management after delivery and approval. The raw material for the same was supplied by the bricks factory. The management of the factory was making the payment to the contractors and not directly to the workers because they were neither directly employed by the management nor did they work in the factory. A dispute arose between the workmen and the independent contractors regarding non-payment of wages. The dispute was referred to the labour court by the appropriate government. The question to be determined before the labour court was whether the workmen employed by the contractors are covered under section 2(s) of the Industrial Disputes Act, 1947? Decide it on the basis of the relevant case laws.
(5+5=10)
- What is an industrial disputes? What is the difference between the individual dispute and industrial dispute?
- Q.6 Mr. 'X' was employed as a junior engineer on daily wage basis for a period of 100 days in a scheme known as rural employment program. On the completion of 100 days, the authority passed a specific order for termination of 'X' on 29th December 2015. Mr. 'X' was offered yet another temporary employment in a scheme known as *Jeevan Jyoti* vide order dated 17th January 2016. The employment was extended from time to time upto 12th June 2016. The last order of appointment was made for a period of 7 days which was issued on 24th June 2016 and it came to an end on 30th June 2016. 'X' has challenged it on the ground that the termination of employment amounts to retrenchment and he is entitled to retrenchment compensation.
(5+5=10)



On the basis of the above stated facts, decide the following issues:

- (a) Whether it amounts to retrenchment and whether 'X' is entitled to retrenchment compensation?
- (b) What are the conditions precedent for retrenchment of the workmen in those industrial establishments who are employing 100 or more workmen?
