

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Labour Law-I**
Semester-VII (Batch: 2013-18)

End Semester Examination: October-2016

Date: 20th October, 2016

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.
- **Bare Act is not allowed.**

Part-A

Marks

Answer **all** the questions

- Q.1 State true or false with the appropriate reasons- (word limit: maximum 50 words) (5x2=10)
- (a) The sales and medical representative is a '*workman*' under section 2 (s) of the Industrial Disputes Act, 1947.
 - (b) The rule of '*continuous service*' under section 25-B of the Industrial Disputes Act, 1947 will be applicable when a casual workman is employed in different establishments of a corporation?
 - (c) It is mandatory for the *appropriate government* to wait for the outcome of the conciliation proceedings before making the order of reference.
 - (d) The certified standing orders is like an '*award*' under the Industrial Disputes Act, 1947.
 - (e) The termination of service of an employee as a result of transfer of ownership of an undertaking to another employer constitute '*retrenchment*'.

Part-B

Answer **any four** questions

- Q.2 (a) Agni Tea Estate (vendor) agreed to sale the tea estate to Swami Tea Company (vendee) on 12th January, 2011. It was also agreed upon by the parties that the transfer would take effect from 1st January, 2011. The agreement was subject to the approval of the Reserve Bank of India. During the pendency of the execution of deed for the approval of Reserve Bank of India, the vendee took the *de facto* possession of the estate on 17th February, 2011. The workers employed therein were allowed to work and receive their wages from it. The permission of the Reserve bank of India was received on 15th July 2011. Before the execution of the sale deed, the vendor company received a letter from vendee to retrench certain surplus staff. The manager of the vendor company accordingly served a notice on eight workmen intimating that their services would be terminated from 18th October, 2011, after paying them retrenchment compensation prescribed under Section 25-F of the Industrial Disputes Act, 1947. The concerned workmen received the compensation under protest. They challenged the validity of the retrenchment. (3+3+4=10)

On the basis of the facts stated above, decide the validity of the retrenchment as per the provisions of the Industrial Disputes Act, 1947.

- (b) What is 'continuous service' under Section 25-B of the Industrial Disputes Act, 1947?
- (c) What are the conditions when the workman is not entitled to lay-off compensation as per Section 25E of the Industrial Disputes Act, 1947?
- Q.3 (a) A trade dispute has arisen between the management of Rajkumar Industries and Co. and its staff union, which was registered under the Trade Union Act, 1926. The said dispute was regarding the weekly holidays in the industry and the bonus. The workers were demanding every Saturday and Sunday as weekly holidays and productivity bonus. Since the employer did not agree, the union decided to go on strike. The union has not served any notice to the management as per the provisions of the Industrial Disputes Act, 1947. The members of the union in order to make the strike a complete success made certain posters containing defamatory statements against the management. They also tried to physically interfere with the free movement of cars, vehicles and lorries carrying raw material out of the premises of the industry. The management filed a suit for the recovery of damage against the office – bearers of the union. The staff union has claimed the protection under section 18 of the Trade Unions Act, 1926. (3+3+4=10)
- On the basis of the facts stated above, decide whether the staff can claim the protection under the Trade Unions Act, 1926? Whether the management can recover the damages from the union.
- (b) Discuss the relevance of the recognition of the trade unions. What are the rights acquired by a recognized trade union?
- (c) Discuss the provisions relating to the amalgamation and dissolution of the trade union.
- Q.4 (a) "Rapid Industrialization in India is heavily dependent on harmonious industrial relations" Discuss. What are the different approaches to industrial relations in India? (5+5=10)
- (b) The University of Jammu was plying the buses for the convenience of the female students attending one of its constituent colleges since 2010. In the year 2014 they had decided to discontinue the service from the next academic session as it resulted in losses. In pursuance of this decision, they terminated the service of two bus drivers on payment of one month's salary in advance in lieu of notice. The drivers demanded retrenchment compensation alleging that they are workmen. The university declined to accept their demand. Therefore the drivers have raised an industrial dispute. Whether the drivers are *workmen* and the university *an industry*? Decide in the light of relevant cases.
- Q.5 (a) Define the term *collective bargaining*. What are the characteristics of collective bargaining? (5+5=10)
- (b) What are the recent trends in collective bargaining in India?
- Q.6 (a) As a result of the lay-off declared by the management in the Ratanpur Tea Estates, an industrial dispute arose between them and their workmen. The management justified the lay-off on the ground of financial incapacity. The management contended that the lay-off was appropriate in the interests of the employees and in the interest of the employer in order to avoid closure of business. The workmen (3+3+4=10)

urged, inter alia, that the depression in trade or financial difficulties which may be characterised as trade reasons did not justify the lay-off under the relevant Standing Order, and, they justified their claim for full wages during the period of the lay-off.

Relevant standing order-

Rule 8 of the, Standing Orders which have been duly certified under' the Industrial Employment (Standing Orders) Act, (No. 20 of 1946). The relevant portion of Rule 8 reads as:-

"Closing and re-opening of sections of the industrial establishments, and temporary stoppages of work, and the rights and liabilities of the employer and workmen arising therefrom.

- (a) (1) The Manager may at any time in the event of fire, catastrophe, break down of machinery, stoppage of power or supply, epidemic, civil commotion, strike, extreme climate conditions or other causes beyond his control, close down either the factory or field work or both without notice. In cases where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be, when, however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof."

The management of Ratanpur Tea Estate contended that the clause "stoppage of power or supply" may cover cases of stoppage of financial assistance. Hence lay-off is justified.

Answer the following questions on the basis of the above facts-

- (i) Whether the claim of the workmen is justified? Are they entitled for full wages during the period of lay-off?
- (ii) Whether Section 2(kkk) of the Industrial Disputes Act, 1947 is wider than the relevant Rule in the Standing Orders and should apply to the facts of this case?
- (b) Discuss the procedure for the certification of the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (c) Discuss the powers, duties and jurisdiction of the Labour Court and Tribunal under the Industrial Disputes Act, 1947.
