Industrial Disputes: Causes and Dispute Settlement Process in India

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Abstract

The paper deals with a very common problem in any developing economy that is industrial dispute. The paper is further concerned with the various types of industrial disputes that is internal and grievance disputes. Later paper deals with various causes of industrial disputes. Lastly the paper examines the process of settling these industrial disputes. There are five different steps by which industrial disputes can be resolved such as conciliation, voluntary arbitration, courts of injury, labor courts and finally national and industrial tribunals.

Key words: Workmen, management, disagreement, conflict, conciliation

Introduction

An Industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employee representative; usually a trade union, over pay and other working conditions and can result in industrial action. When the disputes arise, both i.e. management and the worker pressurize each other. The management may resort to lockouts and the workers , on the other may resort to strikes, gheraos, etc.

According to Section 2(k) of the Industrial Disputes Act 1947, an Industrial dispute can be defined as "any dispute or difference between employers and employees, or between employers and workmen, or between workmen and which is connected with the employment and non-employment or the terms of employment or with the condition of labor, of any person".

As per the above definition there are various aspects of a dispute. It is not only concerned with the disagreement between employer and employee but also the difference of opinion among workers.

Types of Industrial Disputes

The International Labor Organization has divided industrial disputes into following two categories:

1. Interest Disputes
2. Grievance or Right Disputes

1. Interest Disputes:

These disputes are also known as economic disputes. Such types of disputes arise out of

terms and conditions of employment either out of the claims made by the employees or offers given by the employers. Such demands or offers are generally made with a view to arrive at a collective agreement. Examples- lay-offs, claims for wages and bonus, job security, fringe benefits, etc.

2 Grievance or Right Disputes:

These disputes arise due to application or interpretation of existing agreements or contracts between employees and the management. They relate either to individual worker or a group of workers in the same group.

Main causes of industrial disputes in India

Industrial disputes may arise in a number of ways. A dispute may arise due to any demand raised by the workers to which management does not agree. Demands made by unions prior to negotiating a long term contract are a common cause of major industrial disputes. Industrial disputes could also arise as a result of a union grievance alleging that the employer is not following or adhering to the terms of the contract. There have been many disputes pertaining to the non-implementation of contract terms, even after the contract has been signed. A major source of industrial disputes relates to recognition of unions. There is no law mandating union recognition in India; furthermore, there is no provision in any law providing that in any unit or establishment, there can be but a single bargaining unit. Consequently, there are a number of unions in each factory and non-regulation of any union will lead to an industrial dispute. Despite the fact that there is no law on recognition of unions, there exists a code of discipline entered into by representatives of employers and employees in 1956 that gives guidelines on recognition. Under the terms of the code, a union that is formed must remain in existence for one year and must have membership corresponding to at least fifteen percent of the total workforce in the unit to be eligible for recognition. After a year of existence, membership verification is conducted. An employer is then bound by the code to recognize the union if it is found to have the necessary membership. Until its formal recognition as a bargaining agent, the union may only discuss with management grievances of an individual nature which affect its own members; it has no "locus standi" to bargain on collective issues. Frequently, unilateral changes in various existing practices in the factory may give rise to an industrial dispute raised by the union. The unions tend to argue that certain practices which were in existence at the time of signing the contract cannot be changed without due notice and discussion during the lifetime of the contract. Unless there is a specific clause in the contract giving management the right to change practices, work schedules, etc., any such change can be the subject matter of an industrial dispute. These practices could be related to: period and mode of wage payment, allowances, leave granting procedures, alteration of work and shift timings and schedules, classification of jobs by grades, withdrawal of any customary concession, privilege, or change in usage of such custom or privilege, introduction or alleviation of rules of discipline, change or rationalization, standardization or improvement of plant or technology that could have retrenchment

repercussion on employees, or increases or reduction in the number of persons on any shift. Employers tend to adopt the view that these are basically the rights and responsibilities of management subject to any worker's right to raise a grievance, yet this accounts for many industrial disputes. Disputes would also arise if there is a change in labor law, and the employer or workmen do not agree or implement the provisions of the new law. Most of the latest labor law changes have been favorable to labor, and since employers often appeal against the law, they prefer to wait for a decision on their appeal before implementing the law. Trade unions will demand immediate implementation and this may be another reason for an industrial dispute. Interpretations of contract language also gives rise to disputes. Management and unions tend to interpret contract language differently which can lead to an industrial dispute if the parties do not come to an interpretive agreement. It is the style to couch the contract terms in language that is deliberately difficult to understand. Contract language in India is not as explicit as it is in the United States. The Indian labor statistics, published by the government of India, have cataloged all disputes that resulted in strikes or lockouts into seven narrow causal categories: wages, bonus, personnel, leave, hours of work, violence and indiscipline, and others. These categories attribute strikes to their immediate cause although an intensive analysis of strikes has shown that the immediate cause is often the final spark that ignites simmering tensions.

Dispute settlement process

Section 10 of the Industrial Disputes Act, provides that when an industrial dispute occurs or is apprehended, the appropriate government may: refer the industrial dispute to a conciliation officer or board of conciliation officers for promoting a settlement, or to a court of inquiry, or to a labor court of adjudication, or to an industrial tribunal for adjudication. Therefore, theoretically, any employer or workman must write in the prescribed form to the appropriate government, informing the appropriate government that an industrial dispute exists. The appropriate government may then refer the dispute to conciliation, labor courts, or tribunals. Invariably, the appropriate government is the Secretary of Labor of the state. As a matter of practice, however, this procedure is not always strictly followed, as is evident from the procedures outlined below:

1. Conciliation
2. Voluntary Arbitration
3. Courts of Injury
4. Labor Courts
5. National and Industrial Tribunals

Conciliation

Although it is the duty of the appropriate government to refer the dispute to conciliation, the convention allows either party to submit a request in writing to the conciliation officer in his district, requesting the officer to start the process. The government maintains a system of

conciliation officers at the district level, regional level and at the state level, to serve as conciliation officers. People who serve as conciliation officers are normally recruited to the state government service by means of a public service examination. The applicant must have the basic qualification of a bachelor's degree, and perhaps a diploma in industrial relations or social work. The conciliation officer is empowered to inquire into the dispute and suggest possible solutions to bring the parties into an agreement. His responsibility is basically an effort of mediation, and in the case of the private sector, his solutions need not be accepted by the parties. The process of conciliation is invariably time consuming. Although by statute conciliation proceeding is supposed to be completed within fourteen days, this is rarely achieved. The conciliation officer normally calls a meeting of the parties, and if his efforts are not successful, he may decide to call another conference at a later date. On occasion, conciliation meetings last a whole day when the subject matter of the dispute involves much discussion. The strategy is to try to ascertain each party's bargaining and actual positions and to suggest suitable compromises in order to settle the dispute.

Voluntary arbitration

Under section 10(a) of the Industrial Disputes Act, the parties may agree to refer the dispute to arbitration at any time before the dispute is referred for adjudication. The statute requires the parties to sign an arbitration agreement specifying the terms of the reference and the names of the arbitrator or arbitrators. Once the arbitration agreement is signed, the government has the power to terminate and prohibit any strikes and lockouts or the continuation of any strikes and lockouts in connection with the dispute. An arbitrator has the power to bind unions and workers who are not parties to the arbitration agreement if he is satisfied that the union represents the majority of the workers in the unit. The Act does not provide any rules to structure the arbitration procedure. The normal procedure used is that the arbitrators request both parties to support their arguments in writing. The arbitrator studies the case and arguments put forward by both parties. If further evidence is needed, the arbitrator may call either party for a hearing, after which he gives his decision or award. The arbitration award is required by law to be passed to the appropriate government. The award is then published in the official government gazette thus obtaining legal validity. Private arbitration pursuant to an agreement between the parties is also authorized. However, in this case, the award will be binding on the parties in the establishment, even though only some of the labor unions in the establishment may be a party to the dispute. Although the government makes industrial tribunals and presidents of labor courts available as arbitrators for private sector industrial disputes, they are rarely used. Rather, parties usually select arbitrators whom they know well and trust. These arbitrators tend to be well known public figures, retired judges, or in some cases local municipal officers. Unlike in the United States, well known academicians are not presently used in India as arbitrators. Arbitration is probably the quickest method of labor dispute settlement in India. However, it is not used very much mainly because the parties can rarely agree on the choice of the arbitrator. Agreement as to an arbitrator is difficult primarily because unions feel that management will

influence the arbitrator. Such suspicions are symptomatic of the distrust unions have for management in the private sector. In addition, the lack of a trained body of professional arbitrators with a well-defined code of ethics further hinders the use of arbitration. Finally, the government bodies who act as arbitrators (i.e., the labor court, industrial tribunals, etc.) are too few in number to be of use. While employers and employees may agree to resolve the dispute through an arbitrator who is a private individual, the parties cannot exercise the same freedom with conciliation. A private individual acting as a conciliation officer does not have the powers of the conciliation officer appointed by the government. However, even in the case of arbitration, the general tendency is to use the government agencies, rather than private individuals.

Courts of injury

The Industrial Disputes Act establishes the court of inquiry to investigate any matter connected with a dispute. The court's only purpose is to inquire into the dispute and submit its findings to the appropriate government. The court of inquiry, like labor courts and industrial tribunals, has powers equivalent to those of a civil court. Consequently, as distinguished from conciliation officers, courts of inquiry have a certain validity and position in law. Also, as distinguished from other forms of dispute resolution, the court of inquiry has a time limit of six months from the commencement of the inquiry within which it must submit its report to the appropriate government. The act or the rules do not specify a procedure or set of standards for the court appointment, but rather leave that entirely to the judgment of the appropriate government. In actual practice, courts are seldom used. While conciliation officers, boards and tribunals are equally capable of ascertaining the facts and recommending solutions, the courts may only submit a report of the facts, not having any recommendatory powers. However, the government occasionally uses the courts to buy time or to cool off hot-headedness that might arise from an industrial dispute. This is normally done by announcing the reference to a court of inquiry, whereby strikes or lockouts are banned by statute during the pendency of investigation.

Labor court

Under Section 10(c) of the Act, the appropriate government may also refer disputes to a labor court for adjudication. Only matters covered in the Second Schedule of the Industrial Disputes Act may be dealt with by labor courts. The schedule includes, inter alia, matters connected with disciplinary action taken by the employer or his workmen, illegal lockouts and strikes and interpretation of standing orders. Generally, a labor court consists of a single person, with specified qualifications, who is vested with the plenary powers of a civil court. The labor court basically inquires into a dispute referred to it. After examining all relevant documents and conducting detailed hearings complete with the examination of witnesses, the court issues its decision. In addition, by means of a legislative amendment in 1971, labor courts were given additional powers to give appropriate relief to any worker wrongfully discharged (including authority to set aside the order of discharge dismissal) and to impose a lesser punishment if appropriate. Prior to this amendment, courts were empowered only to decide whether the

discharge or dismissal was correct or wrongful. Labor courts are used extensively in India in connection with all matters concerning the second schedule. Although the appropriate government has to refer the dispute to the labor court to officially confer jurisdiction, in practice, a petition filed in the labor court by either party under copy to the appropriate government is sufficient for the court to commence its operations. Decisions of the labor court may be appealed by either party in the high court of each state. Consequently, a labor court ruling often takes considerable time to be implemented since the court's decision is not necessarily final. Normally, the appeals process takes the following form. The decision of the labor court may be appealed before a high court (single bench). If the single bench decision is not satisfactory to either party, an appeal may be taken before the full bench of the high court. If that decision is similarly unsatisfactory, the appellate stage proceeds before a single bench of the Supreme Court. Further stages include a three bench and, finally, the full bench of the Supreme Court. A decision of the full bench of the Supreme Court is final and terminates the appeals process. Matters referred to the labor court can take considerable time for resolution. For instance, the labor court generally takes a minimum of three to four months to make a decision. The parties can then prolong the proceedings further by requesting postponements. To compound the situation, the backlog of the labor courts is so severe that many cases taken up for hearing on any particular day get adjourned. Generally however, employers and workers refer a matter to a labor court if the dispute involves points of law or if they do not want to exercise direct protest means such as a strike or lockout. Therefore, despite the delay, the labor courts have had a very important "cooling effect" and have been of great value as a settlement method.

National and industrial tribunal

The Industrial tribunal, under the Industrial Disputes Act is constituted by the appropriate government to adjudicate industrial disputes in connection with matters referred to in the second or third schedule of the Industrial Disputes Act. The appointment of persons, their powers, the mode of referral to a tribunal and, to a certain extent, the qualifications of persons eligible to be appointed on industrial tribunals is similar to those of labor courts. National tribunals are tribunals appointed by the central government to adjudicate matters of national importance, or disputes that are likely to affect industrial establishments in more than one state. The tribunals have been set up to complement labor courts. Therefore, the tribunals are allowed to deal with matters specified in the second and third schedules. The labor court's jurisdiction is limited to matters specified in the second schedule only, and to that extent, an industrial tribunal has greater prestige and power. The matters specified in the third schedule are:

a) wages including the period and mode of payment;

b) compensatory and other allowances;

c) hours of work and rest intervals;

d) leave with wages and holidays;

e) bonus, profit sharing, provident fund, and gravity;

f) classification by grades;

g) rules of discipline;

h) rationalization;

i) retrenchment and closure of the establishment; and

j) any other matter as may be prescribed.

Conclusion

On the basis of above discussion it is quite evident that industrial dispute is any disagreement among various concerned parties, related to any term or condition related to the job contract. Though industrial disputes can be settled by following a certain procedure. First step of this process consists of conciliation and is followed by other steps like voluntary arbitration, courts of injury, labour courts and finally national and industrial tribunal.

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