

Law and Practice of
EMPLOYMENT

Selection to Separation

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Law and Practice of Employment **(Selection to Separation)**

by

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PREFACE

There are a number of books written both foreign and indigenous on the subject of Personnel Management and therefore, a question may arise why yet another book on the subject. The answer lies in the fact that whereas these books no doubt deal with the subjects covered by the present one, and very much more, but the manner of such treatment differs from what I have attempted to do viz. to state in simple terms, without professional jargon and legal quibbling, so that a non-personnel professional by reading the relevant subject should get proper guidance. I hope, I have been able to achieve this objective.

On my retirement from Sandoz (India) Limited where I held the position of Chief Of Personnel and Head Office Administration, I was approached by a member of organisations, and majority of them were small businessmen and social organisations which were visited with problems of how to handle their employees so that they do not commit some basic errors. These small businessmen as well as social organisations, I found, were as unorganised in the field of personnel management as the unorganised labour who do not know their rights and responsibilities. I also noticed that basic requirements like procedure for employment, follow-up actions, maintenance of records, etc. were lacking. I also found in my discussions with them that they were not aware as to how one goes about determining the required manpower, classifying them, what is actually the difference between temporary, casual, part-time and permanent employees, what precautions are required to be taken, what are the rights of the employers as well as employees with regard to hours of work, payment of wages, what importance is required to be given to employees, what are their likely needs, how to go about them, etc. This has led me to write this book so that it can serve as a guide essentially to small scale and what I call unorganised body of employees so that they could themselves tackle majority of issues in the day to day dealings with their employees by first taking necessary precautions from the word go and prepare themselves in a sort of "scientific management" of their work force however small and guard against basic acts of commission and omission when, inspite of such precautions they are faced with problems of industrial relations.

I have purposely avoided tackling with legal issues such as applicability of different labour legislation, (excepting mentioning it when it becomes necessary by way of certain obligations in the matter of employment itself) industrial relations, collective bargaining, trade unions and the like topics, as I believe there are a number of books already written on the subject. Moreover, in such cases one has necessarily, to approach appropriate experts when the matters go beyond a domestic problem between the employer and the employee/s. In other words, my thrust has essentially been at tackling human relations aspect between the employer and employees, i.e. face to face relations only. I hope I have succeeded in this objective at least in some measure.

I am grateful to my friends Mr. P.M. Mantri and Mr. M.L. Gore, veterans in the profession, who readily agreed to go through the manuscript and make valuable suggestions in the preparation of this book.

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Law and Practice of Employment

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I EMPLOYMENT

1 Organization Structure and Job Relationships:

- 1.1. An industrial or commercial organization whether it be small, medium size or large does not consist only of land, buildings, plant and machinery or materials or even computers, but also of human beings and this latter factor is the most important of them all. The human factor involves definite relationships between different job holders, who have certain functions, or tasks, responsibilities and certain authorities. Therefore it becomes necessary to have a structure indicating all these issues; and though normally on an organization chart jobs upto certain categories, essentially what is called management jobs, are indicated, it is necessary to have departmental charts as well which will show supervisory, clerical, field sales staff, as well as shop floor jobs. These charts must be accompanied by job description for each of the jobs or at least each group of jobs. A note on job descriptions for management jobs is given in Annexure A with typical job descriptions for certain jobs. Similarly, a note on job descriptions for clerical, field sales staff and shop floor jobs are given in Annexure B.

1.2 Total Organization Strength:

Having taken action as per 1.1 above, it is advisable to determine the strength of each and every department and lay down procedure for additional requirements of personnel. For additional hands the departmental manager must justify to the top management the need for such additional hands and must indicate whether these additions will be temporary, casual or permanent basis and this should be done after cost/benefit analysis of the issues involved such as whether to introduce more machines than men, capital expenditure versus revenue expenditure, duration of employment, etc. It is emphasised that while taking additional people a thorough study of all the factors, including legal issues involved, is required because human resources are not easy to manage and therefore they should be kept within manageable limits. This will apply to all the jobs in the organization, i.e. from the lowest unskilled, semiskilled to higher jobs.

2. Employment Policy:

- 2.1 It is necessary to lay down on paper employment policy so that a proper guideline will be available to those who are required to recruit sanctioned personnel strength in each and every category in the organization. This will bring about a pre-determined standard of personnel working in the organization. The employment policy will have the following ingredients:
- 2.1.1 Employ the best available candidate for a given job, including those in unskilled category.
- 2.1.2 Under what circumstances a given job will be done departmentally and when it should be done by contract labour. For guidelines on contract labour see Annexure C.

2.1.3 Lay down minimum qualifications for the job.

2.1.4 What should be the sources of recruitment such as:

- (a) Dissemination of information relating to a vacancy among existing employees by verbal notification or by announcing it on Notice Board;
- (b) Advertisement in local papers;
- (c) Through Schools/Colleges or technical institutes;
- (d) Through Local Employment Exchange;
- (e) Referring to the file containing applications which are received from time to time unsolicited;
- (f) Employment of local people (sons of the soil).

2.1.5 Which jobs will be filled in by men only, or female only.

2.1.6 As far as possible not to employ relations, or to limit employment to say not more than one.

2.1.7 Specifications required of a person, viz:-

- (a) Physical make-up such as height, weight, especially for shopfloor jobs where heavy work might be involved; or appearance, speech, poise, age-range, etc., for sales or office jobs.
- (b) Education and experience or any special professional skill required, trade tests, etc.
- (c) Special aptitudes such as dexterity, facility in mathematics, communication both oral and/or written.

3. **Recruitment Procedure;**

3.1. **Selection of Candidates for interview**

When applications are received it is necessary to whet through them to find out candidates who satisfy the required qualifications, experience etc, and this should advisably be done by the Head of the Department or his deputy where the candidate is going to work.

Depending upon the response and the type of the job at least 5 to 7 candidates should be called for interview. For interview call letter see Annexure D. For unskilled or semiskilled jobs it is possible to get them at the gates of the organisation, but even for such job a regular procedure should be followed to avoid future problems.

3.2 **Interviewers**

Decide who will interview the candidates. For example for a job in Finance Department the Finance Manager or his deputy and the Administration Manager; or for a production job the Shopforeman/Manager and Factory Administration Manager — where Personnel Department under a Personnel Officer/Manager does not exist may be assigned the task of selection.

3.3 **How to Conduct Interviews**

The interview should be conducted by the persons assigned for the purpose of selection. At the outset they should give the candidate information on the Company, its products or lines of business, customers, brief description of the job for which the candidate is being considered. Before shooting questions at the candidate ensure that he

is not tense but is relaxed, and that interview should be an open and frank discussion and not a trial of wits. Having achieved this, proceed to ascertain information on the following aspects:—

- (a) Whether the candidate satisfies the job requirements, including qualifications, experience, different abilities, etc. on the basis of job description/job requirements.
- (b) What is the extent of his knowledge of the given job and whether he possesses relevant experience?
- (c) Whether he will be suited to the requirements and can be fitted in the existing team of employees?
- (d) Whether he possesses technical qualifications required for the job?
- (e) For higher or managerial job – whether he possesses ability to lead people, take decision, ability to judge, etc.

3.4 One has to be wary of certain knock-out factors in a candidate which make him unsuitable for further consideration, even though he may otherwise be an acceptable candidate. These knock-out factors could be:—

- (1) Alcoholic record
- (2) Lack of integrity
- (3) Poor vocal quality/ability
- (4) Poor expression of thoughts
- (5) Job hopping with very short intervals
- (6) Adverse Police record
- (7) Accident prone, etc.

3.5 Short List

Based on the evaluation of the candidates as per the form in Annexure E, short list 2 or 3 candidates for final interview by the Departmental Manager and the Top boss of the Company. Give the candidates application for Employment Form – Annexure F – so that full details will be available at one place – and ensure that the candidates return the form before leaving company premises. They should be asked to report for final interview at the pre-determined date and time fixed in consultation with the Final Interview Board.

3.6 Final Selection

The Final Interview Board should interview the candidates short listed, and make final selection. Those who are not selected, but interviewed under 3.4 and 3.5 should be sent a regret letter, Annexure G so that the company's image is built up in the minds of the candidates who are not selected, viz., that they received due consideration for their candidature. It should be borne in mind that the interview process has a public relations aspects to a certain extent because the candidates interviewed are bound to discuss the entire process, the Company, etc., with their relations friends, etc.

In addition to the above the following points should also be borne in mind while interviewing candidates.:

While stressing the importance of courtesy, candidates for interview should not be

- kept waiting for long periods

- interviewed in unacceptable conditions
- subjected to questions which might be seen as threatening or hostile.

3.7 Offer of Employment

Discuss with the candidate who has been finally selected for the job the terms and conditions of service. Normally an experienced candidate will ask for a particular salary, allowances and perquisites. Obtain full details of his existing basic salary, allowances, retirement benefits, etc. The organization should study the "expected salary" column in the application form and determine in advance how much salary, perquisites, etc. it is prepared to offer and only in that event discussions on terms and conditions or even final selection of a particular candidate should be dependent. While offering salary, allowances and perquisites care should be taken that we are not upsetting the existing employees with equivalent skills, experience, etc. After the terms and conditions have been determined and accepted by the candidate further steps as follows are necessary.

3.7.1 Medical Examination

Care should be taken that the selected candidate is medically fit to do the job, as well as to ensure that we are not taking responsibility for the Company for unknown health hazards the candidate may have.

Therefore at Company's expense the medical examination should be arranged. Life Insurance Corporation doctors or Government Hospital Doctor or Civil Surgeon should be approached for the purpose and medical report – (Annexure H) – should be obtained from the doctor and only a fit candidate should be taken in employment. The form covers relevant family medical history so that maximum care is taken about his suitability.

3.7.2 Letter of appointment on Probation

Issue letter of appointment on probation and mention the date from which you expect the candidate to join duty. Normally an experienced person would require one month's notice to leave his present job. The letters on probation for different categories of employees are given in Annexure I. Appropriate letter should be given.

- Note:**
- (a) Normally for shopfloor and office-jobs probationary period of 3 months is applicable under the Model Standing Orders in the State of Maharashtra.
 - (b) For Sales Personnel the probationary and training period can be stretched to 12 months out of which first six months will be training and familiarisation with Company's products, customers, distributors, area, etc., and next six months on probation in order to judge his actual performance in the field to determine suitability or otherwise as a company employee.
 - (c) In the case of Management staff i.e. junior and senior Executives, probationary period of upto 12 months can be

fixed. There is always a tendency to extend probationary period. If proper care and concern is shown this should not be necessary. In any case, extension of probationary period should be only in exceptional cases, and higher management must get convinced before agreeing for extension.

4. On Joining Employment

4.1 The new employee should be seen by the Personnel Officer/Administrative Officer/Manager, welcomed to the organization and given a preliminary talk about the Company, the department in which he will be working, etc.

4.2 It is necessary to get the following forms filled in by him as they are required by relevant laws:—

- (a) Declaration and Nomination Form under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- (b) Declaration and Nomination Form under the Employees' Family Pension Scheme, 1971.
- (c) Enrolment form under Employees' State Insurance Act, 1952; and
- (d) Nomination form under sub-rule (1) of rule 6 of payment of Gratuity (Maharashtra) Rules, 1972 See Annexure U.

These forms are required to be sent to the statutory authorities, and it is also necessary to file a copy thereof on the employee's personal file to form a permanent record.

Note: It is advisable for the organisation to open a file for each and every permanent employee which should contain his application for employment form, medical report, interview notes, references received, copies of his certificates, etc. and the file should be properly maintained.

4.3 Checking of References

In the application for employment form the employee is required to give two references of persons who are not his relations, but known to him. They should be asked to send their assessment of the employee – see Annexure K. Similarly reference should be made either in writing or over the telephone, to his previous employer to check the reasons for his leaving job and request him to communicate how the employee generally performed his duties, etc. See Annexure L.

4.4 Induction

As mentioned at 4.1 the new employee should be greeted by the Personnel Officer/Administration Officer and informed about the company, where and when he will get his monthly salary, arrangements about canteen, rest rooms, locker rooms, uniforms, hours of work, reporting time, general rules and regulations, standing orders, etc.

Thereafter he should be taken to the Department where he will be working and handed over to the Department Head or his deputy. In the department he should be introduced to his shopfloor foreman/supervisor, and his colleagues. He should be explained the working of the department in general, how it is integrated with other depart-

ments, and what part it plays in the final product manufactured by the Company. He should also be explained the safety precautions, rules and regulations governing safety and safety equipment. Thereafter he should be started on the job-training. The Department Head must make it a point to meet the new employee at least once a month during his probationary period and encourage him to integrate into the team.

Sales Promotion Employee

The Sales Promotion Employee (SPE) should be given detailed training in sales, product knowledge, customers, stockists, distributors, etc. Also he should be fully apprised of the sales promotion campaigns, visual aids detailing literature and importance of his field work. A detailed job description with do's and don'ts will help him in self development. For a specimen of a SPE's job description see Annexure M.

4.5 Evaluation During Probation

During probationary period it is necessary to evaluate the candidate after the end of say one and half months, called mid-term report and *before* the end of the probationary period called final report, to assess if he is suitable for the job and for this purpose written reports are necessary. See Annexure N. It is necessary to discuss with the employee those reports and do not treat them as confidential between him and the Company, so that he cannot make a grievance at a later date that he did not know the reasons for termination while on probation.

Note: In the State of Maharashtra the Model Standing Orders prescribe a probationary period of three months only. Outside Maharashtra it may be possible to fix such period of upto 6 months, with provision for further extension, which must be written down in probationary appointment letter.

In the case of Sales Promotion Employees the total period of upto 12 months can be fixed out of which first six months can be treated as trainee, followed by another period of six months on probation when his effectivity or otherwise on the job can be tested. A meticulous study is necessary as a SPE works more or less on his own with little supervision and therefore it becomes necessary to ensure, before he is confirmed in service, that he not only knows Company's business requirements, but can be depended upon for a variety of attributes for the successful pursuit of the Company's aims and objects, business interests and Company's image in the territory he operates. Such a judgement can be made based upon periodic written reports from field supervisors – See Annexure O. As mentioned earlier these reports must be discussed with the SPE.

4.6 Confirmation/Termination

4.6.1 Confirmation

On the basis of the written reports during probationary period a judgement is required to be made whether the employee is fit to be confirmed or not. If the employee has received good reports during training/probation he should be confirmed in writing. On confirmation he will be eligible to receive one month's notice of the organization's intention to terminate his contract,

as well as it will impose an obligation on him to give one month's notice if he wishes to leave. Apart from this a permanent employee gets a definite status in the organization where he can progress and build up his career. For model confirmation letter see Annexure P.

4.6.2 Termination

If the employee is found to be not fit for confirmation his services can be terminated any time during the probation by giving him 24 hours' notice. It is necessary to bear in mind that such an employee can question his termination before the Labour Commissioner who will enquire whether the decision to terminate has been based upon some evidence or it is *malafide*, arbitrary or by way of victimisation. In such an event the written reports and discussion of such reports with the employee prove very handy and useful and it becomes difficult if not impossible to successfully challenge management's action – See Annexure Q for termination letter.

5. Temporary Employment

5.1 A temporary employee is defined in the Model Standing Orders as one who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional hand in connection with temporary increase in work of a permanent nature.

5.2 It is necessary to emphasize that in the State of Maharashtra a worker taken as a badli or temporary who has put in 240 days' uninterrupted service in the aggregate during a period of twelve months is required under the Model Standing Orders to be made permanent by an order in writing signed by the Manager. The Standing Orders provide that any period of interrupted service, caused by cessation of work which is not due to any fault of the workman concerned, shall be counted for the purpose of computing 240 days for making a badli or temporary workman permanent.

In simple language it means that if an employer wants to engage temporary workman in his establishment, he has to plan his work schedules in advance and ensure that no work on temporary basis is involved or accepted for more than 7 months in a period of twelve months, and thus avoid the obligation of making temporary or badli workman permanent.

5.3 For the purpose of avoiding abuse of the limit of 240 days work by engaging one set of workers for a period of say three months, discharging them and engaging another set it has been provided in the Maharashtra Act. Model Standing Orders that the employer has to maintain a waiting list of all temporary workmen whose services have been terminated on account of the completion of the work for which they were appointed, or on account of the expiry of the period for which they were employed, containing the following particulars:-

- i) their names and addresses,
- ii) the nature of work or occupation in which they were employed,
- iii) wages paid, and
- iv) the dates of termination.

Whenever any vacancies in the establishment are required to be filled those persons whose names are entered in the waiting list shall be given preference over outsiders and it is further laid down that no person whose name is not entered in the waiting list shall be appointed in the establishment as temporary or badli, unless all persons included in the list have been provided with employment in the establishment

The above provisions have been made in order to curb the practice of keeping in employment for years together temporary workmen. Therefore managements have to be very careful in the matter of temporary employment.

- 5.4 This also leads to the further requirement that when one thinks of engaging a temporary hand, one cannot compromise on requirements such as qualifications, skills, acceptability, etc., as a temporary employee becomes a potential permanent employee of the organization. It must also be remembered that if a temporary employee is found to be wanting in any of the acceptable attributes such as punctuality, ability to perform given job, ability to get on with people, ability to understand and follow instructions, etc., his services should be terminated even before his temporary period is over. A confidential record of each and every temporary employee is required to be maintained. Where services have been terminated for unsatisfactory performance a note to that effect should be made in the waiting list against such an employee.

In short employment of a temporary employee cannot be taken casually or lightly, but with all the attention needed for engaging a permanent hand.

- 5.5. **Temporary Employment** where Industrial Employment (Standing Orders) Act provisions do not apply.

Where the provisions of the Standing Orders Act do not apply because the establishment employs less than 50 persons, or outside the State of Maharashtra where 240 days provision is not applicable, it is possible to employ a workman on temporary basis for periods exceeding 240 days, provided, of course, the temporary work continues. However, it is advisable to put in writing this stipulation that on completion of the temporary work or the period mentioned, the employment will come to an end automatically. On such termination there is no longer any legal obligation to employ the same person because of amendment to the Industrial Disputes Act which has come into effect from August 1984 – See Section 2 (00) of the Industrial Disputes Act, 1947, as amended, in case an occasion arises for temporary employment. See Annexure R for a specimen of such letter.

6. **Part Time Employment**

6.1 **Definition**

A part time employee is one who is employed to do work for less than the normal period of working hours of the establishment. Therefore where work is not of a continuous nature, but available only for part of the time e.g. loading or unloading of materials during a particular period only, or volume of specific work justifies engagement of

employees for a limited period of time and such other circumstances engagement of part-time employees can be sustained or justified. However where there is full time work available, it will not be wise or advisable to employ two persons on part time basis on the plea that half a loaf of bread is better than nothing. This argument is not accepted in industrial or commercial parlance.

6.2 What wages to pay

Wages to be paid to such employees can be a percentage of wages of full time employees doing similar jobs, but the percentage should be related to the hours of work put in by the full time/part time employee.

6.3 Is he to be treated on par with others?

It is necessary to emphasize that a part time employee is a "workman" under the Industrial Law for all practical purposes, such as leave, holidays, bonus, gratuity, etc., where part time employment is continuous. However, if part time employment is given on casual basis only, that is if and when work is available and the employee is not required to report at the factory or establishment every day, but only on certain specified days, then he will not be treated on par with regular employee of the establishment, and his eligibility to benefits other than wages, will depend upon how many days in a period of twelve calendar months he is engaged as casual/part time employee. If he puts in 240 days or more days' work he will be eligible to benefits like leave, gratuity, etc.

6.4 Employment of a retired person

A person who has retired from an establishment offering his services to a concern is as much as a part time or even full time employee. Therefore, it is necessary to enter into a written contract of employment making clear the terms and conditions of service during the tenure of his service with the organization. A specimen contract of employment is given in Annexure S.

7. Apprentice/Learner

Apprentice means a workman who is a learner and who may or may not be paid an allowance during the period of his training.

Provided that no workman shall be classified as an apprentice if he has had training for an aggregate period of one year.

One of the basic conditions is that he must not have had any previous training in the job that he will be required to do. In other words he has to be an apprentice or trainee or learner in the true sense of the term. Such training period is limited to one year. After that he could be absorbed as a regular employee if there is a vacancy or he should be asked to go, and this must be made clear in the letter of appointment itself — See Annexure T.

After one year's training he can be given temporary employment, if one is available, but all the provisions of temporary employment mentioned above will be applicable to him from the date of his absorption as a temporary employee.

An apprentice is not covered by the Employees' Provident Funds and Miscellaneous Provisions Act, though he may be covered under the Employees' State Insurance Act.

Apprentice Act, 1961

Apart from the enabling provisions of the Model Standing Orders, the Apprentice Act, 1961, makes it obligatory for an industrial establishment