LABOUR LAW IN INDIA

CHANDRA KUMAR JOHRI



Labour Law in India

Chandra Kumar Johri

This book was originally published as a monograph in the International Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704 United States of America

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom Email: kluwerlaw@turpin-distribution.com

Email: customer.service@aspenpublishers.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4705-9

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author	
List of Abbreviations	13
Introduction	1:
Chapter 1. General Features	1:
§1. THE EVOLVING MODERN INDIA	13
§2. IDENTITY AT BIRTH	1.
§3. NATIONAL LEADERS AND PRESENT DAY POLITICIANS	18
§4. THE PRINT MEDIA	18
Chapter 2. The UN Millennium Goals	20
§1. Urban Poverty	2
§2. Elementary Education	23
§3. THE ENERGY DEFICIT I. National Perspective II. International Perspectives	2: 2: 2:
§4. Environmental Concerns	20
§5. CLIMATE CHANGE	27
Chapter 3. Political Economy	30
§1. Perspectives on Inclusive Goals	30
§2. AGRICULTURE AND AGRARIAN CRISIS	3

§3.	LABOUR FORCE UNEMPLOYMENT	32
§4.	SCOPE OF LABOUR MARKET INTERVENTION	34
§5.	THE NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME (NREGS)	34
§6.	EMPLOYMENT IN THE ORGANIZED SECTOR	35
§7.	GLOBALIZED GROWTH PERSPECTIVE	36
§8.	WORLD TRADE AND INDIA'S VULNERABILITY I. India in the World Economy II. Indian Imports III. Exposure to World Prices	37 37 38 38
Ch	apter 4. Political and Administrative Systems	40
§1.	COALITION GOVERNMENTS	43
§2.	MENACE OF CORRUPTION	44
§3.	NEW ENTRANTS IN INDIAN POLITICS	46
§4.	CRISIS OF GOVERNABILITY AND ANTI-STATE INSURGENCIES	47
§5.	THE CRISIS MODE OF INDIAN DEMOCRACY	49
Ch	apter 5. Labour Policy and Industrial Relations	52
Sel	lected Bibliography	59
Pai	rt I. The Individual Employment Relationship	61
Ch	apter 1. Definitions and Concepts	61
§1.	Worker, Workman, Employee, Employed Person and Related Terms	61
§2.	WAGES AND REMUNERATION	65
§3.	EMPLOYER, PRINCIPAL EMPLOYER, OWNER AND OCCUPIER	67
§4.	Individual Disputes	69
§5.	APPOINTMENTS	70

§6. Natural Justice	70
Chapter 2. Individual Contracts: Legal Limitatons	72
§1. STANDING ORDERS	72
§2. Domestic Inquiry	74
§3. Punishment	75
§4. CATEGORIES OF EMPLOYEES	76
§5. Retirement	77
§6. Increments and Promotion	78
§7. Transfer	80
§8. Continuity of Service	81
§9. ABANDONMENT OF JOB	82
Chapter 3. Settlement of Individual Disputes	84
§1. What is an Individual Dispute?	84
§2. Termination of Service	84
§3. Unfair Labour Practices	90
§4. Notice of Change	92
§5. Inquiry and Punishment	93
§6. Back Wages	95
§7. Non-payment of Salary	97
§8. SALES PROMOTION EMPLOYEES AND OTHER CATEGORIES	99
§9. Overtime Pay	99
§10. Cine-workers and Cinema Workers	101
811 CONDITIONS OF EMPLOYMENT OF REEDI WORKERS	103

8	12.	ABSORPTION – PRINCIPLE OF LEGITIMATE EXPECTATION	103
C	haj	oter 4. General Conditions of Service I	104
5	§1.	SECRECY AND CONFIDENTIALITY	104
2	§2.	LOYALTY AND OBEDIENCE	106
	§3.	SUSPENSION	106
	§4.	DISCHARGE AND DISMISSAL	108
	§5.	RIGHTS OF PROTECTED WORKMEN	11(
	§6.	GRIEVANCE PROCEDURE	112
	§7.	COMPASSIONATE APPOINTMENTS	112
C	ha	pter 5. General Conditions of Service II	114
	§1.	HOURS OF WORK I. Children and Adolescents II. Semi-organized Sector III. Cine-workers and Cinema Theatre Workers IV. Working Journalists V. Mines, etc.	112 113 113 113 118
	§2.	OVERTIME AND MINIMUM WAGES ACT	119
	§3.	Annual Leave with Wages and other Entitlements	120
	§4.	SAFETY	12
	§5.	MEDICAL AND OTHER FACILITIES	123
(ha	pter 6. General Conditions of Service III	12:
	§1.	SECTION 17A OF ID ACT	125
	§2.	THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS	12:
	§3.	THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995	120
	84	FOOD AND CANTEENS	12

§5. Environment	12
§6. Apprenticeship	13
§7. SEAMEN'S EMPLOYMENT	13
§8. SICK INDUSTRIES	13:
§9. CONTRACT LABOUR	13.
§10. Welfare Officers	134
§11. MINIMUM WAGES	13:
Part II. Remuneration, Bonus and Benefits	13
Chapter 1. Wages and Earnings	13
§1. WAGE REGULATING LAWS	13'
§2. Definitions and Rules	138
§3. WAGE FIXATION MACHINERY	140
§4. PRINCIPLES OF WAGE DETERMINATION	148
Chapter 2. Dearness and Other Allowances	15
§1. PURPOSE OF DEARNESS ALLOWANCE	15
§2. Judicial Principles	152
§3. OTHER ALLOWANCES I. Incentive Wages II. Overtime Allowance III. Tiffin Allowance IV. Halting Allowance and Running Allowance V. Transport Allowance/Conveyance Allowance VI. Clothing and Uniform Allowance VII. Retaining Allowance VIII. Compensatory Allowance and Special Allowance	153 154 154 155 156 157 157 158
IX. Medical Allowance X. Acting Allowance XI. Moving Staff Allowance XII. Vacation Allowance XIII. Housing Accommodation and House Rent Allowance	158 158 159 159

XIV. Retirement Allowance XV. Consolidated Pay XVI. Subsistence Allowance	160 160 160
Chapter 3. Bonus and Related Payments	162
§1. Bonus as a Justiciable Right	162
§2. THE BONUS COMMISSION	163
§3. THE PAYMENT OF BONUS ACT	163
§4. Productivity Bonus-related Issues	171
§5. Other Bonus-related Issues	173
Chapter 4. Social Security Benefits	174
§1. Introduction	174
§2. Workmen's Compensation	174
§3. SICKNESS INSURANCE	180
§4. RETIREMENT BENEFITS	189
§5. Gratuity	199
§6. Maternity Benefits	204
Chapter 5. Unemployment Compensation	207
§1. Introduction	207
§2. Lay-off Compensation	207
§3. RETRENCHMENT COMPENSATION	209
§4. Closures	217
§5. Transfers	221
Part III. Collective Employment Relationship	225
Chapter 1. The Law on Trade Unions	225

		Table of Contents
§1.	Introduction	225
§2.	LEGAL DEFINITIONS AND ISSUES	228
§3.	VERIFICATION OF MEMBERSHIP VERSUS ELECTION	239
§4.	APPROVED AND RECOGNIZED UNION	242
Ch	apter 2. Voluntary versus Compulsory Principles Settlement of Disputes	of 245
§1.	Introduction	245
§2.	CODE OF DISCIPLINE	245
§3,	JOINT CONSULTATION	246
§4.	JOINT NEGOTIATIONS	246
§5.	VOLUNTARY ARBITRATION	247
§6.	COLLECTIVE BARGAINING	248
§7.	WAGE BOARDS	250
Ch	apter 3. Conciliation and Adjudication	251
§1.	SELECTED DEFINITIONS I. Industrial Disputes II. Settlement III. Award IV. Industry V. Reference	251 251 252 256 256 257
§2.	CONCILIATION	260
§3.	SETTLEMENTS: PROCEDURE AND DIFFICULTIES	261
§4.	JURISDICTION OF ADJUDICATION AUTHORTIES	264
Ch	apter 4. Strikes and Lock-outs	269
§1.	DEFINITIONS I. Strike II. Lock-out III. Public Utility	269 269 270 271

IV. 'Unfair Labour Practice'	271
§2. JUSTIFIED STRIKES AND LOCK-OUTS	272
§3. LEGAL STRIKES AND LOCK-OUTS	275
§4. SIT-DOWN STRIKE, STAY-IN STRIKE, ETC.	278
§5. Gheraos, Etc., Injunctions by Courts	281
Chapter 5. Employment Relationships in the Unorganized Sector	285
§1. THE UNORGANIZED SECTOR	285
§2. COVERAGE OF LABOUR LEGISLATION	286
§3. CONTRACT LABOUR	294
§4. Decasualization Schemes	297
Chapter 6. Migrant Labour, Bonded Labour, Female and Child Labour	299
§1. Interstate Migrant Labour	299
§2. THE BONDED LABOUR SYSTEM	301
§3. Abolition of Sex Discrimination	303
§4. CHILD LABOUR	305
Law Mentioned in the Text	311
Table of Cases	315

Index

333

Labour Law in India

Chandra Kumar Johri

This book was originally published as a monograph in the International Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci



The Author



Chandra Kumar Johri is an economist by training and profession. He studied at the University of Allahabad, India and the University of Michigan, Ann Arbor. He has authored *India: Perspectives on Politics, Economy and Labour, 1981-2001* in two volumes: Vol. 1. *The Age of Gandhi, 1918-1957* and Vol. 2. *The Age of the Constitution, 1958-2007* (2011) published by Aakhar Books, Delhi.

The Author

The Author	
List of Abbreviations	13
Introduction	1.5
Chapter 1. General Features	15
§1. THE EVOLVING MODERN INDIA	15
§2. Identity at Birth	17
§3. NATIONAL LEADERS AND PRESENT DAY POLITICIANS	18
§4. The Print Media	18
Chapter 2. The UN Millennium Goals	20
§1. Urban Poverty	21
§2. Elementary Education	23
§3. THE ENERGY DEFICIT I. National Perspective II. International Perspectives	25 25 25
§4. Environmental Concerns	26
§5. CLIMATE CHANGE	27
Chapter 3. Political Economy	30
§1. Perspectives on Inclusive Goals	30
§2. AGRICULTURE AND AGRARIAN CRISIS	31

§3. LABOUR FORCE UNEMPLOYMENT	32
§4. Scope of Labour Market Intervention	34
§5. THE NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME (NREGS)	34
§6. EMPLOYMENT IN THE ORGANIZED SECTOR	35
§7. GLOBALIZED GROWTH PERSPECTIVE	36
§8. WORLD TRADE AND INDIA'S VULNERABILITY I. India in the World Economy II. Indian Imports III. Exposure to World Prices	37 37 38 38
Chapter 4. Political and Administrative Systems	40
§1. COALITION GOVERNMENTS	43
§2. MENACE OF CORRUPTION	44
§3. New Entrants in Indian Politics	46
§4. Crisis of Governability and Anti-state Insurgencies	47
§5. THE CRISIS MODE OF INDIAN DEMOCRACY	49
Chapter 5. Labour Policy and Industrial Relations	52
Selected Bibliography	59
Part I. The Individual Employment Relationship	61
Chapter 1. Definitions and Concepts	61
§1. Worker, Workman, Employee, Employed Person and Related Terms	61
§2. Wages and Remuneration	65
§3. EMPLOYER, PRINCIPAL EMPLOYER, OWNER AND OCCUPIER	67
§4. Individual Disputes	69
§5. APPOINTMENTS	70