People or Production? Divergent Priorities Reflected in the Blue Collar Termination Laws of India and Georgia

Introduction

Under the Constitution of India, the labor and employment laws are categorized in the concurrent list, which means that both the Parliament and the individual State Legislatures share co-equal powers in enacting labor and employment legislation.[1] Despite the potential for disparate legislation under this system, these laws have remained largely uniform. An essential characteristic is the critical distinction between white collar and blue collar workers. This distinction, and the greater legal protections afforded to blue collar laborers, is largely the product of early socialist principles, articulated in the Constitution, which laid out the foundation for the Indian welfare state.[2] These ideals were the impetus for a number of key laws, enacted over the course of the 20th century, designed to protect the rights of blue collar workers.

In the United States, however, labor and employment laws vary greatly by state. While federal laws such as the Fair Labor Standards Act ("**FLSA**") and the Occupational Safety and Health ("**OSH**") Act dictate standards for minimum wage and safe working conditions, the states themselves predominantly govern in cases of employment and labor legislation. The state of Georgia, in an attempt to attract business and industry through a laissez faire, capitalist spirit, has eschewed the employee protections favored in India for a system of "at-will employment." This allows employers, absent a written contract specifying a definite period of employment, to terminate for "good cause, bad cause, or no cause at all, so long as it is not an illegal cause."[3] While Georgia's labor laws do not expressly differentiate between blue and white collar workers, the effects of at-will employment are most strongly felt among those working under traditional blue collar employment.

This newsletter aims to provide a comparative analysis of selective provisions regulating the termination of the blue collar workforce in both India and Georgia, while recognizing the divergent policy goals of each jurisdiction.

1. Defining a Blue Collar Worker

Among India's 20th century labor legislation, the Industrial Disputes Act of 1947 ("**ID Act**") is the most extensive. Section 2 (s) of the ID Act defines a blue collar worker, or "workman," as "*any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied*". This category does not include individuals employed in a managerial or administrative capacity and excludes workers taking on supervisory roles who earn more than INR 10,000 (about USD 155) a month.[4] This distinction between workmen and non-workmen

1 The Constitution of India. List 3, Entry 24
2 Anand Prakash, Labour Law, http://14.139.60.114:8080/jspui/bitstream/123456789/738/16/Labour%20Law.pdf at page 392 (last accessed on June 9, 2017)
3 Georgia Secretary of State, http://sos.ga.gov/index.php/corporations/what_georgia_employers_need_to_know (last accessed on June 14, 2017)
4 This is based on the exchange rate on June 19, 2017 of USD 1= INR 64.38

is essential in determining and executing the proper course of termination as prescribed by the "ID Act."

In the United States, the blue collar sector has traditionally been defined as employment consisting of manual labor and compensation based on hourly rates of pay. Although Georgia's labor legislation does not explicitly differentiate between blue and white collar workers, the rights of blue collar workers (and some white collar workers) are often limited due to the absence of a contractually defined period of employment and generally unequal bargaining power. Georgia courts are likely to view termination as valid in these cases so long as it is neither discriminatory nor violative of the terms of the contract. The Georgia Fair Employment Practices Act prohibits discrimination on the basis of race, color, sex, religion, disability, national origin, or age, but it only applies to state owned employers with 15 or more employees.[5] Private employers with 15 or more employees are prohibited from discriminating based on race under Title VII of the Civil Rights Act of 1964, but smaller entities are generally free to terminate for any reason. Additionally, the courts have set a high bar for plaintiffs wishing to file a wrongful termination suit on the basis of discrimination. In *Cody v. Palymyra Park Hosp. Inc.,* the U.S. Court of Appeals for the 11th Circuit, interpreting Georgia law, dismissed a former employee's claim of discriminatory termination on the basis of race. The court stated that in order to successfully state a claim, a "[p]laintiff must establish a *prima facie* case of discrimination, the defendant must then provide a legitimate non-discriminatory reason for the employment action, and the plaintiff must finally prove that the defendant's reason was a pretext for discrimination."[6] However, the court noted that an employer's burden to provide a legitimate reason for termination is "exceedingly light."[7]

2. Grounds for Termination

Grounds for the termination of workmen in India can be divided into three primary categories. These include (i) misconduct, (ii) superannuation, which is not discussed as it is self-explanatory, and (iii) retrenchment, layoffs, and closure.[8] While these categories are not clearly defined in Georgia, they provide a helpful structure for the purposes of comparison.

2.1 Termination Due to Misconduct

The Supreme Court of India has identified misconduct as employee behavior that is "inconsistent with the discharge …of duty" or that is "prejudicial to the interests or reputation" of the employer.9 Under Schedule 1, Clause 14 (3) of the Industrial Employment (Standing Orders) Central Rules, 1946, misconduct can include willful insubordination, theft, fraud, dishonesty, the taking or giving of bribes, negligence, habitual absence, and disorderly behavior. Nevertheless, dismissal due to misconduct can present challenges to employers of blue-collar workforce in India. While misconduct is a valid cause for termination, employers are expected to exercise fair and reasonable judgment in determining whether disciplinary action or termination is more appropriate. Courts are skeptical of employers dismissing workmen under the guise of misconduct and, therefore, heavily scrutinize an employer's actions. Additionally,

5 GA Code Sec. 45-19-20 et seq.
6 Cody v. Palymyra Park Hosp. Inc., 398 Fed. Appx. 556, 558 (11th Cir. 2010)
7 Ibid (citing *Perryman v. Johnson Prods. Co., Inc.,* 698 F.2d 1138, 1142 (11th Cir.1983)
8 Supra note 2 at 415-422
9 Govinda Menon v. Union of India AIR 1967 SC 1274

employers are obligated to grant workmen certain procedural rights in the dismissal process that include notification of the pending charges, reasonable time to respond, and, if the workman wishes to challenge the allegations, an opportunity to cross examine both the witnesses and the evidence against him in a formal inquiry.10 Moreover, under section 10-A of the Industrial Employment (Standing Orders) Act, 1946, the employer must compensate a workman 50 percent of his salary during the time of the suspension inquiry and 75 percent if the inquiry is prolonged through no fault of the workman. If the results of the inquiry are contested, then the industrial tribunal, acting as a sort of appeals court under section 7-A of the "ID Act," can determine whether the dismissal was an act of discrimination or if the punishment was disproportionately harsh. While the civil laws of India generally prohibit remedies of specific performance in employment disputes, the industrial tribunals possess the freedom to grant both back pay for lost wages and reinstatement in cases of employer malfeasance. Therefore, employers must closely examine an employee's misconduct in determining whether there are other, less punitive measures that can be considered before dismissal.

India's system of employee protections stands in stark contrast to the employer favored labor and employment laws of Georgia. Georgia's system of at-will employment means that "*in the absence of a controlling contract, permanent employment, employment for life, or employment until retirement is employment for an indefinite period, terminable at the will of either party, which gives no cause of action against the employer for wrongful termination*."[11] As such, many blue collar workers, very often employed at will, may be dismissed "without cause, and [generally] regardless of motives" or public policy so long as those motives are not discriminatory.[12] In cases where a term of employment has been contractually defined, employers have more flexibility than their Indian counterparts in determining the propriety of terminating an agreement on the basis of misconduct. Analogous to India, there are a number of recognized grounds for termination due to misconduct, including incompetence, failure to obey orders, use of inappropriate language, intoxication, insubordination, or conviction of a crime.[13] However, courts have found when contracts don't expressly state the grounds and procedure for termination in these cases, both the employer and employee must exercise good faith in their duties and obligations. Therefore, courts are likely to scrutinize the intentions of the parties to determine whether either party was acting in bad faith. Generally, courts have held in favor of employers in these cases so long as the termination was not deemed arbitrary or capricious.

2.2 Retrenchment, Layoffs, and Closure

(a) Retrenchment

Under Section 2 (oo) of the "ID Act," retrenchment is the termination of a workman for any reason other than (i) voluntary retirement, (ii) retirement upon reaching the age of superannuation, (iii) termination due to the non-renewal of the contract, or (iv) termination due to the ill health of the employee. In retrenchment, an employer is obligated to give a workman in continuous employment either one month's notice or one month's compensation. Section 25-B of the ID Act, defines "continuous employment" as a period of "uninterrupted service" excluding any excused absences resulting from sickness, authorized leave, accident, or a legal

10 S. 10-A (a), 10-A (b) of the ID Act
11 Georgia Power Co. v. Busmin, 242 Ga. 612, 612 (1978)
12 James W. Wimberly Jr., Georgia Employment Law (4th ed., The Harrison Company, 2017), § 1:6
13 Supra note 13 at §1:7

strike. Additionally, exceptions exist in cases where a workman has not been in continuous employment, but has worked (i) 190 days over the previous 12 months or 95 days over the previous 6 months in a mine, (ii) 240 days over the previous 12 months or 120 days over the previous 6 months in any other industry.14 Moreover, Section 25-G of the ID Act mandates industrial enterprises adhere to the policy of "last one in, first one out" by retrenching "the last person to be employed in that category." However, these rules do not apply to establishments employing less than 50 workmen or to those employing only seasonal workers.15 Additionally, employers are also obligated to pay all the applicable statutory benefits to the retrenched workers. Due to the potential for judicial scrutiny in retrenchment, it is critical that employers follow the proper procedures.

(b) Layoffs

While both retrenchment and layoffs generally occur in response to an employer's hardship, a layoff is a temporary inability to provide work to an employee. Under Section 2 (kkk) of the "ID Act", layoff refers to "the failure, refusal, or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or other natural calamity or for any other connected reason]." Where a workman has been employed for more than 1 year, an employer is obligated to compensate the employee 50 percent of his basic wages for up to 45 days.[16] However, a workman is not entitled to compensation if he (i) refuses to accept reasonable, alternative employment, (ii) fails to "present himself" at work at the appointed time and day, or (iii) the lay-off is the result of a strike or employee induced slow-down.[17]

(c) Closure

Section 25-O of the ID Act prescribes the process in case of a closure. An employer must apply for permission from the appropriate government at least 90 days prior to the intended date of closure. This application must clearly express the reasons for closure and a copy must be distributed to the workmen. If the government finds the reasons valid, then the closure will be approved with the employer obligated to compensate each workman an amount "equivalent to 15 days average pay for every year of continuous service or any part thereof in excess of 6 months." However, where the employer fails to properly file the application or simply disregards the refusal to grant permission, the employer must compensate the workmen for all entitled benefits they were to receive during the period of the illegal closure. Additionally, the High Court of Andhra Pradesh has held that the term "retirement" under the Payment of Gratuity Act includes closure and, therefore, a workman would also be entitled to gratuity so long as he has been employed for the requisite 5 years.[18]

In Georgia, however, retrenchment, layoffs, and closure are largely unregulated by the state. Nevertheless, retrenchment and layoffs are impermissible if done for discriminatory purposes. Additionally, employers must adhere to the express language of the contract if termination occurs prior to the expiration of the terms. In these cases, an employer would be

14 S. 25-B (1), (2) of ID Act
15 S. 25-A (a), (b) of ID Act
16 S. 25-C of ID Act
17 S. 25-E (i-iii) of ID Act
18 Duncan Agro Industries Limited v. Subbanna, B. (1984) ILLJ 96 AP

responsible for any benefits or pension rights expressed in the contract. In some American companies certain benefits such as health care don't commence until an employee has worked for an agreed period of time, generally ranging from one month to one year. If an employee is terminated prior to satisfying the employment conditions necessary to receive benefits, courts are likely to scrutinize the employer's decision to determine if there was a violation of good faith and fair dealing.[19] Additionally, some courts have found termination to be unjust in cases where termination occurred "solely for the purposes of pecuniary gain"[20]or to simply replace an employee with a new worker at a lower salary.[21]

Conclusion

The relative wealth of blue collar employee protections in India are a direct reflection of its underlying goals of creating a system of production that ensures justice for workers. As such, employers should closely adhere to the particular rules regulating employment termination in order to avoid labor violations. Alternatively, Georgia's system of at-will employment and consequent dearth of worker protections is largely reflective of its industry friendly, laissez faire system. While Georgia employers have fewer restrictions and significantly more flexibility in terminating employment agreements, there are practical rather than legal motivations to engage in a consistent and just system of termination. Real or perceived injustices in termination produce disgruntled former employees whose seeming mistreatment can lead to resentment among current employees, which results in reduced levels of productivity and tarnishes the overall reputation of the company.

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19 Supra note 13 at § 1:13
20 Bloomberg BNA, Employment at Will: A State by State Survey, Georgia, https://www.bloomberglaw.com/product/blaw/document/9034522152,(last accessed on June 15, 2017)
21 See Georgia Magnetic Imaging, Inc. v. Greene Cnty. Hosp. Auth., 466 S.E.2d 41, 45 (1995)