

ECONOMIC, LABOUR AND INDUSTRIAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer SIX questions including Question No. 1 which is **COMPULSORY**.

Question 1

With reference to the relevant legal enactments, write short notes on any five of the following :

- (i) Company Secretary as patent agent*
 - (ii) Reliefs which a Consumer Disputes Redressal Forum can grant to an aggrieved consumer*
 - (iii) Environment impact assessment and management plan*
 - (iv) Competition policy*
 - (v) 'Regulation of combinations' under the Competition Act, 2002*
 - (vi) Current account transactions.*
- (3 marks each)*

Answer 1(i)

Company Secretary as Patent Agent

Section 126(1) of the Patents Act, 1970, provides that a person shall be qualified to have his name entered in the register of patent agent, if he is a citizen of India, completed the age of 21 years, has obtained a degree in science, engineering or technology from any university established under law for the time being in force in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and in addition has passed qualifying examination for the purpose.

A person shall also be qualified to have his name entered in the register of patent agent under Section 126(1)(c)(iii), if he has for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the controller under Section 73 of the Act or both, but ceased to hold any such capacity at the time of making the application for registration.

In the light of above legal position, a company secretary who fulfils the requirement of Section 126(1)(a)(b) & (c)(ii) or (iii) can have his name entered in the register of patent agent.

Answer 1(ii)

The nature of relief's which can be granted by the various consumer fora have been provided under Section 14 of Consumer Protection Act, 1986. The relief which Consumer Disputes Redressal Forums can grant to any complainant are only those specified under Section 14. These remedies are wide enough to cover removal of defects/deficiency in goods/services, replacing defective goods with new goods, refunding price/charges paid by the complainant, payment of compensation for loss or damage suffered, providing costs to parties and issuing prohibitory orders directing the discontinuance of unfair trade practice, sale of hazardous goods etc.

Answer 1(iii)**Environmental Impact Assessment and Management Plan**

Environmental Impact Assessment (EIA) is an important management tool for ensuring optimal use of natural resources for sustainable development. Environmental Management Plan (EMP) converses all aspects of planning, construction and operation of the project, which are relevant to environment. EIA and EMP are the important documents on the basis of which the environment clearance is given by Government. These two important documents set out the details for prevention, elimination or mitigation of the adverse impacts, right from the inception stage of the project.

Ministry of Environment and Forests has issued notifications restricting location of any industry, mining operations, cutting of trees, grazing by cattle in certain areas, construction of any clusters of dwelling units, farm houses, roads etc. and electrification in the Aravalli range. Any person wishing to undertake any of these operations in the said area is required to submit an application in the prescribed form along with an Environment Impact Statement and an Environmental Management Plan. It has also been notified that the setting up of any new industrial project or the expansion or modernisation of any existing industry shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central or any State Government, as the case may be. Clearance would be so accorded only on the basis of an Environmental Impact Assessment of the project and the necessary Environmental Management Plan for the prevention, elimination or mitigation of the adverse impacts, right from the inception stage of the project.

Answer 1(iv)**Competition Policy**

Under Section 49 of the Competition Act, 2002, the Central Government may seek the opinion of the Competition Commission of India by making reference to the commission for its opinion on the possible effects of the policy on competition.

On receipt of such a reference, the Commission shall, give its opinion to the Central Government, within sixty days of making such a reference and the latter may formulate the policy as it deems fit. The role of the Commission is advisory and the opinion given by the Commission shall not be binding upon the Central Government in formulating such a policy. The Commission has also been assigned the role to take prescribed suitable measures for —

- (a) promotion of competition advocacy;
- (b) creating awareness about the competition; and
- (c) imparting training about competition issues.

Answer 1(v)**Regulation of Combinations under the Competition Act, 2002**

Regulation of combinations is one of the core provisions of the Competition Act, 2002. Section 5 of the Competition Act, 2002 provides that acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a

combination of such enterprises and persons or enterprises which are above the certain prescribed size in terms of (a) assets or (b) turnover.

Section 6 of the Competition Act, 2002 provides that any person or enterprise entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be void. However, in term of Section 6(4), provisions relating to regulation of Combinations shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

Answer 1(vi)

Current Account Transactions

The term Current Account Transactions as defined in Section 2(j) of Foreign Exchange Management Act, 1999 means a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments; remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Section 5 of the Act, allows any person to sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may, in the public interest and in consultation with the Reserve Bank impose reasonable restrictions for current account transactions.

Question 2

State, giving reasons in brief, whether the following statements are true or false. Attempt any five :

- (i) *The Copyright Board has power to limit the user of copyright to any particular territorial area.*
- (ii) *Every person carrying on industry is required to submit an environment audit report.*
- (iii) *Foreign contribution can be accepted as an agent of a foreign source.*
- (iv) *Release of foreign exchange for studies abroad in a prestigious university is without any limit.*
- (v) *After the National Environment Tribunal makes an award, an application is required to be made to the court to make it executable as a decree of a civil court.*
- (vi) *The term 'industrial property' is a collective name for rights referring to the commercial or industrial activities of a person.* (3 marks each)

Answer 2(i)

The statement is not correct. The Copyright Board has no power to limit the user of copyright to any particular territorial area.

Answer 2(ii)

The statement is correct. Rule 14 of the Environment Protection Rules provides that every person carrying on an industry, operation or process requiring consent under section 25 of the Water (Prevention and Control of Pollution) Act, Section 2 of the Air (Prevention and Control of Pollution) Act, Hazardous Waste (Management and Handling) Rules, is required to submit an Environment Audit Report.

Answer 2(iii)

The statement is correct. Section 8 of the Foreign Contribution (Regulation) Act, 1976 allows a person to accept foreign contributions as an agent of foreign source in relation to any transactions made by such foreign source with Government.

Answer 2(iv)

The statement is not correct. As per rule 5 of FEM (Current Account Transactions) Rules, 2000 prior approval of the Reserve Bank of India is necessary for a transaction included in schedule III of the said rules. Accordingly release of foreign exchange for studies abroad in excess of the estimates from the Institution abroad or US\$1,00,000 per academic year whichever is higher requires prior approval of RBI.

Answer 2(v)

The statement is not correct. Section 23 provides that an award made by the National Environment Tribunal shall be executable by the Tribunal as a decree of a civil court and for this purpose the Tribunal shall have all the powers of a civil court.

Answer 2(vi)

The Statement is Correct. Industrial property right is a collective name for rights referring to the commercial or industrial activities of a person. These activities may include the industrial or commercial interests. They may relate to manufacture, new designs or model and distinctive marks for goods etc.

Question 3

(a) *Distinguish between any two of the following :*

- (i) *'Small scale undertaking' and 'ancillary industrial undertaking'.*
- (ii) *'Foreign contribution' and 'foreign hospitality'.*
- (iii) *'Restrictive trade practice' and 'unfair trade practice'. (5 marks each)*

(b) *Re-write the following sentences after filling-up the blank space with the appropriate word(s)/figure(s) so as to convey the correct meaning :*

- (i) *The term of a patent is _____ year(s).*
- (ii) *Investment by a person resident in India in foreign securities is a _____ transaction.*
- (iii) *The employees of government companies are _____ to accept foreign contribution under the Foreign Contribution (Regulation) Act, 1976.*
- (iv) *Process of money laundering can be classified into placement, layering and _____.*

- (v) A trade mark which is not used for a period of _____ year(s) of its registration is liable to be removed. (1 mark each)

Answer 3(i)

Small Scale Undertaking has been defined as an industrial undertaking in which the investment in fixed assets in plant and machinery, whether held on ownership terms or on lease or on hire purchase, does not exceed rupees one crore.

Ancillary Industrial Undertaking is an industrial undertaking which is engaged or is proposed to be engaged in the manufacturing or production of parts, components, sub-assemblies, tooling or intermediates, or the rendering of services, and undertaking supplies or proposes to supply or renders not more than fifty per cent of its production or services, as the case may be, to one or more other industrial undertakings and whose investment in fixed assets in plant and machinery, whether held on ownership or on lease or on hire purchase, does not exceed rupees one crore.

Answer 3(ii)

<i>Foreign Contribution</i>	<i>Foreign Hospitality</i>
Foreign Contribution means the donation, delivery or transfer made by any foreign source —(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, does not exceed one thousand rupees; (ii) of any currency, whether Indian or foreign, (iii) of any foreign security as defined in clause (i) of Section 2 of the Foreign Exchange Management Act, 1999 Foreign Contribution (Regulation) Act imposes restrictions on acceptance of foreign contribution by candidate for election, correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper, judge, government servant or employee of any corporation, member of any legislature, and political party or office-bearer thereof. Section 5 of FCRA prohibits an organisation of a political nature not being a political party, from accepting any foreign contribution, except with the prior permission of the Central Government.	Foreign Hospitality means any offer, not being a purely casual one, made by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free board, lodging, transport or medical treatment. Foreign Contribution (Regulation) Act prohibits acceptance of foreign hospitality by certain persons except with the prior permission of the Central Government. Accordingly no member of a Legislature, office bearer of a political party, Judge, Government servant or employee of a corporation shall, while visiting any country or territory outside India accept, without the prior permission of the Central Government any foreign hospitality.

Answer 3(iii)

<i>Restrictive Trade Practice</i>	<i>Unfair Trade Practice</i>
It is a Trade Practice which has or may have the effect of preventing, distorting or restricting competition in any manner and in particular which obstruct the flow of capital or resources into the stream of production or which tends to bring about price manipulation conditions of delivery to the effect the flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions. The definition of restrictive trade practice under MRTP Act is exhaustive and not inclusive and is result oriented, i.e. the restriction must have the actual or likely effect of restricting, distorting or preventing competition. MRTP Act requires registration of certain agreements relating to restrictive trade practice.	MRTP Act defines the unfair trade practice as to mean a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services adopts any unfair method or unfair or deceptive practice. The unfair trade practices include deceptive advertisements or false representation, bargain sales, offering gifts/prizes and conducting promotional contests, non-compliance of goods with prescribed standards etc.

Answer 3(b)

- (i) The term of a patent is *twenty* year(s).
- (ii) Investment by a person resident in India in foreign securities is a *Capital Account* transaction.
- (iii) The employees of government companies are *prohibited* to accept foreign contribution under the Foreign Contribution (Regulation) Act, 1976.
- (iv) Process of money laundering can be classified into placement, layering and *integration*.
- (v) A trade mark which is not used for a period of *five* year(s) of its registration is liable to be removed.

Question 4

- (a) *State whether the following transactions are valid and permitted under the Foreign Exchange Management (Current Account Transactions) Rules, 2000 :*
 - (i) *Harish, an agent stationed abroad, desires to receive remuneration of \$30,000 for sale of commercial plots in India.*
 - (ii) *Vijeta Ltd., a company incorporated in India, is interested in issuing 'foreign currency convertible bonds' (FCCBs) for \$500 million to a person resident outside India.*
 - (iii) *Shyam, who had purchased \$15,000 for his business trip overseas, has \$550 on his return.*

- (iv) *A person resident in India, being an individual, seeks to acquire qualification shares in a company outside India.*
- (v) *Mehta Investments Ltd., a company incorporated in India, wishes to issue shares to its employees who are residents outside India. (1 mark each)*
- (b) *Mention the provisions of the Foreign Exchange Management Act, 1999 regarding acquisition and transfer of immovable property outside India. (5 marks)*
- (c) *State the obligations of banking companies, financial institutions and intermediaries under the Prevention of Money Laundering Act, 2002. (5 marks)*

Answer 4(a)

- (i) This transaction is not valid. RBI's prior approval is required to receive commission per transaction by agents abroad for sale of residential flats/commercial plots in India exceeding the limits of USD 25,000 or 5% of the inward remittance, per transaction, whichever is higher.
- (ii) This transaction is valid. An Indian company can issue FCCBs not exceeding US\$500 million to a person resident outside India.
- (iii) According to, Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2000, in case foreign exchange acquired or purchased by any person from an authorized person is for the purpose of foreign travel, then, the unspent balance of such foreign exchange shall be surrendered to an authorized person within 90 days from the date of return of the traveler to India, when the unspent foreign exchange is in the form of currency notes and coins and within 180 days, if it is in the form of traveler cheques. Hence, Shyam has to return the unspent foreign currency to the authorized person within the prescribed period.
- (iv) The transaction shall be valid. A person resident in India being an individual may acquire foreign securities as qualification shares issued by a company incorporated outside India for holding the post of a director in the company: Provided that, -
 - (i) the number of shares so acquired shall be the minimum required to be held for holding the post of director and in any case shall not exceed 1 per cent of the paid-up capital of the company, and
 - (ii) the consideration for acquisition of such shares does not exceed the ceiling as stipulated by RBI from time to time.
- (v) The transaction shall be valid. Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad, other than citizens of Pakistan. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:
 - (i) The scheme has been drawn in terms of relevant regulations issued by the Securities and Exchange Board of India; and
 - (ii) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.

If the company is not listed, it has to follow the provisions of the Companies Act, 1956.

Answer 4(b)

Acquisition and Transfer of Immovable Property outside India

The Reserve Bank of India in exercise of the powers conferred under Section 6(3)(h) and Section 47(2) of the Foreign Exchange Management Act, 1999 prescribed regulations in respect of acquisition and transfer of immovable property outside India.

A person resident in India is prohibited from acquiring or transferring any immovable property situated outside India without general or special permission of the Reserve Bank. However, this prohibition is not applicable to the property held by a person resident in India who is a national of a foreign state; and acquired by a person resident in India on or before 8th July, 1947 and continued to be held by him with the permission of the Reserve Bank.

A person resident in India may acquire immovable property outside India by way of gift or inheritance from a person who was resident outside India, in terms of Section 6(4) of FEMA acquired by a person resident in India on or before July 8, 1947 and continued to be held by him with the permission of RBI.

A person resident in India may acquire immovable property outside India by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000.

Reserve Bank is empowered to permit a company incorporated in India having overseas offices, to acquire immovable property outside India for its business and for residential purpose of its staff subject to such terms and conditions as it considers necessary.

A person resident in India who has acquired immovable property outside India as above may transfer it by way of gift to his relative who is a person resident in India. For this purpose, relative in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

Answer 4(c)

Chapter IV of The Prevention of Money Laundering Act, 2002 deals with obligations of banking companies, financial institutions and intermediaries. Section 12 requires every banking company, financial institution and intermediary to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions legally connected to each other, and when such series of transactions take place within a month. Banks and financial institutions are required to verify and maintain the records of the identity of all its clients, in such manner as may be prescribed. The records as mentioned above are required to be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company, financial institution or intermediate.

Section 13 states that the Director may, either on his own motion, or on an application made by any authority, officer or person call for records of all transactions and make such inquiry or cause such inquiry to be made, as he thinks fit. In the course of any inquiry, if the Director finds that a banking company, financial institution or an intermediary or any of its officers has failed to maintain or retain records in accordance with the provisions of the Act, he may, by an order, levy a fine on such banking company, financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

Section 15 empowers the Central Government to prescribe, in consultation with the Reserve Bank of India, the procedure and the manner of maintaining and furnishing information for the purpose of implementation of the provisions of the Act.

Question 5

Attempt any three of the following :

- (i) *Sukhwinder, a farmer in Punjab, purchased a tractor to till his lands. During the idle time, he let it on hire for tilling the lands of others.*

Explain the meaning of 'consumer' under the Consumer Protection Act, 1986 and state whether Sukhwinder is a 'consumer' under the said Act. (5 marks)

- (ii) *Explain the provisions of the Patents Act, 1970 regarding restoration of lapsed patents. (5 marks)*

- (iii) *Destitutes Rehabilitation (India), an NGO devoted to the cause of ameliorating the lot of destitutes and the needy, has been offered a contribution of \$5,000 by an American foundation.*

Mention the provisions of the Foreign Contribution (Regulation) Act, 1976 regulating, the receipt of foreign contribution by an organisation pursuing a definite social, cultural, economic, educational or religious programme. (5 marks)

- (iv) *What are the requisites for conferring copyright protection to works of international organisations ? (5 marks)*

Answer 5(i)

A person is a consumer under the Consumer Protection Act if :

- (i) goods/services are availed for a consideration which has been paid in full;
- (ii) goods should not be for re-sale or for commercial purpose.
- (iii) any beneficiary of goods/services is also deemed to be a 'consumer'.

It is also clarified that 'commercial purpose' does not include use for the purpose of earning livelihood or self employment.

In *Bhupendra Jang Bhadur Guva v. Regional Manager & Others* (11, 1995 CPJ 139) the National Commission held that a tractor purchased to till the land by the purchaser and let out during idle time would not amount to 'commercial use'.

Answer 5(ii)

Section 60 of Patents Act, 1970 provides that where a patent has ceased to have effect by reason of failure to pay any renewal fee within the period prescribed under

section 53 or within period as may be allowed under section 142(4), the patentee or his legal representative and where the patent was held by two or more persons jointly, then with the leave of the Controller one or more of them without joining the others, may within eighteen months from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

Section 61 provides that if, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is *prima facie* satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall publish the application in the prescribed manner; and within the prescribed period, any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds that —

- (a) the failure to pay the renewal fee was not unintentional; or
- (b) there has been undue delay in making the application.

If notice of opposition is given within the prescribed period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before deciding the case. If no notice of opposition is given within the prescribed period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent. The Controller may, if he thinks fit as a condition of restoring the patent, require that an entry shall be made in the register of any document or matter which has to be entered in the register but which has not been so entered.

Answer 5(iii)

Section 6 of Foreign Contribution (Regulation) Act, permits receipt of foreign contribution by certain associations having a definite cultural, economic, educational, religious or social programme. Receipt of foreign contribution by any such association is permitted only if it registers itself with the Central Government in accordance with the Foreign Contribution (Regulation) Rules. Moreover, every such association is required, within the prescribed time and manner to give an intimation to the Central Government regarding:

- (a) Amount of foreign contribution received;
- (b) Source of such foreign contribution;
- (c) Manner in which such contribution was received;
- (d) Purpose for which such contribution was utilised;
- (e) The manner in which such contribution was utilised.

Answer 5(iv)

The following are the requisites for conferring copyright protection to works of international organizations :

- (a) The work must be made or first published by or under the direction or control of the international organization.

- (b) There should be no copyright in the work in India at the time of making or on the first publication of the work.
- (c) If the work is published in pursuance of an agreement with the author, such agreement should not reserve the author any copyright in the work or any copyright in the work should belong to the organization.

Question 6

Attempt any three of the following :

- (i) *What are the important heads under which compensation for damages may be claimed under the National Environment Tribunal Act, 1995 ? (5 marks)*
- (ii) *Girish, while taking a loan from a bank, gave FDR of his family friend Neena as a guarantee against the loan received. The bank adjusted the said FDR amount when Girish defaulted the loan repayment. Neena claimed return of money from the bank contending that she is a third party and it was 'deficiency in service' on the bank's part. Will Neena succeed ? (5 marks)*
- (iii) *Explain the provisions of the Environment (Protection) Act, 1986 regarding prevention, control and abatement of environmental pollutant in excess of prescribed standards. (5 marks)*
- (iv) *Under the 'salary saving scheme' of LIC of India, employees of a company have taken insurance policies and the premium due on each policy is collected by the company from the salaries of the employees and sent to LIC of India. LIC of India neither issued any separate receipts nor used to issue any premium notices to the employees. When the widow of a deceased employee made a claim to the LIC of India on the death of her husband, LIC of India repudiated the claim on the ground that four instalments of the premium have not been paid. The widow approached the Consumer Disputes Redressal Forum for redressal. Will she succeed ? (5 marks)*

Answer 6(i)

The Schedule to the National Environmental Tribunal Act, 1995 lists out the following heads under which compensation for damages may be claimed —

- (a) Death
- (b) Permanent, temporary, total or partial disability or other injury or sickness
- (c) Loss of wages due to total or partial disability or permanent or temporary disability
- (d) Medical expenses incurred for treatment of injuries or sickness
- (e) Damage to private property
- (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected person
- (g) Expenses incurred by Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment
- (h) Loss to Government or local authority arising out of, or connected with, the activity causing any damage

- (i) claims on account of any harm, damage or destruction to the fauna including milch and drought animals and aquatic fauna
- (j) claims on account of any harm, damage or destruction to the flora including aquatic flora, crops, vegetables, trees and orchards
- (k) Claim including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-system
- (l) Loss and destruction of any property other than private property
- (m) Loss of business or employment or both
- (n) Any other claim arising out of or connected with, any activity of handling of hazardous substances.

Answer 6(ii)

Neena will not succeed. The present problem is similar to the case of *Mrs. Anumati v. Punjab National Bank*, decided by the National Commission. In this case, the National Commission held that there shall be no deficiency in service where the bank takes conscious decisions to adjust the fixed deposits of the joint holders against the loan taken by a third party when the FDR has been mortgaged as guarantee for loan.

Answer 6(iii)

The Environment (Protection) Act, deals with prevention, control and abatement of environmental pollution.

Section 7 prohibits carrying on of any industry, operation or process which discharges or emits any environmental pollutant in excess of prescribed standards. Section 8 prohibits a person from handling or causing to be handled any hazardous substance except in accordance with prescribed procedures and standards. Section 9 obliges certain persons to provide information to authorities and agencies in cases where the discharge of any environmental pollutant is in excess of prescribed standards. Section 10 empowers the Central Government to authorize persons to enter and inspect. Section 11 deals with taking of samples and Section 12 authorizes the Central Government to establish environmental laboratories. Section 15 deals with penalties and Section 16 contains provision in respect of offences by companies and Government Departments.

Answer 6(iv)

Yes, the widow of deceased employee will succeed. The problem is similar to that of *Delhi Electric Supply Undertaking v. Basanti Devi*, the Supreme Court in this case held that since the burden of collecting the premium and remitting it to the corporation was on the employer it was not for the employee to intimate the corporation about non-remittance of the premium. The Supreme Court further held that the employer had implied authority to collect premium on behalf of the corporation. There was no gain saying the fact that if the employer had after deducting the stipulated amount from the employees salary failed to remit the premium to the corporation, it was the fault of the agent of the corporation. Hence LIC is liable to make payment under the policy.

Question 7

(a) Discuss any two of the following :

- (i) Scope of industrial relations
- (ii) Industrial unrest
- (iii) Important matters which are to be provided in standing orders under, the Industrial Employment (Standing Orders) Act, 1946
- (iv) Privileges of a registered trade union. (5 marks each)

(b) Attempt any five of the following stating the relevant legal provisions and case law, if any :

- (i) An employee was dismissed from service for an act of misconduct. The company did not pay any bonus to the dismissed employee for the accounting year in which the dismissal took place. Is the action of the company justified ?
- (ii) A notice of dismissal is given by an employer to Mukesh, an employee who is in receipt of sickness benefit under the Employees' State Insurance Act, 1948. Has the employer the right to dismiss Mukesh during the period he is in receipt of sickness benefit ? Give reasons.
- (iii) While working on a machine, a worker accidentally drops a valuable testing appliance which becomes defective. The employer deducts the value of the appliance from the wages of the worker. Is the deduction justified under the Payment of Wages Act, 1936 ?
- (iv) A Municipal Board entrusted electrification work of a town to State employees. A workman employed by the State received injuries while doing his work. Who is liable to pay compensation to the workman and why ?
- (v) Dare Davil Ltd. has no industrial dispute pending in any labour court. In order to rationalise working conditions, it wants to change hours of work, leave with wages, and holidays. Can the company do so ?
- (vi) Navratna Public Sector Undertakings have factories throughout the country. These undertakings have an impeccable record of best welfare measures and working conditions. Do these undertakings still require to appoint welfare officers in their factories ?
- (vii) Efficiency Ltd. is in the process of reorganisation of its business. It is likely to result in some labour being rendered surplus. It has proposed retrenchment of economic dead weight. Can the company do so ? (3 marks each)

Answer 7(a)(i)**Scope of Industrial Relations**

Industrial relations deal with people who are the base of the industry-a class of people that makes things to happen. Industrial relations play a crucial role in establishing and maintaining the industrial democracy in the country. Industrial relations mean relationship between management and employees and their organisation that characterize or grow out of employment.

The concept of industrial relations has been extended to denote the relations of the State with employers, workers and their organisations. The subject therefore includes individual relations and joint consultation between employers and working people at their work place; collective relations between employers and their organisations and trade unions and the part played by the State in regulating these relations.

According to ILO, industrial relations deal with either the relationship between the State and employers and workers organisation or the relation between the occupational organisation themselves.

Thus, industrial relations are integral aspect of social relations arising out of employer-employee interaction in modern industries which are regulated by the State in varying degrees, in conjunction with organised social forces and influenced by the existing institutions. The major objective of industrial relations is to maintain sound relations between employees and employers to develop harmonious relations and establish the industrial democracy.

The scope, therefore, for Industrial relations is very wide and it includes:

- (a) establishment and maintenance of good personnel relations in the industry,
- (b) ensuring manpower development,
- (c) establishing a closer contact between persons connected with the industry and that between management and the workers,
- (d) creating a sense of belongingness in the minds of management,
- (e) creating a mutual affection, responsibility and regards for each other,
- (f) stimulating production as well as industrial and economic development
- (g) establishing good industrial climate and peace and ultimately maximising social welfare.

Answer 7(a)(ii)

Industrial Unrest

Unrest may be defined as a disturbed state of mind in a human being caused by discontent or dissatisfaction arising out of failure to satisfy certain basic human needs. Industrial unrest, therefore, refers to the discontent or dissatisfaction lurking in the disturbed mind of labourers about certain lapses at the working place or about their wages or security or employment etc. Labourers are always hopeful that their causes of discontent or unrest can be eliminated by their collective strength. Hence they form their own organisations and resort to certain measures with which they try to gain their ends. Since industrial unrest involves question of right or wrong and also affects every section of society, it thrusts itself upon the attention of the community and becomes a social problem.

Two categories of causes of industrial unrest are :

- (1) intangible causes; and
- (2) tangible causes.

Intangible causes : These are closely connected with the study of human nature. Man seeks to satisfy his wants but the path that he follows in his search for satisfaction is a complex one, governed by reasons, emotions and instincts. Very often the path may appear to be irrational and illogical to the outsider but to the person himself, it is perfectly rational and logical. Different people have different attitudes towards the same fact.

Tangible causes : These include demand for increase in wages, bonus etc.; demand for re-instatement of any dismissed worker; demand for greater facilities; demand for recognition of a trade union; political causes leading to general agitation.

Answer 7(a)(iii)

Important matters to be provided in the Standing Orders

The Industrial Employment (Standing Orders) Act, 1946 requires the employers in Industrial Establishment to define the conditions of employment of the workmen and also make the same known to them. The purpose is to have:

- (i) Uniformity in service conditions
- (ii) Conditions cannot be changed
- (iii) Maintain industrial peace
- (iv) New entrants can accept the job, knowing their conditions

Standing Orders means the Rules relating to the service conditions and related matters set-put in the Schedule to the above Act. Following matters have to be provided in the Standing Orders under the Schedule to the Act:

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.

Answer 7(a)(iv)**Privileges of a Registered Trade Union**

The Act protects the members and the office-bearers of a Registered Trade Union from certain criminal and civil acts provided such acts are necessary in carrying out the lawful objectives of the Trade Union. These immunities may be discussed under the following heads:

(i) *Immunity from criminal proceedings*

According to Section 17, no office-bearer or member of a Registered Trade Union shall be liable to punishment under Sub-section (2) of Section 120B of the Indian Penal Code, in respect of any agreement made between the members for the purpose of furthering any such objects of the Trade Union as is specified in Section 15, unless the agreement is an agreement to commit an offence.

Thus, immunity is granted, in respect of any agreement made between the members for the purpose of furthering the objects of Trade Union, from punishment under Section 120B(2) of Indian Penal Code.

Section 17 grants immunity to Trade Unions. But no exemption is granted against either an agreement to commit an offence or intimidation, molestation or violence when they amount to an offence.

(ii) *Immunity from civil suits in certain cases*

As per Section 18 of the Act, no suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof, in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the only ground that:

- (a) such act induces some other person to break a contract of employment; or
- (b) it is in interference with the trade, business or employment of some other person; or
- (c) it is in interference with the right of some other person to dispose of his capital or his labour as he wills. [Section 18(1)]

Section 18(2) further provides that a registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of or contrary to express instructions given by, the executive of the Trade Union. Depending on facts of each case, conduct or act will be protected under Section 18.

(iii) *Enforceability of agreement*

Section 19 of the Trade Unions Act, 1926 says that notwithstanding anything contained in any other law for the time being in force, agreement between the members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade.

Section 19 further prevents Civil Courts from entertaining any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of

any agreement concerning the conditions on which any member of a Trade Union shall or shall not sell their goods, transact, business, work, employ or be employed. When the purpose is not to recover damages, the agreement is enforceable.

Answer 7(b)(i)

The action of the company is justified. It has been held that if an employee is dismissed from service for any act of misconduct enumerated in Section 9, he stands disqualified from receiving any bonus under the Act, and not the bonus only for the accounting year in which the dismissal takes place. (*Pandian Roadways Corpn. Ltd. v. Presiding Officer, Principal Labour Court*)

Answer 7(b)(ii)

The employer has no right to dismiss Mukesh during the period he is in receipt of sick benefit.

It has been expressly provided under Section 73 of the Employees' State Insurance Act, 1948 that no employer shall dismiss discharge or reduces or otherwise punishes an employee during the period the employee is in receipt of sickness benefit or maternity benefit. It further provides that no notice of dismissal or discharge or reduction given to an employee during such period shall be valid or operative.

Answer 7(b)(iii)

Section 7(2) of the Payment of Wages Act, 1936 envisages the illustrations of various kinds of deductions which the employer can make from the wages of an employed person. These inter- alia include :

“deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default”. [Section 7(2)(iii)]

The deduction is not justified as the defect caused to the testing appliance is accidental and not attributable to his neglect or default.

Answer 7(b)(iv)

This is the case of employment by contracting as provided under Section 12 of the Workmen's Compensation Act, 1923.

In a case with similar facts, the Allahabad High Court has held that it is the State and not the Board, liable to pay compensation because execution of electrical project is not the ordinary business of the Municipal Board (AIR 1960 All 408).

Answer 7(b)(v)

The two matters relating to 'hours of work' and 'leave with wages & holidays' are specified in Schedule 4 to the Industrial Disputes Act, 1947.

According to Section 9-A of the Industrial Disputes Act, 1947 no employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change (i) without giving to the workmen likely to be affected by such change a notice in the

prescribed manner of the nature of the change proposed to be effected; or (ii) within 21 days of giving such notice.

Even if no dispute is pending in Labour Court, still it is necessary to give notice under Section 9A of the Industrial Disputes Act. Accordingly, the management is advised to follow the legal procedure laid down in Section 9A of the Act.

Answer 7(b)(vi)

Section 49 of the Factories Act imposes a statutory obligation upon the occupier of the factory to appoint welfare officers. According to Section 49(1), in every factory wherein 500 or more workers are ordinarily employed, the occupier should employ such number of welfare officers as may be prescribed. The State Government is empowered to prescribe the duties, qualifications and conditions of service of such welfare officers.

In the light of the legal provisions stated above, the undertakings have to appoint welfare officers in their factories.

Answer 7(b)(vii)

The company can do so. In *Parry & Co. Ltd. v. P.C. Pal*, (1970) 11 LLJ 429, the Supreme Court observed that the management has a right to determine the volume of its labour force consistent with its business or anticipated business and its organisation. If for instance a scheme of reorganisation of the business of the employer results in surplus age of employees, no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however, unfortunate it be. The fact that the implementation of a reorganisation scheme adopted by an employer for reasons of economy and convenience would lead to the discharge of some of the employees, will have no material bearing on the question as to whether the reorganisation has been adopted by the employer bona fide or not. The retrenchment should be bona fide and there should be no victimisation or unfair labour practice on the part of the employer.
