

O.P. Malhotra's Law of Industrial Disputes provides an incisive treatment of every aspect of the law relating to industrial disputes in a clear and lucid manner.

Industrial law in this country is of recent vintage and has developed in respect of the vastly increased awakening of the workers of their rights, particularly after the advent of Independence. Industrial relations embrace a complex of relationships between the workers, employers and government, basically concerned with the determination of the terms of employment and conditions of labour of the workers. Escalating expectations of the workers, the hopes extended by Welfare State, uncertainties caused by tremendous structural developments in industry, the decline of authority, the waning attraction of the work ethics and political activism in the industrial field, all seem to have played some role. Whether an employee is workman or not under the Industrial Disputes Act is most important factor under the industrial jurisprudence. The reason being that a workman enjoys job security to such an extent that howsoever unwanted, undisciplined or inefficient he may be, his employer cannot dispense with his service unless a meticulous and complicated procedure is followed. However the law has not laid down a standardized, definite and irrefutable definition. Under the Contract Labour Act a workman means a person engaged in skilled, semiskilled or un-skilled manual, supervisory, or clerical work for hire or reward but excludes person employed mainly in a managerial or administrative capacity. The definition of workman in S2 s of the Industrial Disputes Act, in connection with persons employed in an industry falls in 3 parts: I Gives statutory meaning of workman. The first part brings in the concept of contract of employment between employer and employee. Moreover, every person employed in an industry irrespective of whether he is temporary, permanent or probationer- would be a workman. By the former, the employer can order not only what is to be done but how the work shall be done but in the latter, the person can be asked what is to be done but not how it shall be done. Punjab National Bank Ltd. The Court after referring to English decisions held that the correct test for determining relationship was the control and supervision test. State of Saurashtra held that the prima facie test to determine whether there existed a relationship of employer employee was the existence of the right in the master to supervise and control the work done by the servant, not only in the matter of directing that work but directing the manner in which work had to be done- the greater the amount of due control over the person rendering service, the stronger the ground will be for holding it a contract of service. However, the real difficulty in application of the test arose in cases relating to beedi industry viz. P ; Birdichand Sharma v. State of Maharashtra and Mohinudeen Sahib v. In all beedi cases, the court in principle, consistently subscribed to supervision and control test, even as it was at the same time mindful of limitations of this principle in its application to concrete fact- situations. The court arrived at different conclusions by emphasizing the difference in factual situations while applying the control test. Organisational Test Silver Jubilee Tailoring House case , the court observed that other factors like organizational test, working in premises of the employer, working on the machines in employers premises, power to remove if the work is not in conformity with standards prescribed, are relevant factors for determining the relationship. The court here realized that control and supervision test is one of the test in determining the relationship between employer- employee but it is not the sole decisive test. Court here held that livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise , the absence of direct relationship or presence of dubious intermediaries from the Management cannot snap the real life bond. Also, the court here extended the corporate law principle of lifting the corporate veil to the area of employment law jurisprudence and subsequent decisions. The true test for determining whether an employee employed under contract of service is workman or not? This is a matter of debate. As against this, in a set of cases viz. Mahesh Chandra , Ved Prakash Gupta v. Delton Cable India Ltd. Ciba Geigy India Ltd. These decisions are also based on the facts found in those cases. Following this, in Adyanthaya v. The Court held that the position in law as it obtains today is that a person to be a workman under the Act must be employed to do the work of any of the categories, viz. It is not enough that he is not covered by either of the four exceptions to the definition. The

technical nature of the work done by Medical Representatives has been expressly rejected in *Burma Shell* case. Recently, the court in *Ram Singh v. All* relevant facts and circumstances are to be considered including the terms and conditions of contract. The control and supervision test that used to be considered sufficient is no longer so, especially in case of employment in case of highly skilled individuals. There is no single test to determine if a person is an employee. Mere fact that government is running such activity is not of any consequence. The judiciary has taken divergent views in this regard. For this first one should seek to answer the question that is the work done by doctors is manual unskilled, skilled, technical, operational, clerical or supervisory in nature. In *Bengal United Tea Co. Ram Labhaya* the court held that a medical officer and his work is of technical nature and is therefore a workman. However, in this case there was no dispute as to the purpose of which the appointment of doctor was made or the functions which he performed. The case proceeded on the assumption that doctor performed functions of a medical attendant. The court observed that the duties of Assistant Medical Officer was not only to treat persons but to meet other administrative requirements where he is in charge of hospital or health unit and was responsible for its establishment and administration. They were given a notice stating termination of their service after one month. The Supreme Court observed that when he was on shift he was the sole person in charge of the first aid post and he had people working under him male nurse, nursing attendants, sweepers etc. Court held that when a doctor discharges his duty attending the patients and in addition supervises the work of persons subordinate to him he cannot be held a workman. In *Wadia Charitable Hospital v. Umakant*, a Charitable hospital a part of the money received was given in charity, employed doctors who were even allowed to have their own private practice. The hospital terminated services of one of the doctor. Prior to this, there existed a dispute with regard to better facilities for the doctor. After the termination, doctors announced an indefinite strike, therefore the hospital terminated services of all. The question before the court was doctors who are employed in hospitals and who are allowed private practice, are workmen? D Act to the patients and are therefore workmen. The court held that when patients are allowed to come to the hospital, it cannot be said that the doctor is rendering services only to an employer who owns an industry or an undertaking. He renders service to the Society at large. Court, observed that in the cases cited by the counsels, the Medical Officer has been appointed for treating the workmen employed in Industries and were doing the work of the Industry for which they were paid salary and such a situation cannot be equated to the facts of the present case. Here the doctors are rendering only professional service to various institutions Therefore the doctors cannot be held to be workmen. It also added that there cannot be a strait jacket test or formula in these matters. It will ultimately depend on the fact of each case. *Ahmedabad Municipal Corporation v. Virendra Kumar Jayantibai* the court held that a doctor being paid for visits for visiting the dental clinic of the corporation which provided medical service to the residents of the Corporation, was held not to be a workman. A chemist-in-charge of performing, the work essentially of technical nature, having power to recommend leave but no power to grant leave or take disciplinary action was held to be a workman. *Shailesh Hathi* the question was whether physiotherapist is workman? It is highly specialized skilled job and is in nature of job of Doctor. It was held that the person holding a degree of physiotherapist is not a workman because of his carrying work of helping a patient to exercise. In fact a treatment given by the physiotherapist is not a perennial nature of work. Therefore, a physiotherapist is not a workman under S 2 s of I. The payments which were made by the Hospital was from the fees recovered from the various patients moreover, there was no material whatsoever produced by the petitioners to show any direct master servant relationship Recently, a Division Bench of the Kerala High Court comprising Justice C. Ramachandran Nair and Justice V. Mohanan ruled that a consultant physician employed by the hospital did not come within the meaning of the term workman as defined in the Industrial Disputes Act, The Bench observed that there was a categorical finding by the Supreme Court on the issue. The apex court had held that a medical officer, being a professional, could not be termed as a workman under any law. The court observed that an employee engaged in supervisory work was outside the scope of workman. The claimant-doctor who was one of the senior doctors in the hospital was engaged in supervisory and technical work. From the above cited cases it is evident that there is no straight jacketed formula adopted by the judiciary for determining if a person is a workman or not. The decision varies with facts and circumstances of

each and every case. The Supreme Court has not given a concrete reason as to why doctors are not workman. In most cases the issue of doctors being engaged in supervisory work is raised and the court without applying the predominant nature of the work test and looking into the fact if a doctor is engaged in technical work or not, holds him not to be a workman. This approach of the court is highly erroneous as the Court is digressing from the main function of the doctor and holding him not to fall under the definition of the workman because of the ancillary function of supervision being carried out by him. The First National Commission on labour had observed that in order to bring a feasible degree of simplification and uniformity in definitions it should be possible to integrate those enactments which cover subjects having common objects. The Commission proposed that instead of having separate, it maybe advantageous to incorporate all provisions relating to employment relations, wages, social security, safety and working conditions etc. It is high time to implement the recommendations of both the Commissions by integrating and amending labour legislations to bring uniformity in the definitions of various terms so it can avoid confusion so that there is no conflict or inconsistency in their interpretation by the courts.

2: HEALTHCARE PROFESSIONALS AS WORKMEN UNDER THE INDUSTRIAL DISPUTES ACT,

Note: Citations are based on reference standards. However, formatting rules can vary widely between applications and fields of interest or study. The specific requirements or preferences of your reviewing publisher, classroom teacher, institution or organization should be applied.

3: The Law of Industrial Disputes (Set of 2 Vols)

The law of industrial relations or industrial disputes in India is primarily locatable in the Industrial Disputes Act (IDA). Other important central laws falling in this category are the.

4: Books On Industrial Law - CiteHR

O.P. Malhotra's Law of Industrial Disputes provides an incisive treatment of every aspect of the law relating to industrial disputes in a clear and lucid manner. Dwelling on the nature of industrial disputes, the procedure for industrial adjudication, and the powers and duties of the various.

5: Course Plan - INDUSTRIAL RELATIONS AND LEGISLATIONS

*The Law of Industrial Disputes (Set of 2 Volumes) [O.P. Malhotra] on www.enganchecubano.com *FREE* shipping on qualifying offers. The Law of Industrial Disputes provides an incisive and lucid commentary on every aspect of the law relating to industrial disputes.*

6: General | Human Resource Outsourcing Provider | Gerard & Associates Sdn Bhd

The Law of Industrial Disputes provides an incisive and lucid commentary on every aspect of the law relating to industrial disputes. It dwells on the nature of industrial disputes, the procedure of industrial adjudication, and the powers and duties of the various adjudicatory authorities under the Industrial Disputes Act, as well as specifies the judicial remedies available to both the.

7: Chapter 23 - Human Resource Management [Book]

The law of industrial disputes: The Industrial Disputes Act, by O. P Malhotra (Author) Be the first to review this item.

Haynes saab 9 5 repair manual Holes anatomy and physiology List of thermal power plants in india Writing picture books Literature 1 Anthology (Reading in the Content Areas) Waiting for the sky to fall. 25 years with a mad man! The History of Rome, Books Twenty-Seven To Thirty-Six Visions upon the land Exotic Tastes of Sri Lanka This blessed fire Prop and throttle Rod Serlings The Twilight Zone The theological papers of John Henry Newman on Biblical inspiration and on infallibility Everything you always wanted to know about the Catholic Church but were afraid to ask for fear of excommu Solidworks 2011 surface tutorial Bellevue Redmond Kirkland Issaquah Washi UFO Encounters and Beyond The war against America Where is overdrive on android Ixopo: The story of a South African Buddhist center Tuesday : Peje, Kosovo Measuring What Matters: Competency-Based Learning Models in Higher Education International Motor Racing Guide Gre subject test psychology 5th edition Basic amplification schemes The Group Therapists Notebook Pg trb maths study material Happily Ever Now (Urban Christian) Sometimes a little brain damage can help From The master thief Camille Guthrie Wcscore Concepts of Accoutning with Course Pack Access Cards Set Gunchvayelo kachindo The last word on first names The nucleus of our galaxy The growth of Londonistan The Essential Wedding Planner Information bearcat bc 3 receiver Southwest ceramic art Learning center identification charts