New Labour Codes of India
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Lecture 17
Retrenchment

Dear students, we have covered strikes and we have covered lockouts and we have covered lay-off and now, we have to cover the next concept of retrenchment.

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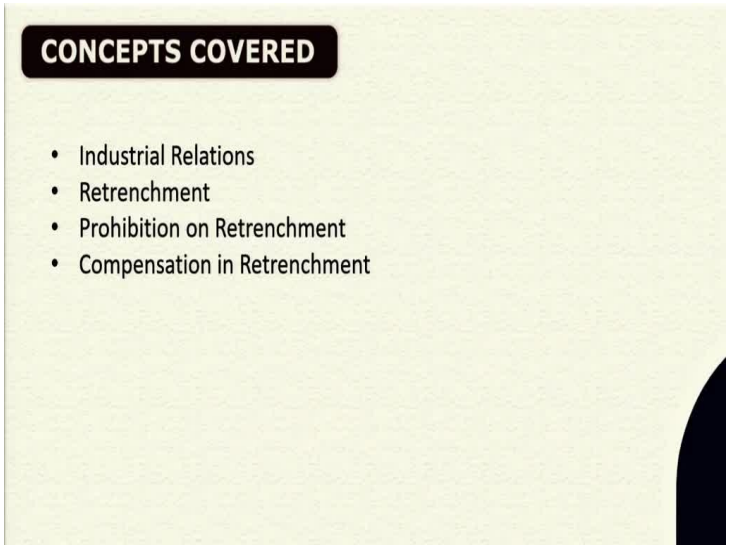

So, what do you mean by retrenchment and what is the concept of retrenchment, what are the circumstances under which a retrenchment can be done by the employer and what is the role played by the employer in case of compulsory retrenchment? In certain cases, there is a

prohibition of retrenchment, whether compensation to be paid in the case of retrenchment? So, all these questions we are going to discuss in this particular lecture.

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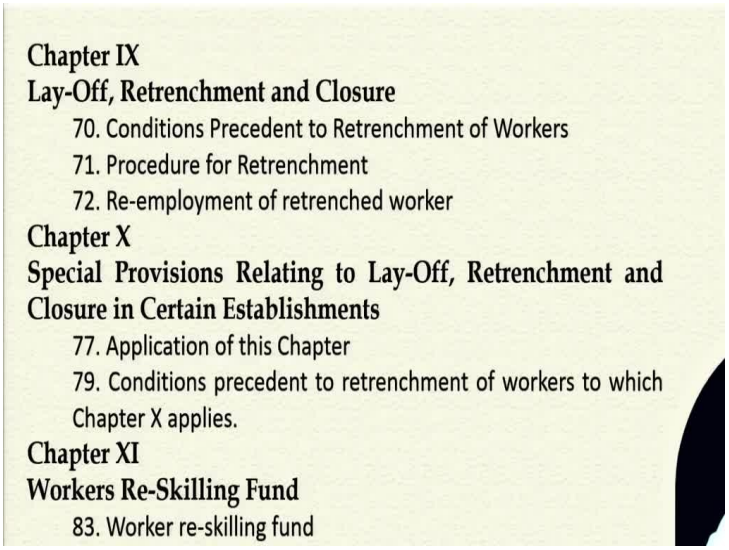

So, we can see the provisions in the IR code in chapter 9 and also chapters 10 and 11, which completely talk about the conditions, the conditions for or preconditions in the case of retrenchment, what are the procedures of retrenchment and re-employment of retrenched workers and also what are the conditions precedent for retrenchment of workers and also worker Re-skilling fund the constitution of worker Re-skilling fund under the provisions of chapter 11.

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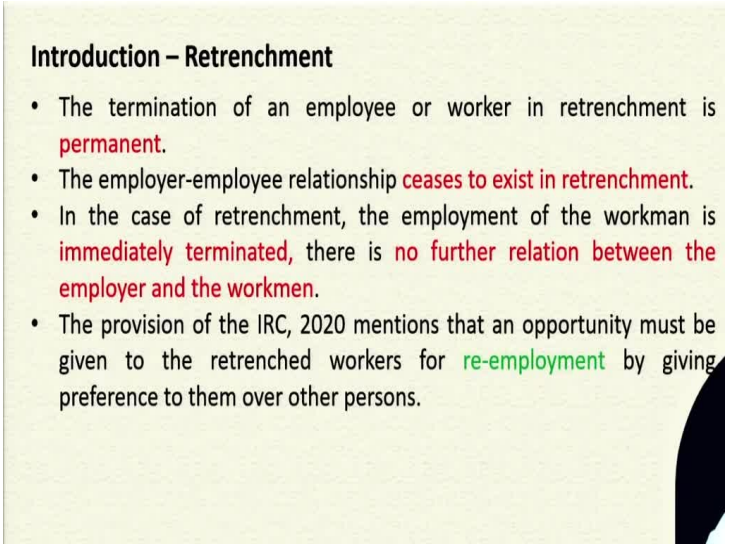

So, unlike layoff, retrenchment is a permanent termination of employment, not a temporary ceasing of work, this is a permanent termination of the employee. Here, the employer-employee relationship ceases to exist in the case of retrenchment and the workman is immediately terminated and there is no further relationship between the workman and the employer. And here the IRC the Industrial Relations Court 2020, talks about an opportunity that must be given for reemployment to the retrenched workmen and when there is the re-employment these workers should be given preference.

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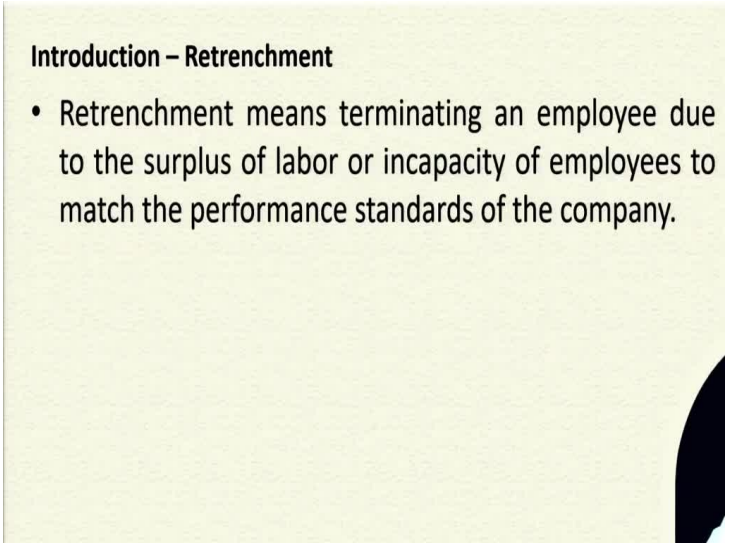

And we can see that mainly retrenchment is terminating an employee due to various reasons, it may be due to the surplus of labour or the incapacity of the employees to match the expected performance of the employer or the standard of the company. So, it can be, the reason can be on the part of the employer. Sometimes, the reason may be due to the non-working or the performance-related issues of the employees as well.

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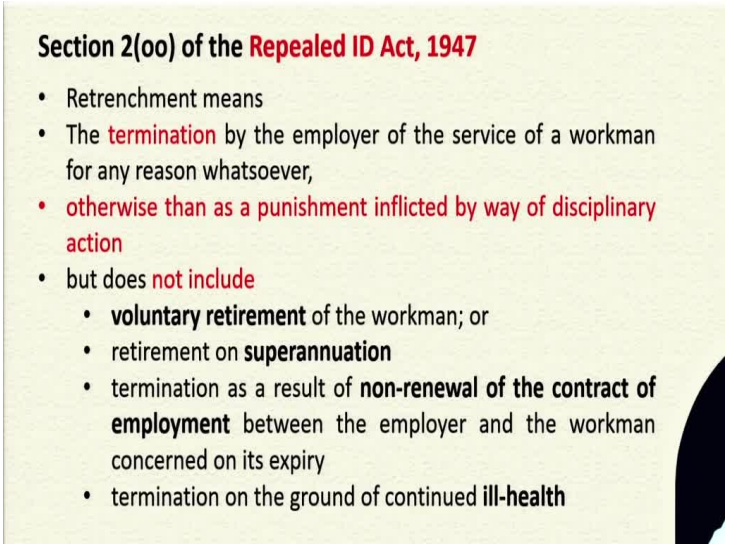

So, retrenchment is defined under Section 2 (oo) of the Industrial Disputes Act. So, retrenchment, the definition says that it is termination by the employer of the service of a workman for any reason whatsoever any reason other than a punishment or consequences of the disciplinary action. But, it does not include voluntary retirement or retirement during superannuation and termination as a result of non-renewal of a contract of employment. It means the ending of the contract between the employer and the employee for work, particular the work we were talking about the contract of work.

So, in the case of completion of the particular term of employment or term of the contract, it cannot be considered retrenchment. So, in that case, retrenchment benefits are not provided to such kind of contractual employees. In case of continued termination on the grounds of continued ill health also cannot be considered as a retrenchment.

So, it means retrenchment is a cessation or the termination of the employment due to any reasons other than voluntary retirement, superannuation and non-renewal of the contract and the termination on the grounds of ill health. So, otherwise, the termination of the service can be considered as a retrenchment.

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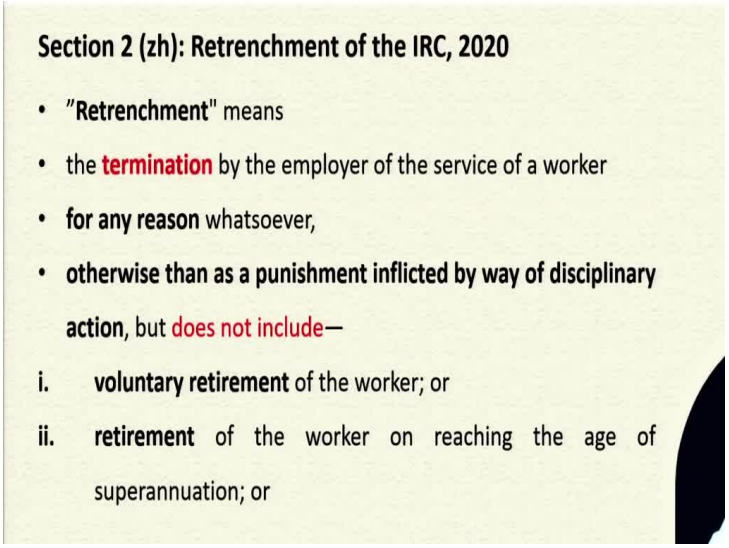

So, the new provision Section 2 (zh) of the Industrial Relations Code IRC code. So, this relation code which talks about retrenchment, the same definition has been incorporated here as well. So, there is no change which is mentioned under the new code as well.

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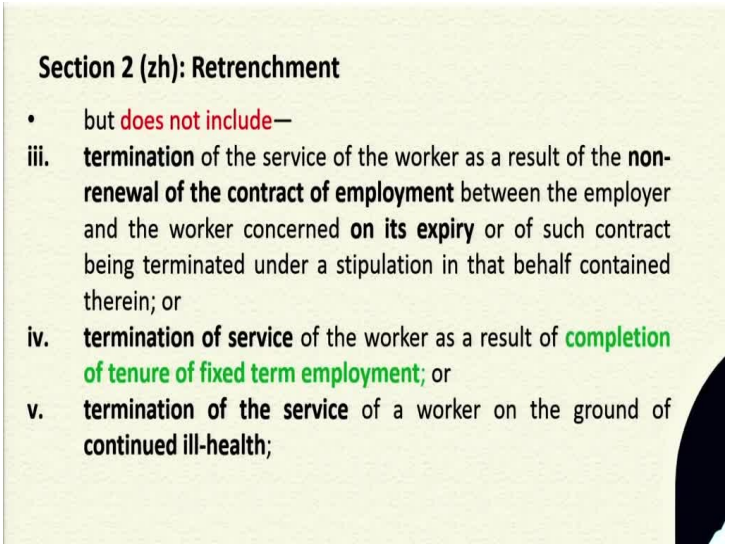

So, it is very clear fixed-term employment are going to be in future that is going to be the order of the day. So, the provision very clearly says the termination of or completion of tenure of the fixed employment is not going to be considered as retrenchment. So, fixed-term employment is legalized and it is not going to be considered as retrenchment and the employees are not eligible for compensation in that particular case.

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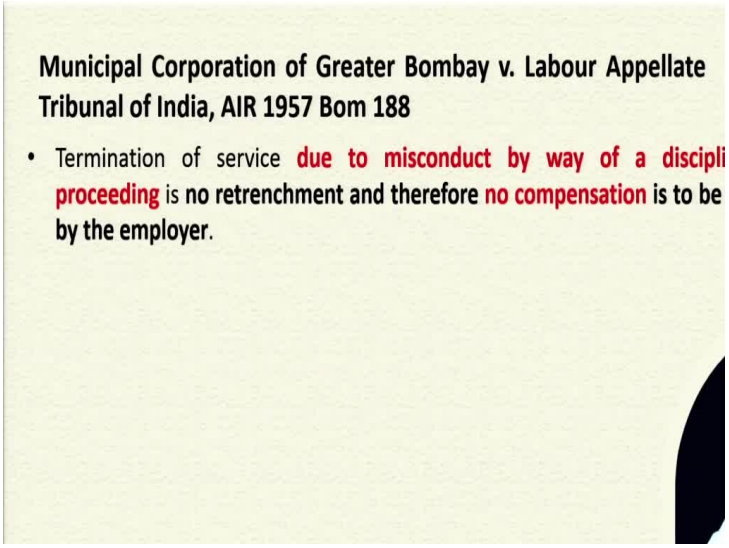

Here in the Municipal Corporation of Greater Bombay versus Labour Appellate Tribunal one of the earlier cases 1957, if somebody's services are terminated due to disciplinary proceedings in consequence of a disciplinary proceeding on the grounds of misconduct, in that case, it cannot be considered as a retrenchment and no compensation has to be paid in that particular case. So, this is an exception, which is already mentioned in the definition under the Act.

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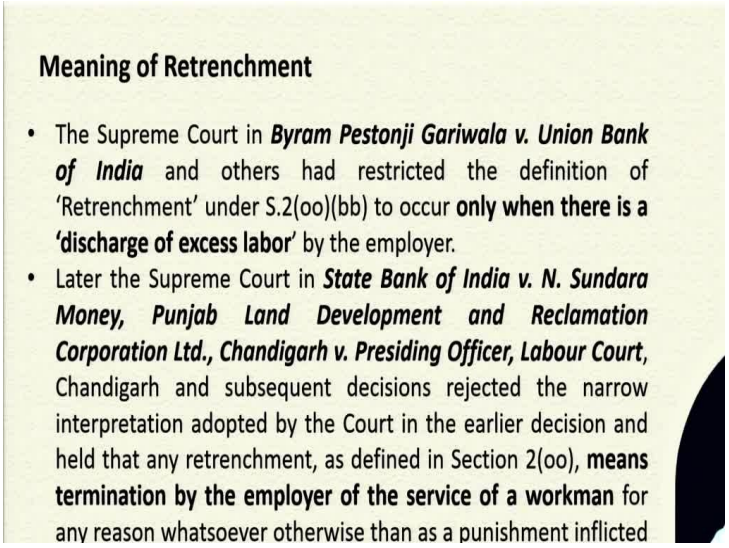

And the most important cases, jurisprudence or the concept of retrenchment is explained through these particular cases. And the Supreme Court has explained the jurisprudence in Byram Pestonji Gariwala versus Union Bank of India and others and also the continuous

cases considered the cases especially the most important cases the State Bank of India versus N. Sundara Money. And the third case is the Punjab Land Development and Reclamation Corporation Limited versus Presiding Officer Labour Court. So, through these particular cases, the court was trying to explain what you mean by exact retrenchment whether the provision has to be very narrowly interpreted or it has to be taken into consideration the whole spirit of the particular provision.

So, the court in the beginning the court has interpreted narrowly by saying that discharge of excess labour. So, it is the definition is restricted to the discharge of labour, but later on through this particular cases of State Bank of India versus Sundara Money and also the Punjab Land Development cases. The court has widened the scope of the termination, retrenchment, and the definition of retrenchment and very clearly said that the termination of service of a workman and what exactly will come under the purview of retrenchment, the definition of retrenchment.

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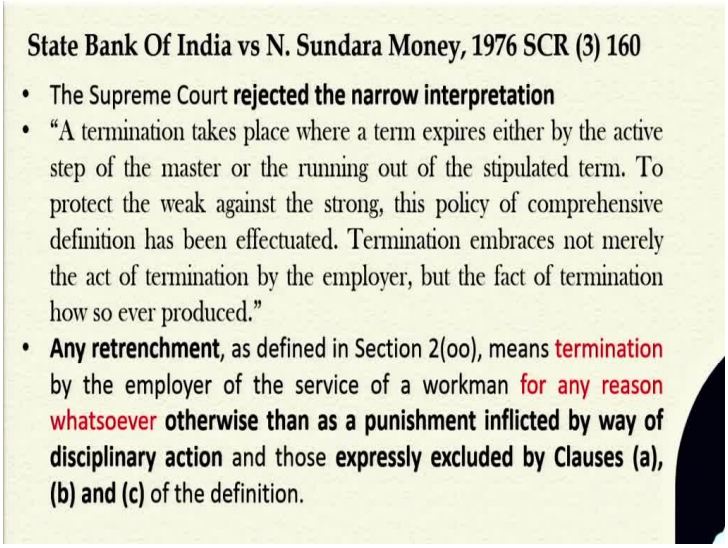

So, we will consider the first case the State Bank of India versus Sundara Money. In this particular case, the court has rejected the narrow interpretation and widened the scope of the terminology which is retrenchment. So, the interpretation can be in favour of the employee and they are eligible to get compensation.

So, here the court says, a termination takes place where a term expires either by the active step of the master or the running out of the stipulated term to protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces

not merely the act of termination by the employer, but the fact of termination how so ever produced.

So, here the court wants to say that this particular provision is included or the terminology is defined to help the workers. So, here retrenchment means termination by the employer of the service of the workmen for any reason otherwise as a punishment, otherwise as a punishment any reason whatever the reasons given by the employer it can be considered as retrenchment and the employees are eligible to get compensation in that particular case.

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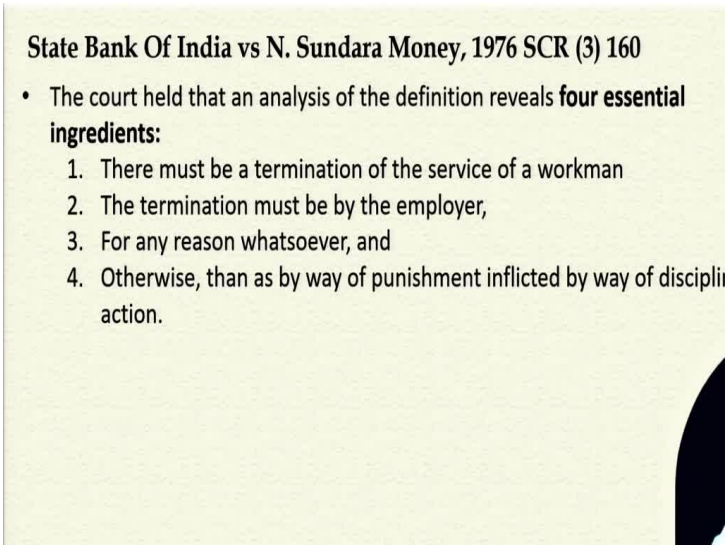

So, in this case, the court fined the State Bank of India case the Supreme Court has fined four essential ingredients of retrenchment. So, first there must be a termination of service of a workman, two, the termination must be by the employer, three, for any reason whatsoever. So, there must be a reason which is mentioned by the employer and four, it must not be a consequence of disciplinary action and it is inflicted as a punishment on the workman or the worker. So, these are if the four conditions are fulfilled, then it can be considered as retrenchment.

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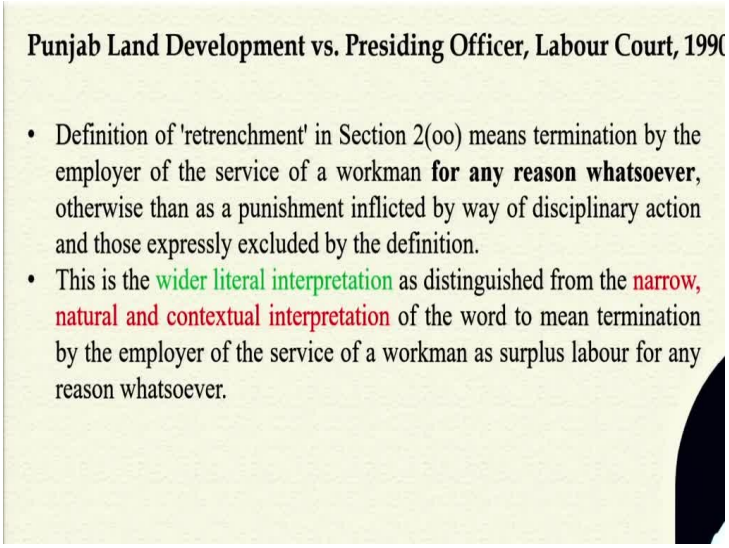

So, the definition, the reason whatsoever is subjected to interpretation again by the Supreme Court in 1990 in the Punjab Land Development versus the Presiding Officer. Here they clearly said that. So, the wider literal interpretation is to be given to these meanings of the reason for any reason whatsoever.

And the Court said that the natural and contextual interpretation should be given. So, the word, termination by the employer of any service that may be due to surplus labour or any other reason can come under the purview of the definition of retrenchment. So, the court has widened the interpretation of this terminology through the State Bank of India case and Punjab Land Development case.

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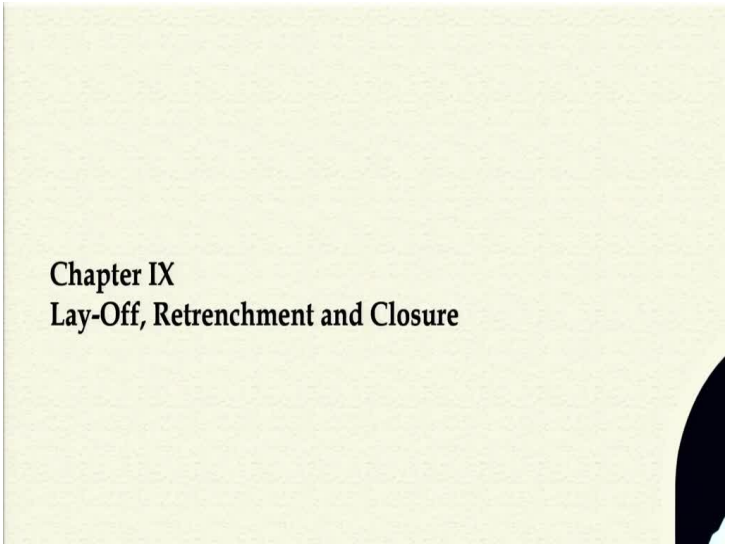

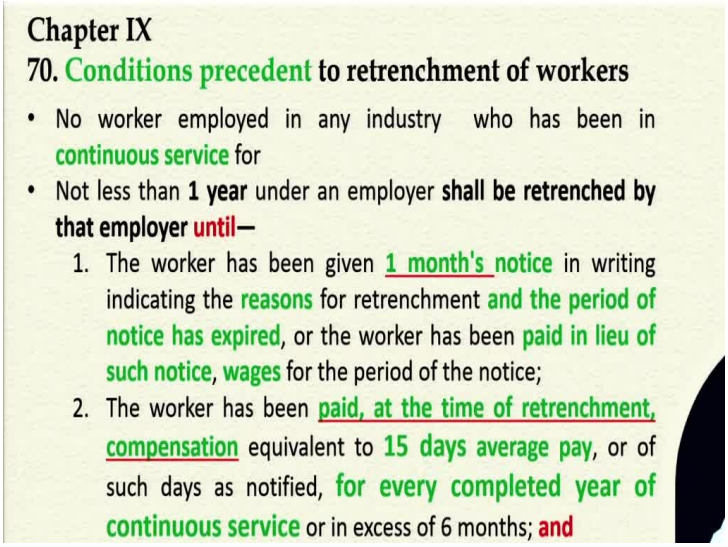

Chapter IX

70. Conditions precedent to retrenchment of workers

- No worker employed in any industry who has been in continuous service for
- Not less than 1 year under an employer shall be retrenched by that employer until—
  1. The worker has been given 1 month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice;
  2. The worker has been paid, at the time of retrenchment, compensation equivalent to 15 days average pay, or of such days as notified, for every completed year of continuous service or in excess of 6 months; and

So, now, irrespective of the reasons, this can be considered as retrenchment. So, cessation of work or the termination of the work permanently will be considered as retrenchment, then we come to, what are the reasons? What are the conditions precedent for the retrenchment of workers?

So, here we can say that the first condition is that in a certain continuous period of workers that means, not less than one year, not less than one year in employment shall be retrenched by that employer until the worker has been given a 1 month's notice period. And we know that now, every appointment order carries a provision that may be 1 month's notice or 3 months' notice or 3 month's notice in lieu of salary.

If a 1-month notice or 1 month in lieu of a 1-month salary should be given indicating also the reasons for retrenchment also the work can be retrenched and I have already said that paid in lieu of such notice the wages for such period. So, mostly, now, the private companies gave the terminology, which we clearly mentioned about 1-month notice in lieu, paid in lieu of 1-month salary wages are mostly in the government services 3-month notice or in lieu of 3-month salary. And in the case of retrenchment, a retrenchment compensation has to be paid which is equivalent to 15 days average pay or such other days for every completed year of continuous service in excess of 6 months.

So, that means if anybody is worked more than 6 months, they are eligible to get 1-year compensation which is the 15-day average pay and also the retrenchment in the case of retrenchment notice will be served on the appropriate Government as well. So, in the retrenchment compensation is fixed as 15 days average pay for every working year.

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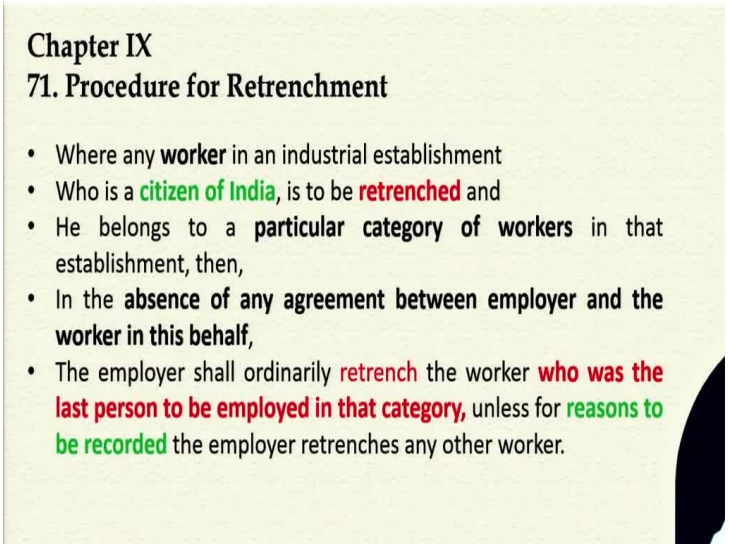

The compensation has to be paid by the employer in any establishment so and other the process and other procedures mentioned in provision 71 are and he must be a citizen of India. And he belongs to a particular category of worker in that particular establishment if in the case of if he is mentioning the category or not or whether there is a specific agreement between the employer and the employee. So, the rule, the thumb rule in the industry is that who was the last person to be employed in the category should be retrenched first unless there is a specific reason to be recorded. So, this is not a statuary rule but almost all industries follow that the last person employed retrench first.

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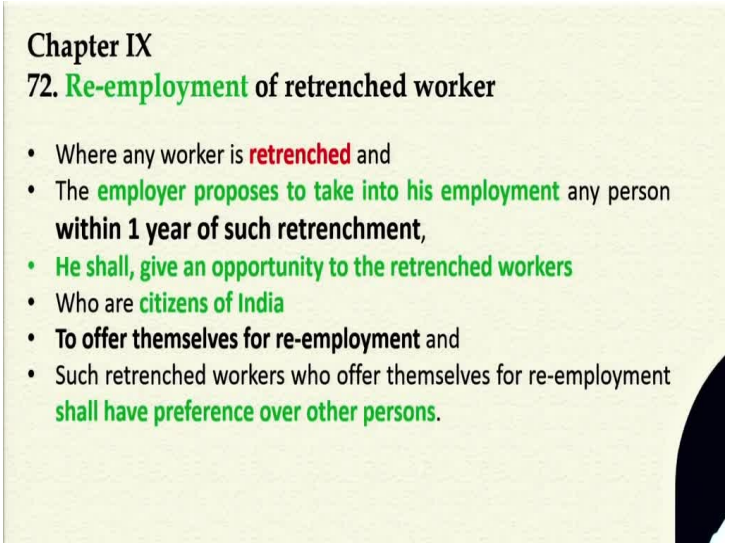

So, again, the employer is proposed to take into employment any other person within 1 year of such retrenchment, that is means re-employment of retrenched workers, the specific provision included in the code IR code for re-employment of retrenched workers. So, if he is proposing to so retrenchment of one employee and taking another employee in his place is not going to be easy for the employees.

So, he must be given an opportunity of the retrenched workers if the employer has retrenched somebody as terminated his employment as a result of consequent disciplinary action, then he need not give an opportunity another way round if he will come under the definition of retrenchment.

His termination of employment come within the definition of retrenchment, then the employer has to give an opportunity to such retrenched workers an opportunity for re-employment within a period of 1 year. So, these retrenched workers have a preference for re-employment within a period of 1 year.

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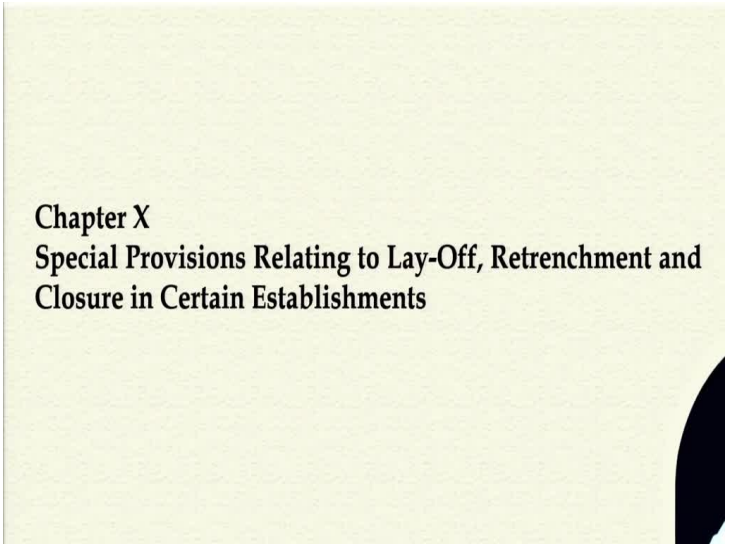

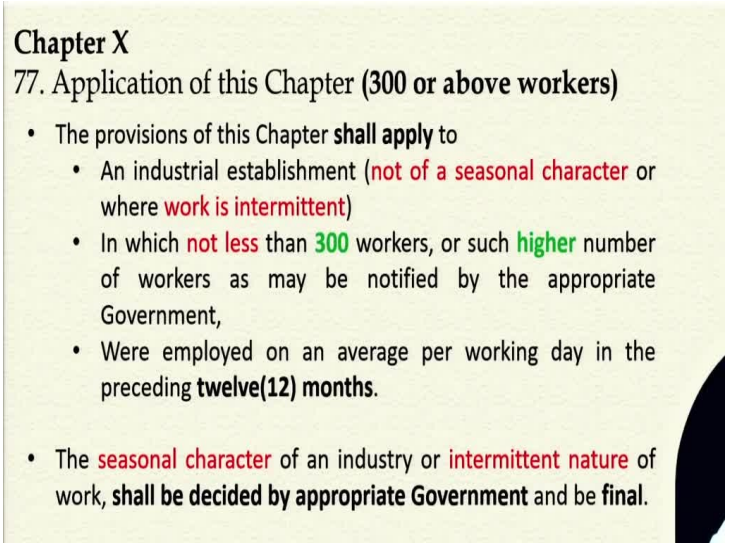

And we can say that these Special Provisions also we can see that with regard to the application of this particular chapter, we already said that 300 or above workers are applicable. So, if an establishment employs more than 300 workers, and seasonal working and intermittent working, it is not applicable. So, presently, these provisions are applicable to bigger establishments, those who are employing 300 or more workers. So, smaller employment, smaller numbers, these particular provisions are not applicable.

So, again, the question is, if somebody is retrenched from a small-scale industry or SME's, those who are employing definitely less than 300 employees, these provisions are not applicable. In that case, the case is not, the employer is not liable to pay compensation. So, the employees will be in a disadvantaged position.

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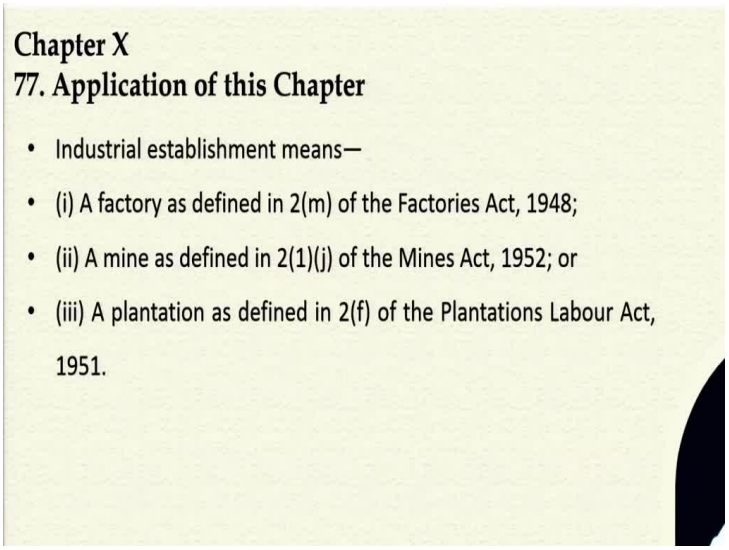

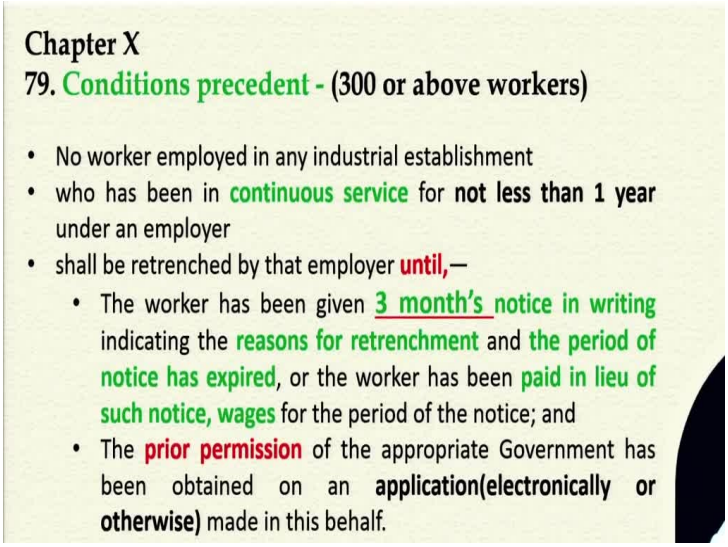

So, all these provisions are applicable to Factories Act, Mines act and Plantation act as well. So, we already said that this is applicable to all 300 and above workers who are establishing those who are working. 300 and above workers and a continuous period of 1 year. And also we can see that in certain cases, the workers must be given 3 month's notice period, in the case of industrial establishments those who are working more than 300. 3-month notice period and the notice period has expired, or the employer has to pay in lieu of such notice wages. And also the prior permission if you want to retrench more than 300 employees.

So, that means those who are working 300 employees in such establishments, have to take prior permission from the government. In most cases, this prior permission is a hurdle to lay off as well as retrenchment of employees. Because the government will take a recent decision, it will take time and sometimes the employees will not take permission in that case, it will be considered as illegal retrenchment. So, there will be cases between the employees and employees, and they may go to the or tribunals and also the appropriate governments can refer this matter to the tribunals as well.

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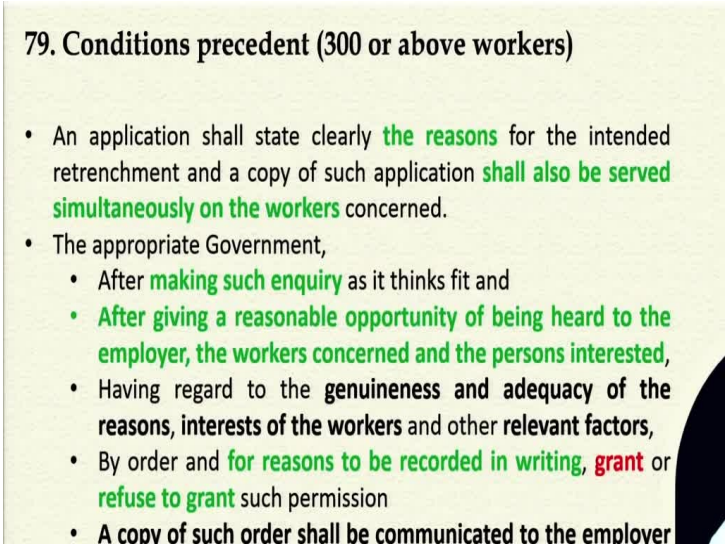

So, when the application is given for retrenchment, then the reasons clearly the reasons to be mentioned. And what are the reasons for such retrenchments? a copy of the application should be given to the government as well as to the workers as well. So, employers cannot keep it secret until such permission is obtained. So, it means that simultaneously they have to give a copy of the application to the government as well as a copy of the worker's consent.

The government will again follow the same process they will follow us in the case of lay-off. They will inquire into the matter, and they will give a reasonable opportunity of being heard to both the employers, employees and also any other interested persons the government should come out with an order that it is granting or refusing such order or permission and also such orders should be communicated to the workers.

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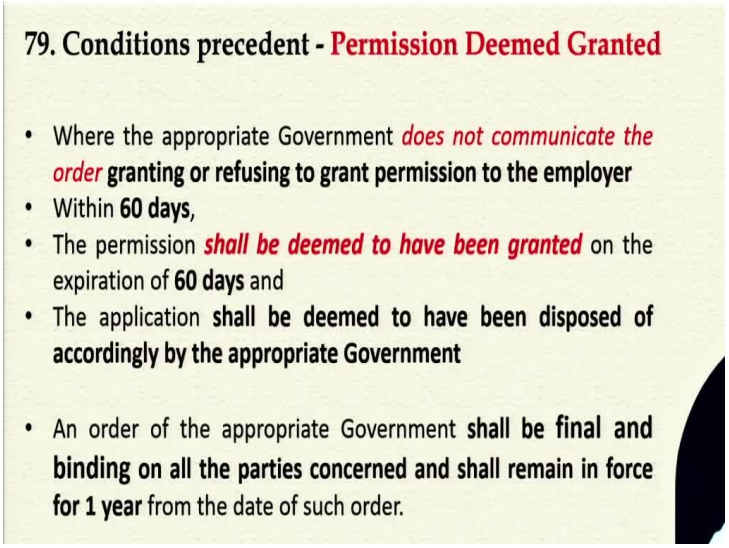

So, if the orders are not communicated to the workers in certain cases they will be deemed to be granted. So, if the government is not taking a particular decision within 60 days of submission of such an application, then the permission shall be deemed to be granted on the expiration of 60 days,

And also the department the application is deemed to have been disposed of. So, it means that if it is very simple, if the government is not taking a decision within 60 days of such an application submitted to the government, then it will be considered as deemed to be granted. So, the employer can go ahead with the retrenchment of employees. So, such orders will remain in force for 1 year period.

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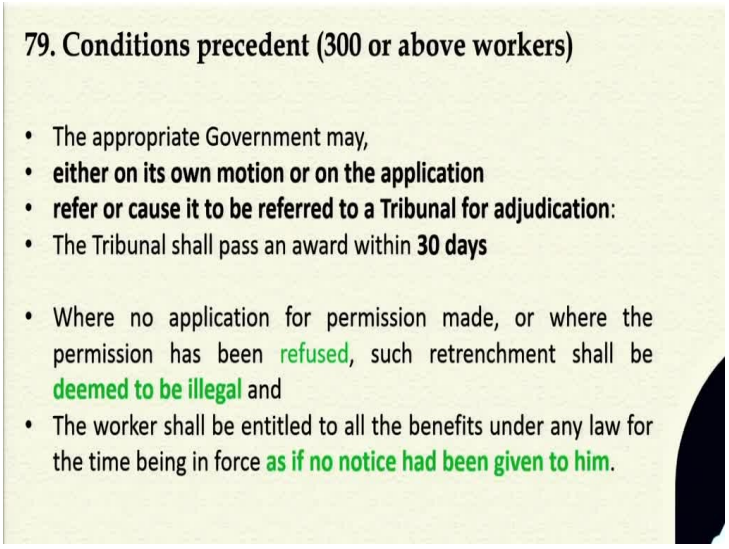

So, here as I told you that the governments can either in their own motion or on the application refer the case to be tribunal or for adjudication. And the provision very clearly mentions that a very short period of time is given for taking a decision with regard to the legality of such retrenchment within 30 days, the time period is given to the tribunals for adjudication.

If no such permission has been granted, but the employer goes ahead with the retrenchment of workers, then it shall be considered to be illegal. And the workers are entitled to all the benefits under the law, if and if no notice has been given to them with regard to retrenchment, in most such cases, the courts or tribunals will order the complete wages or paying of complete wages for a period of this illegal retrenchment period.

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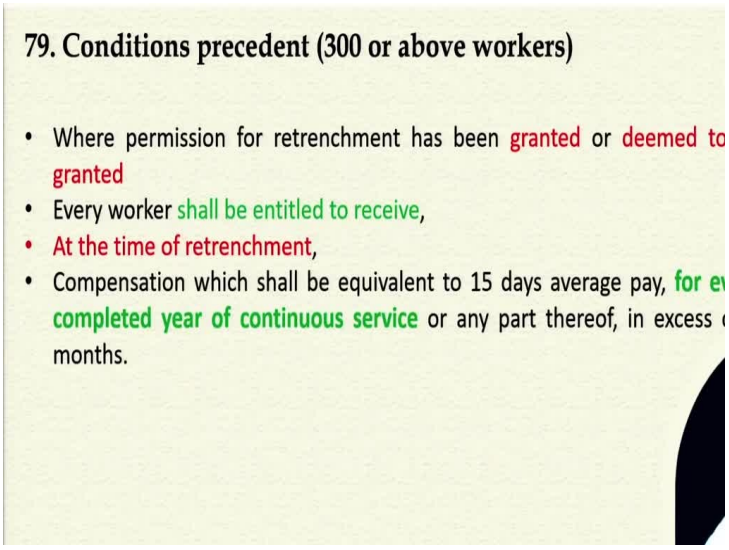

And even the tribunals can ask the employers to take back into the employment of such workers. So, every worker granted permission has to be eligible for getting compensation, retrenchment compensation. So, compensation, which is equivalent to 15 days, which we already said that, if it is more than 6 months service, it will be considered as 1 year, so 15 days average pay, that is the condition precedent, so the compensation to be paid as the retrenchment benefit.

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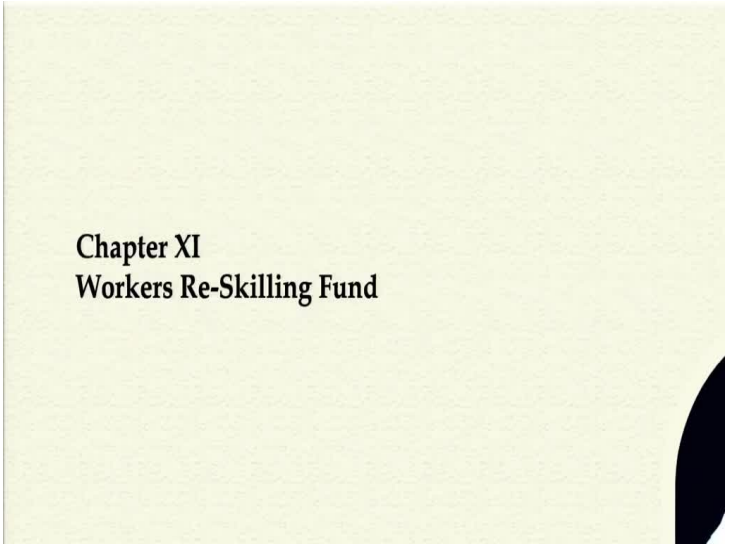

And also, the government under the IR code has established a Workers Re-Skilling Fund. So, that the retrenched workers can be reskilled and employed somewhere else. But where the funds will come it is not clear, but the government has created a workers' reskilling fund so that the retrenched employees can be reskilled and used somewhere else.

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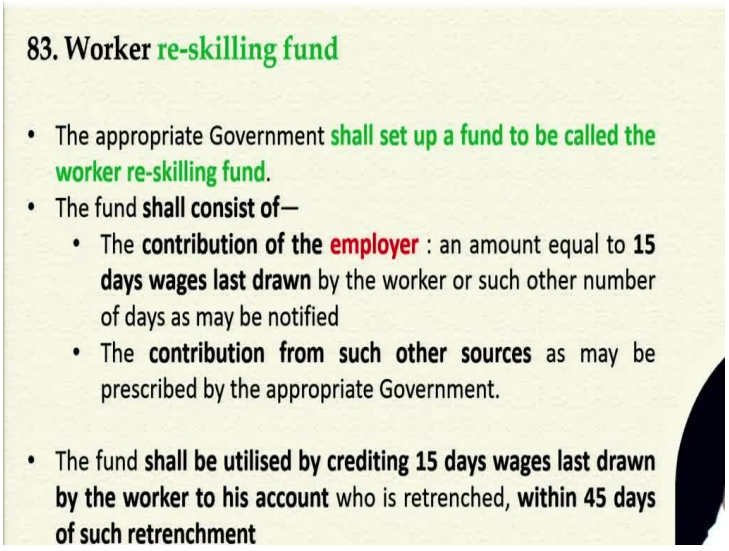

So, the worker's fund is called workers' reskilling fund. So, they say that it is a contribution from the employer. So, 15 days' wages the last drawn by the worker to be. So, this is an additional burden on the employees and also says that the contribution from such other sources, but the IR code is silent on what are those other sources.

And also, this provision provides for crediting 15 days wages, 15 days wages last drawn by the worker to his account, who is retrenched within 45 days of such retrenchment. So, over and above the compensation paid by the employer. The retrenched employee will get another 15 days' wages from this worker reskilling fund. So, that he can survive for another period of time until his reskilling or exercise or training is completed.

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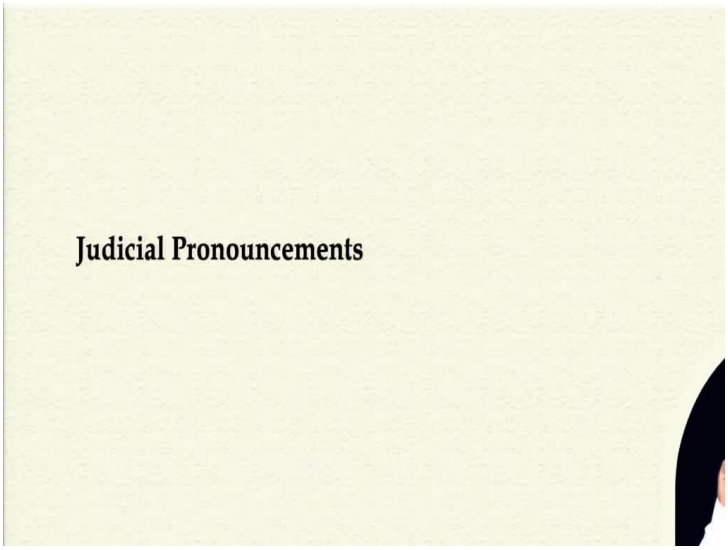

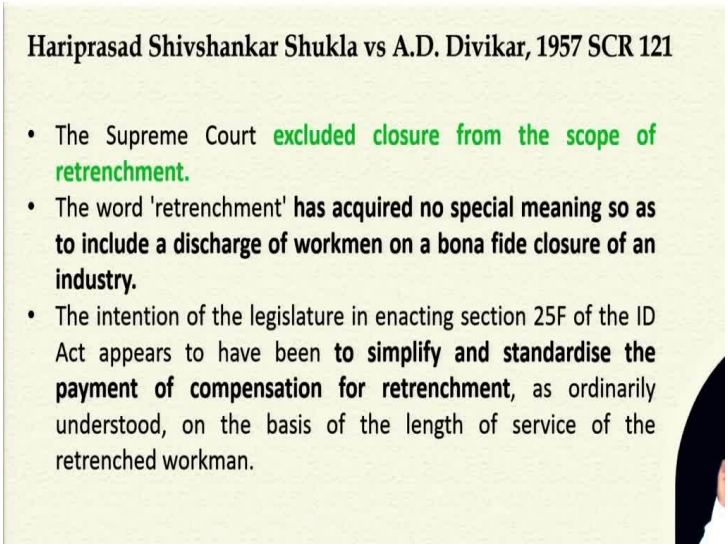

And we can see a number of cases where the court has considered the legality or the veracity or the extent of retrenchment. So, the question was considered in this particular case Hariprasad Shivshankar Shukla versus A. D. Divikar. In this case, the court the Supreme Court considered the question of whether retrenchment, so, whether closure and retrenchment, the closure are absolutely different concepts from retrenchment. So, the court

says the retrenchment has occurred with no special meaning so as to include a discharge of workmen on a bonafide closure of industry. So, the closure of an industry is something different from retrenchment.

So, actually, the compensation retrenchment in the case of compensation in case of retrenchment is a must and the length of service of the employee is also important. So, we have already said that a certain period to be worked and what the compensation is also mentioned in the provisions.

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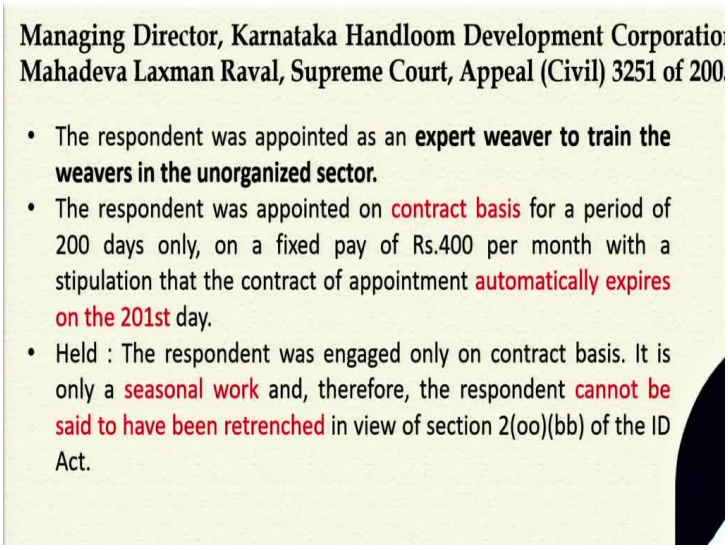

And here is the Managing Director, Karnataka Handloom Development Corporation versus Sri Mahadeva Laxman Raval is the 2005 case the Supreme Court considered whether the employment term in the case of contractual workers, contractual workers means the employment term is fixed based on certain contracts.

And here the respondent was appointed as an expert weaver to train the weavers, he was a trainer to train the weavers and he was appointed on a contractual basis for only a period of 200 days and a fixed pay of 400 rupees per month. So, once so, it is very clear that his term of employment is only 200 days that once the 200 days are over, his employment is over. It is neither retrenchment nor it is the termination of service because his contract period was ended.

The court said that the respondent was engaged on a contractual basis. And this is seasonal work. The weaving is only seasonal work and the respondent was not terminated as per the

provisions of the industrial disputes act at that point in time because once a contractual period is ended, it will not come under the purview of the definition of retrenchment.

So, we already said that the new industrial codes so, the new codes, the Labour codes, which promote the contractual works or term contracts, in that case, the workers are not going to get retrenchment benefits, because the term work, timework or contractual work for a fixed period cannot be considered as a retrenchment at all so they are not eligible for retrenchment benefits.

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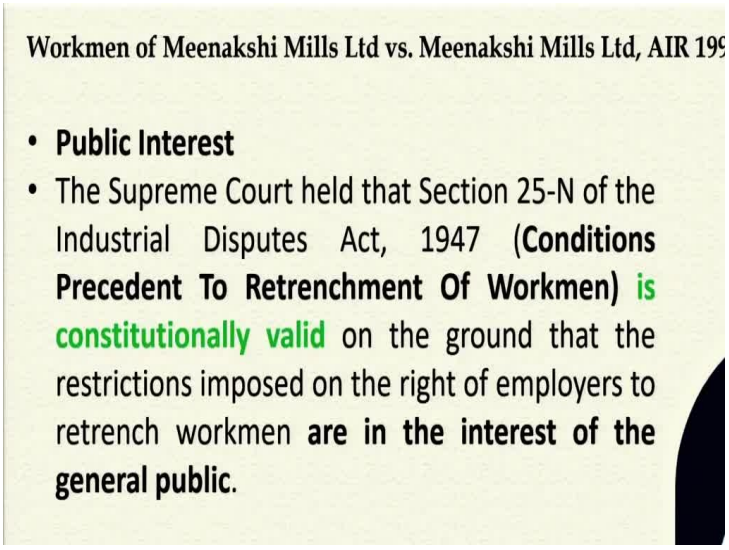

In certain cases, the Court considered the public interest in closing down certain industrial establishments. Here are the workmen of Meenakshi Mills Limited versus Meenakshi Mills Limited 1994. The Supreme Court looked into the public interest involved in closing down, the public interest involved in retrenchments. And here, the court looked into again, Section 25-N of the Industrial disputes act. So, what are the conditions precedent? Whether the establishment has to fulfil the conditions precedent for to retrenchment of workmen.

So, we have said that the condition precedent in the SBI case the Supreme Court has very clearly mentioned, what are the condition precedent for the retrenchment or what are the grounds. So, in certain cases, the Supreme Court held that public interest is one of the criteria to be considered for retrenchment before retrenchment of the workmen.

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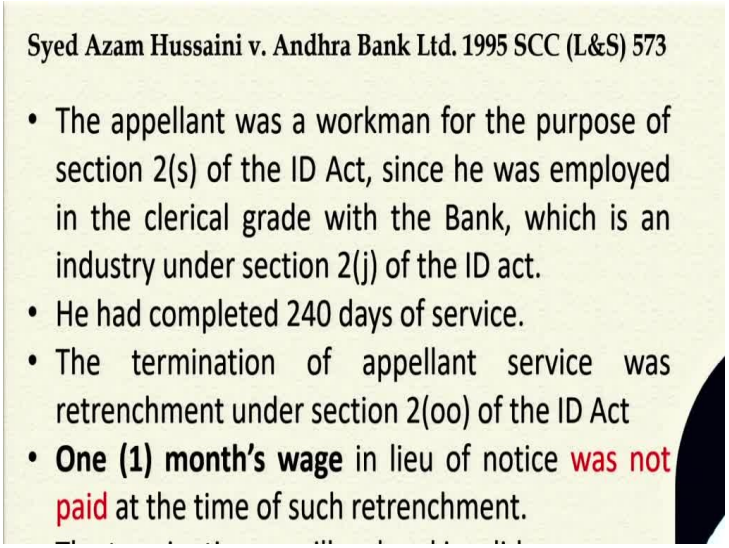

In Syed Azam Hussaini versus Andhra Bank Limited, again the Supreme Court was considering the ambit of retrenchment in that particular case he was a respondent, a clerk in the bank. So, he has again a similar case like the weaver, the training of the weavers, he has completed 240 days of service, his termination was, whether his termination of service was retrenchment or not under the definition of the ID Act at that point of time. So, the retrenchment, 1 month's notice or in lieu of 1 month's wages.

So, in this case, the retrenchment, so the particular provision, which says the court said that, if 1 month's notice or the payment was not made, then the termination was illegal and invalid. So, that means, it is very clear that the notice must be given and also or in lieu of the wages to be paid.

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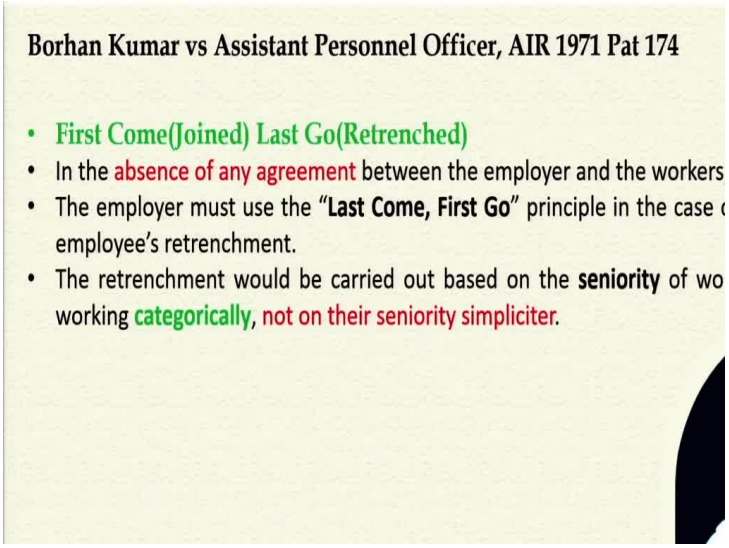

So, we were talking about the thumb rule in the case of retrenchment, the First Come Last Go and Last Come First Go. So, if there is no agreement, if there is no agreement between the employer and workers, the employer must use the case of retrenchment, last come first go rule in the case of retrenchment.

So, and also until there is a specific reason, so, a skilled worker a reason is mentioned. A retrenchment would be carried out on the seniority basis of workers as well. And so, seniority per se should not be a reason and they can, the employer can look into their services, what kind of work they are doing, and also the skill of the worker and suitability of the worker also can be taken into consideration.

So, in this particular case Borhan Kumar versus Assistant Personnel Officer, in this case, the Court held that not per se seniority, so, that means, their seniority simpliciter is not only the reason and other reasons are also taken into consideration for the termination.

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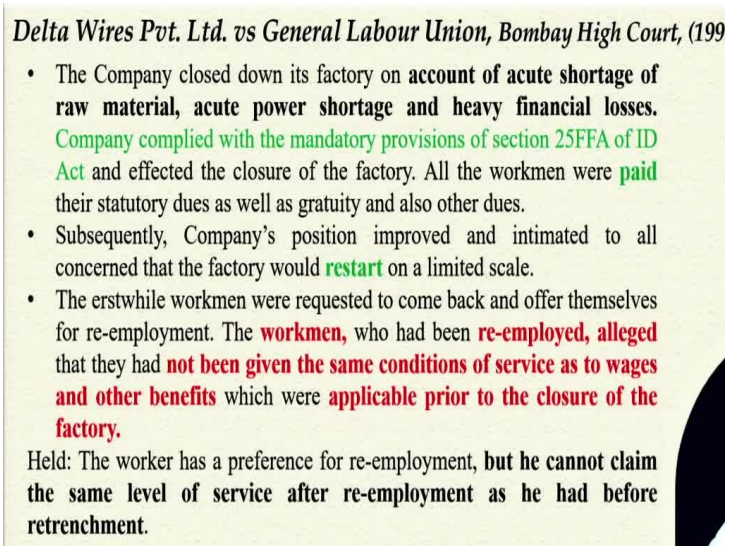

So, we can find a number of cases where the court has looked into the mandatory aspect or the preconditions under Section 25 of the ID Act. So, here you can see that the question is whether reemployment is the right of the workers. So, and also in the case of reemployment, whether they are eligible for the same conditions of service or wages and other benefits, which were applicable in their previous employment.

The court held that yes, the workers can be given preference in employment, but they cannot claim the earlier salary or the level of service or the same wages, they cannot claim it is not the right which is mentioned under this particular provision of the ID Act at that point of time.

So, he will be given a preference, but he cannot claim the status, the same status, the same wages, or the same working conditions if he is re-employed. So, it means that reemployment is not a matter of right, but the preference can be given to these employees and other conditions are not at all a statutory right.

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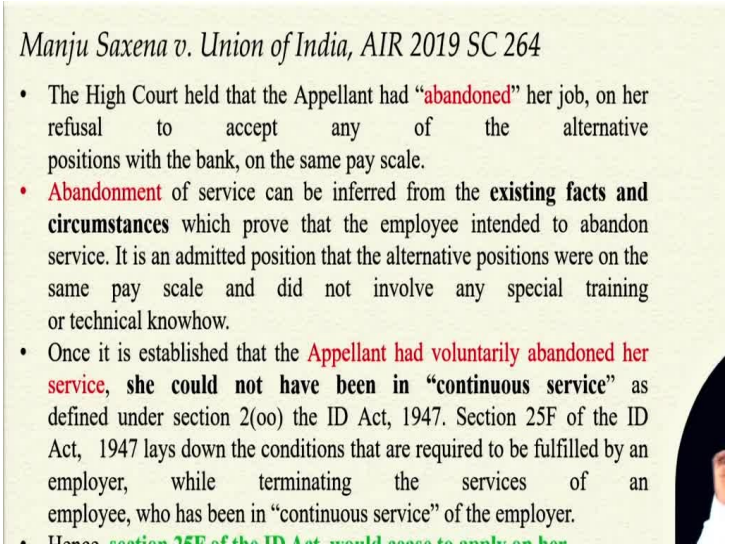

And here also, as I told you, in this case, if somebody is abandoned the job or is refuse to accept any alternate positions, abandonment of service. So, abandonment can be inferred from the facts and circumstances of each case. So, if somebody is voluntarily abandoned, the service cannot be considered as continuous service. If you are not in continuous service, you are not eligible for compensation, or retrenchment compensation. So, that means then in that case, the preconditions are not to be applicable.

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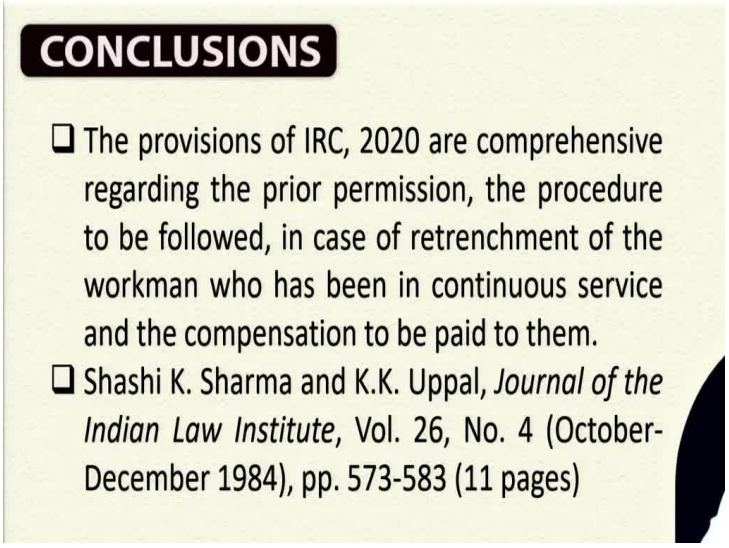

So, in the case of retrenchment, the provisions are very clear. So, an employee can be terminated at any point of time or whatsoever the reason mentioned. So, the provision says

that he can be paid compensation or a notice period to be served or in lieu of 1 month, if it is 1 month, 1 month's wages to be paid.

So, the Industrial Relations Code has simplified the provisions of retrenchment and what is the procedure to be followed? And also, very clearly mentioned and the provisions are clarified with regard to the period of service or continuous period of service and what is clearly the compensation to be paid.

So, in this case, it is very clear that any employee can be retrenched at any point of time. And when we looked into critically looked into this IR code, we can say that the IR code is not providing any relief to the people who are going to be employed on a contractual basis or term employment, there is no relief.

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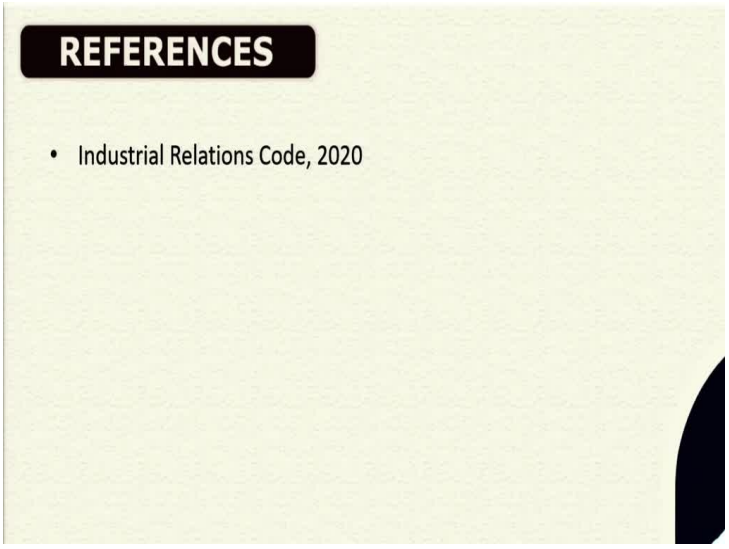

So, this is also part of doing ease of business. So, the employees will be excluded from the liability of paying retrenchment benefits. If, in the case of if it is not a larger establishment is working 300 or more employees. But another way around the IR code has made clear-cut prohibitions with regard to retrenchment and also the easy provisions with regard to the retrenchment, the rights are very clearly mentioned and the compensation is also mentioned in the particular provisions. So, this is going to be applicable to all the employees in the coming days. Thank you.