CONTRACT OF EMPLOYMENT AND MANAGEMENT PREROGATIVES (1993). By Harish Chander. Vijaya Publications, New Delhi. Pp. 322. Price Rs. 250.

THE TRADITIONAL relationship between 'Master and Servant' was formerly governed by common law and not by statute.[1] The common law conferred upon the master an unfettered right to "hire and fire" the servant. The relationship was essentially contractual. This was clearly not justifiable. Consequently, the employer was under an obligation to pay wages for the work done by the employee who during the employment remained under supervision and control of the former. The employer, however, could get rid of an unwanted employee any time by dismissing him from service. The dismissal was unilateral in character as the employer could terminate the contract whether or not the employee was agreeable to that course. The employers in industries often exercised their power to dismiss the workman capriciously and arbitrarily. The social consequence of their vindictive acts was disastrous for workmen besides affecting production and the law and order situation. Employees, therefore, reacted swiftly against the capricious actions. But in the absence of community support, the unionised activities were firmly curbed by the state from time to time. The court also aggravated the situation by giving judgments which favoured more the employers than the workman.[2]

The shift, however, came in the policy of the government which gradually favoured the employees since 1926. The post - 1946 legislation and decisions flowing thereunder had the effect of curbing the management's power to dismiss workmen to such an extent that one wonders if in actual practice, anything is left of the traditional right of the employer. Numerous cases have gone to the Supreme Court during the last 44 years to determine the contract of employment. The court has evolved various principles for the betterment of the economic and social conditions of workmen.[3]

In the epoch-making judgment, the Supreme Court[4] held that the rule empowering the corporation to terminate services of its employees by giving notice of a specified period or pay in lieu of notice period is opposed to public policy and violative of articles 14 and 16 of the Constitution, being arbitrary and as such illegal and void. Such a clause, according to the court, was also void as being against the public policy in terms of section 23 of the Contract Act.

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1. Tej Bahadur Sapru, *Encyclopaedia of General Act and Code of India*, vol. VI, p.2 (1959).
2. S.C. Srivastava, *Industrial Disputes and Labour Management Relations in India* 391 (1984).
3. *Id.* at 395.
4. *Central Inland Water Transport Corporation Ltd. v. Vrajo Nath Ganguly*, A.I.R. 1987 S.C. 1571.

The alarming increase in the number of disputes relating to service matters led to the setting up of tribunals under article 323-*A* of the Constitution (42nd Amendment Act of 1976). Clause (1) of article 323-*A* empowers Parliament to make laws for adjudication or trial by tribunals in respect of recruitment and conditions of service of persons appointed to public services under clause 2(*d*). The Administrative Tribunals Act 1985 was accordingly enacted to deal with service matters. The Act provides for establishment of the Central Administrative Tribunal. It empowers the tribunal to exercise powers, authority and jurisdiction of all courts. It excludes jursdiction of all courts except that of the Supreme Court under article 136 of the Constitution. Be that as it may, the appointment, promotion and disciplinary actions of government service hence been the subject matter of litigation and requires special treatment.

The book under review,[5] is primarily based on the author's Ph.D. thesis submitted to the University of Delhi. The book has been divided into 10 chapters. Chapter 1 deals with historical perspective and framework of study. The author has highlighted the changing concept of contract of employment as evolved through Supreme Court decisions in *Central Inland Water Transport Corporation* v. *Vrajo Nath Ganguly*[6] and *Chandu Lal* v. *Pan American World Airways*.[7] To these, the author may wish to add in the next edition the decisions given in *Ravindra Kumar Mishra* v. *U.P. State Handloom Corporation Ltd.*[8] and *Delhi Transport Corporation* v. *D.T.C. Mazdoor Congress*[9]

In chapter 2, the author has examined the nature of contract of employment. He has discussed the relevance, formation, structure and concept of contract of employment and collective agreement. He has rightly concluded that "the contract of employment is fundamentally a contract like any other contract at least in so far as its creation is concerned".[10]

Chapter 3 deals with source of terms of employment. The author has divided this chapter into two sections, namely, (*i*) source in common law; and (*ii*) source in Indian law. Under (*i*) the author has examined various sources such as legislation, common law, and among others customs and practice. Under the second head he has dealt with (*a*) common law, statutes, wages fixed by industrial tribunals and labours courts, settlement, standing orders, express terms, custom and usage, implied terms, and work rule and instructions of employers for organising business.

In chapter 4, the author has discussed some important management's prerogatives which affect the terms and conditions of employment of employees, namely, selection, probation, promotion, right of permanency of employment, transfer, lay-off, and changing the conditions of employment. He argues that legislative enactments and judicial decisions have provided sufficient security to

5. Harish Chander, *Contract of Employment and Management Prerogatives* (1993).
6. *Supra* note 4.
7. (1958) 2 L.L.J. 181.
8. A.I.R. 1987 S.C. 2408.
9. A.I.R. 1991 S.C. 101.
10. *Supra* note 5 at 43.

employees but at the same time, the interest of industry and society must be kept in view.[11]

Chapter 5 examines the methods of termination of contract of employment. The reviewer, however, does not agree with the author[12] that the effect of the 1984 amendment and inclusion of clause (*bb*) in section 2(*oo*) has been eroded to a great extent by the decision of the Supreme Court in *Central Inland Water Transport Corporation Ltd.* case. The scope and effect of clause (*bb*) of section 2(*oo*) have been delineated in a series of decided cases[13] which the author may wish to include in the next edition.

In chapter 6, the author has discussed the concept of industrial discipline and labour policy in India. However, while dealing with labour policy, he has referred to only the First, Third and Fourth Five Year Plan. The reviewer, however, feels that utility of the book would be enhanced if he refers to in the next edition the labour policy in 5th, 6th, 7th and 8th Five Year Plans also.

In chapter 7, the author has examined the legal basis of management's prerogative of discipline, right to disciplinary action, concept and scope of misconduct and punishment for misconduct with the help of decided cases.

Chapter 8 deals with the constraints of procedure and judicial review. While dealing with the right to representation at domestic enquiry, the author has expressed concern at the recent trend in judicial decisions and feels that if lawyers are allowed to represent the delinquent workmen in domestic enquiries as has been held by the courts, then "such enquiries would lose the domestic character and ultimately all the technical formalities which are required before the Court or the Tribunal will have to be followed even in such enquiries."[14]

The reviewer, however, feels that though the court should discourage involvement of the legal practitioner in simple domestic enquiry for avoiding technicalities and delay, yet it cannot ignore the necessity of such representation in exceptional cases where refusal of such representation would constitute failure of the enquiry itself.

In chapter 9, the author has discussed the governmental prerogatives in the light of constitutional provisions and judicial decisions. He has also discussed the remedies available under the Administrative Tribunals Act 1985.

The last and concluding chapter, summarises the points discussed in the earlier chapter. Here the author has pleaded for evolving a practical working test

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11. *Id.* at 94.

12. *Id.* at 126.

13. *Shailendra Nath* v. *Vice Chancellor, Allahabad Univ.* (1987) Lab I.C. 1606; *D. Chenniah* v. *Divisional Manager, A.P.S.T.C.* (1987) Lab.I.C. 1259; *C.M. Jitendra Kumar* v. *Bharat Earth Movers Ltd.*, (1985) Lab.I.C. 1833; *Arun Kumar* v. *Union of India*, (1986) Lab.I.C.251; *P.K. Vaalakshmy* v. *State of Kerala*, (1986) Lab.I.C. 869; *J.J. Shrimali* v. *District Development Officer*, (1989) 1 L.L.J. 120; *R. Srinivas Rao* v. *Labour Court*, (1990) Lab.I.C. 174; *K. Rajendran* v. *Director, P.E. & Corporation of India Ltd.*, (1992) Lab.I.C. 909; *Ram Prasad* v. *State of Rajasthan*, (1992) Lab.I.C. 2139; *S.S. Sambre* v. *Chief Regional Manager*, (1992) 1 L.L.J. 684; and *M. Venugopal* v. *Divisional Manager, Life Insurance Corpn. of India*, J.T. 1994 (1) S.C. 281.

14. *Supra* note 5 at 220.

for distinguishing between a contract of service and contract for service.[15] The reviewer wishes to point out that even though the Supreme Court in *Dharangdhara Chemical Works* v. *State of Saurashtra*[16] drew a distinction between "contract of service" and "contract for service", in *Hussainbhai* v. *Alath Factory*[17] it has mitigated the hardship caused by the decision in *Dharangadhra Chemical Works* by extending coverage of "worker" to include "dependent entrepreneur". Justice Krishna Iyer laid down the following tests for determining the scope of the term "worker".[17a]

> Where a worker or group of workers labour to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid-off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex-contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor.

The aforesaid decision would provide relief to millions of persons who had been excluded from the purview of workmen. It is submitted that the word "employed", as used in the Industrial Disputes Act 1947 by itself signifies "engaged" and that, wherever necessary, the legislature has limited the scope of the word by using appropriate qualifying expression. Be that as it may, the recent trend of judicial decisions[18] is towards abolishing the contract labour system. Parliament also gave its approval by adopting the Contract Labour (Regulation and Abolition) Act 1970, which provided for abolition of contract labour in certain circumstances.

The book represents the outcome of very useful study in the area for which it had received scant attention earlier. Its chief merit is the comprehension, analysis and discussion on various aspects of contract of employment and management's prerogatives with the help of case law. Some of the suggestions of the author deserve consideration. The reviewer has no doubt that the book will be of great use to lawyers and scholars in the field of labour laws and industrial relations.

*S.C. Srivastava**

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15. *Id.* at 296.

16. A.I.R. 1957 S.C. 264.

17. (1978) 2 L.L.J. 397 (S.C.).

17*a*. *Id.* at 398.

18. *Standard Vaccuum Refinery Co. of India* v. *Their Workmen*, (1980) 2 L.L.J. 233 (S.C.).

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