

DOMESTIC INQUIRY
IN
THE PRIVATE SECTOR

by

Libat Langub

Submitted in partial fulfilment of the requirements
for the Diploma in Law
at the School of Law, MARA Institute of Technology

Dated 1982

Signature of Author 

Certified by
(MR. WU MIN AUN)

P R E F A C E

This paper sets out to examine some aspects of the law relating to discipline in the private sector, viz:-

(1) to review and analyse some of the Awards that have been handed down by the Industrial Court and its predecessors on domestic inquiry, which have made an impact on employer-employee relations;

(2) to find out the basic principles enunciated by the Industrial Court and the consistency with which the Court adheres to these principles;

(3) to examine provisions of the law, statutory and common law, affecting domestic inquiry;

(4) to highlight some controversial issues arising from decisions of the Industrial Court.

The study is confined to domestic inquiries in the private sector and reference is made to Awards handed down by the Industrial Court. It must be pointed out that the word "employee", unless when specific reference is made to "employee" under the Employment Act, 1955, is used here to mean "employee" under the Employment Act, 1955, and also "workman" under the Industrial Relations Act, 1967.

At present, there is no book by local writers which deals exhaustively with the principles and procedures of domestic inquiry. Therefore, books on the subject written for other legal systems, especially India, have to be constantly consulted. It is to be noted that even the Industrial

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INTRODUCTION

(1) Maintenance of industrial discipline

Industrial discipline is an important aspect of master-servant relationship, or in modern parlance, the employer-employee relationship. It is necessary for the efficient functioning of any organisations. The employers and employees have their own part to play to maintain a high level of discipline. What is meant by "industrial discipline"? There is no statutory definition for industrial discipline and normally it is understood to mean punishment but it is more than this. Punishment is the negative side of discipline. Industrial discipline can be viewed as training that seek to correct the erring employee. On the part of the employees, it is the observance of regulations and rules in an industrial establishment for the maintenance of control and order. The Management, on the other hand, has a right to take action against an erring employee. Industrial discipline is important to the Management, industry, individual employee and the nation as a whole.

Many cases that go to the Industrial Court on discipline, usually involves dismissal, and most industrial disputes arise directly or indirectly from here. Perhaps the reason lies in the fact that when an employee is dismissed by the Management he loses his livelihood and losing a job is almost tantamount to capital punishment. Thus, it is pertinent to examine the scope of disciplinary actions and proceedings.

(2) "Hire and Fire"

In an employer-employee relationship there exists a "contract of service" between them. The Employment Act, 1955, defines "contract of services" as "any agreement whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract".¹ A similar definition is given to "contract of employment" under the Industrial Relations Act, 1967. It is provided that a "contract of employment" is "any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as a workman and that other agrees to serve his employer as a workman".²

Under common law the employer has a free hand to 'hire and fire' at pleasure. In a free economic system the relationship of master and servant is terminable at will of either party. This naturally places the employee at a great disadvantage. The law has therefore developed in such a way as to protect the employee. The ordinary law of master and servant has therefore been much altered. Thus, today the Management's common law prerogative to 'hire and fire' has been gradually eroded. Although "hiring" still remains Management's prerogative the right to 'fire' an employee has been defined and limited to a great extent. ^{2a}

Industrial law does recognise the right of the Management to maintain efficiency through discipline in