Employment Litigation and Timelines (India)

by Nitish Raj, Shweta Sahu, and Ajay Singh Solanki, *Nishith Desai Associates*

Law stated as of 01 Dec 2022 • India

Employment litigation often has unique and specific rules. A Practice Note setting out the crucial steps and associated timeframes that occur when running, managing, and defending an employment litigation matter in India.

A dispute between a workman (see *Workman*) and an employer may result in employment-related legal proceedings. When bringing and defending an employment litigation matter, the parties must comply with the mandatory procedural steps, including submitting pleadings within the required timeframes.

This Note sets out the steps involved in a workman bringing and an employer defending an employment litigation claim in India, including the various employment litigation forums, applicable timeframes, and limitations.

However, this Note focusses only on the provisions and rules under the *Industrial Disputes Act, 1947* (IDA) and the *Industrial Disputes (Central) Rules, 1957* (IDCR). It does not detail or cover any state-specific rules that are implemented in some Indian states.

Workman

In India the term employee is used in common parlance. However, the term workman is the statutory terminology used by the IDA to denote a specific category of employees.

A workman is any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, whether the terms of employment be express or implied. For the purposes of any proceeding under the IDA, it includes any such person who has been dismissed, discharged, or retrenched in connection with or because of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person employed:

- In the navy, army, police, or air force.
- In an administrative or management capacity.
- In a supervisory capacity with wages more than INR 10,000 per month.

The IDA is not applicable to employees who do not fall within the category of workman.

Forum of Employment Litigation

The legal forum for employment litigation depends on the nature of the claim filed by the employer or the workman.

Employment litigation matters involving enforcement of statutory rights (those conferred by various employment legislations) are brought before the Labour Courts and Industrial Tribunals while the appropriate forum for litigation for enforcement of contractual disputes between an employer and employee is the Civil Court (Section 2A, IDA).

The Labour Courts adjudicate matters relating to:

- Standing orders (these set out minimum terms and conditions of employment).
- Dismissal or discharge of workmen.
- Revoking customary privileges.
- Legality of strike or lock-out.
- All other matters that are not under the Industrial Tribunal jurisdiction.

(Section 7 and Schedule 2, IDA.)

The Industrial Tribunals adjudicate matters relating to:

- Wages.
- Compensatory allowances.
- Retrenchment.
- Closure of establishment.
- Hours of work and rest intervals.
- Leave with wages and holidays.
- Bonus.
- Provident fund.
- Profit sharing.
- Gratuity.

- Shift.
- Classification by grades.
- Rationalisation.
- Rules of discipline.

(Section 7A and Schedule 3, IDA.)

Special Tribunals

The IDA usually deals with employment disputes relating to discharge, dismissal, retrenchment, and termination of a workman. The IDA provides for the formation of Industrial Tribunals and National Tribunals, the specifics of which are in the below sections.

However, special tribunals and courts have been created to deal with specific matters governed by other labour laws in India. For example:

- Provident fund cases under the Employees' *Provident Funds and Miscellaneous Provisions Act, 1952* (EPF Act) are dealt with by a Provident Fund Appellate Tribunal (PF Tribunal) established under the provisions of the EPF Act and *The Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997*. A person aggrieved by an order under Section 7A and Section 7B can file an appeal at the PF Tribunal (Section 7(I), EPF Act). Central and Regional Provident Fund Commissioners can render decisions and conduct inquiries to determine contribution amounts due and payable by employers (Section 7A, EPF Act). Before deciding, the Provident Fund Commissioner must provide a reasonable opportunity to the employer to represent its case. Under Section 7B of the EPF Act, a person aggrieved by an order can, in the following circumstances obtain a review of the order by applying to the officer who passed the order:
    - when no appeal has been brought under EPF Act; and
    - there is discovery of a new and important matter or evidence which, after the exercise of due diligence was not within the aggrieved party's knowledge or could not be produced at the time when the order was made or on account of some mistake or error apparent on the face of the record.
- Matters relating to Employees' State Insurance (ESI) are referred to ESI courts. Any dispute related to ESI contribution or its determination, rate, or any interpretations under *Employees' State Insurance Act, 1948* (ESI Act) are referred to an ESI court under Sections 74 and 75 of the ESI Act.
- The Commissioner for Employees' Compensation appointed under the *Employees' Compensation Act, 1923* (ECA) has the procedural powers of a civil court to settle disputes between employer and workmen if the workman chooses to submit a claim to the Commissioner (Section 19, ECA).
- *The Payment of Wages Act, 1936* (POWA) gives the Labour Commissioner the right to adjudicate claims related to deductions from wages by having the matter tried. The litigant can only move to a court after bringing the claim to the Labour Commissioner (Sections 15 and 17,POWA).

- Section 23(2) of *The Maternity Benefit Act, 1961* (MBA) stipulates that no court inferior to a Metropolitan Magistrate or a Magistrate of the First Class can try any offence punishable under MBA.

- Section 12 of the *Equal Remuneration Act, 1976* states that disputes falling under that legislation must be tried by no court inferior to a Metropolitan Magistrate or a Judicial Magistrate of the First Class.

- Section 11(2) of the *Payment of Gratuity Act, 1972* prescribes that a forum (court) that decides disputes under this legislation cannot be inferior to a Metropolitan Magistrate or a Judicial Magistrate of the First Class.

- Section 26 of the *Contract Labour (Regulation and Abolition) Act, 1970* (CLRA) stipulates that no court inferior to a Presidency Magistrate or a Magistrate of the First Class can try any offence punishable under CLRA.

- Most state-specific shops and establishment legislations also contain a reference to courts of jurisdiction in case of disputes or non-compliance. For example, the *Maharashtra Shops and Establishments (Regulation 13 of Employment and Conditions of Service) Act, 2017* stipulates that no court inferior to a Metropolitan Magistrate or a Judicial Magistrate of the First Class can try any offence under the law.

Parties that can Bring an Employment Claim

An employment claim may be brought by:

- A workman (see *Workman*).

- A trade union (on behalf of its members).

- An employer.

Limitation Date

The limitation period for disputes under the IDA initiated before the Labour Court or Industrial Tribunal is generally three years (Section 2A (3), IDA). The application must be submitted to the applicable litigation forum (that is, the Labour Court or the Industrial Tribunal), within three years:

- For claims relating to termination of employment, from the date of discharge, dismissal, retrenchment, and other types of termination of employment.

- For claims that arose during employment, the time limit starts from the date the act or omission leading to the claim occurred. For continuing acts or omissions, it is the date when the last act or omission occurred.

Based on various amendments to state (provincial) employment laws, a judge may accept a delay in submitting the application to the Labour Court or Industrial Tribunal if there is a reasonable justification for doing so.

The *Limitation Act, 1963* (Limitation Act) prescribes a time limit of three years to bring claims relating to breach of contract (Article 137, Limitation Act). However, this Act applies only if litigation is conducted in a civil suit for breach of contract (employment agreement or other contractual agreement or policies) instead of an industrial dispute under the IDA.

Pre-Litigation Before Formal Employment Litigation Claim

In India, pre-litigation steps are optional. However, given the slow, complex, and adversarial nature of the Indian litigation system, parties are recommended to try pre-litigation methods of dispute resolution first for an amicable settlement of their industrial dispute.

The parties can take any of the following pre-litigation steps applicable to their dispute.

Grievance Redressal Committee

The IDA requires employers employing 20 or more workmen to form a Grievance Redressal Committee (GRC) to resolve disputes arising out of individual grievances (section 9C (1), IDA). Setting up a GRC does not affect the right of any workman to raise an industrial dispute under the IDA (Section 9C (5), IDA). Any workman aggrieved by the decision of the GRC can file an appeal with the employer. There is no statutory deadline as to when the workman must file the appeal. The employer must hear and decide on the appeal within one month from the date of receipt of the appeal and send a copy of the decision to the workman concerned (Section 9C (7), IDA).

The workman is not required to exhaust the grievance process before filing a litigation claim.

Indian law is silent on how the grievance process impacts the limitation period. However, in practice, judges usually determine the limitation period is paused for the duration of the grievance process.

Works Committee

The appropriate Government (central, federal, or provincial depending on the case (Section 2(a), IDA)) may require the employer to create a Works Committee (WC) in every industrial establishment where at least 100 workmen are employed or have been employed on any day in the preceding 12 months. The WC consists of representatives of employers and workmen engaged in the establishment (Section 3, the IDA).

The purpose of the WC is to promote measures to:

- Secure and preserve amity and good relations between the employer and workmen.
- Comment on matters of their common interest or concern.
- Try to resolve any material difference of opinion regarding these matters.

(Section 3, the IDA.)

Conciliation Officer

The parties can request for a conciliation officer to assist with an industrial dispute. In particular industries where industrial disputes are likely, the appropriate Government (central, federal, or provincial depending on the case (Section 2(a) of the IDA)) may appoint a number of persons as it thinks fit to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes (Section 4, IDA). A conciliation officer may be appointed for either:

- A specified area.
- Specified industries in a specified area.
- One or more specified industries.

(Section 4(2), IDA.)

The conciliation officer can be appointed either permanently or for a limited period.

In case of a public utility service, an applicable conciliation officer, after being informed of strike or lockout or if it considers it necessary to intervene, must intimate to the parties accordingly and begin proceedings for conciliation (Rule 9, IDCR).

In a non-public utility service scenario, when a conciliation officer receives information relating to any existing or apprehended employer and workman dispute, the conciliation officer can begin conciliation proceedings when they deem necessary (Rule 10, IDCR).

The employer or workman (otherwise a representative of workmen) must submit their statements enlisting specific issues for adjudication to the conciliation officer concerned whenever their intervention is required in the dispute (Rule 10A, IDCR).

A conciliation officer can also enter premises of the industrial establishment after giving reasonable notice for the purpose of inquiry (Section 11(2), IDA). A conciliation officer may enforce attendance of any person for examination and inspect documents (Section 11(4), IDA). A conciliation officer can also be considered a public servant within the purview of Section 21 of the Indian Penal Code (Section 11(6), IDA).

If the conciliation officer cannot get a fair and amicable settlement acceptable to both parties, the conciliation officer sends the report to the appropriate Government entailing steps taken by the conciliation officer to get the dispute settled. The Government must then refer the industrial dispute to the Board of Conciliation, Labour Court, or Industrial Tribunal, as the case may be, through a reference. (Section 12(5), IDA.)

In the alternative, a workman that made an application to the conciliation officer, after 45 calendar days from the application to the conciliation officer have expired, can make an application directly to the Labour Court or Industrial Tribunal. The Labour Tribunal or Industrial Tribunal must treat the application as if it has been referred by the Government (section 2A(2), IDA).

Board of Conciliation

The appropriate Government may create a Board of Conciliation for promoting the settlement of an industrial dispute (Section 5, IDA). The Board of Conciliation consists of a chairman and two to five other members. The chairman is an independent person and the other members are persons appointed in equal numbers to represent the parties to the dispute.

When receiving an application for a matter to proceed to employment litigation, the appropriate Government may refer the matter to a Board of Conciliation (rather than a Labour Court or Industrial Tribunal).

Court of Inquiry

The appropriate Government may create a Court of Inquiry for inquiring into matters that appear to be connected with or relevant to an industrial dispute. The Court of Inquiry may consist of one independent person or the number of independent persons as the appropriate Government thinks fit. Where a Court of Inquiry consists of two or more members, one of them is appointed as the chairman (Section 6, IDA).

Arbitration

The employer and the workman can refer a dispute to arbitration through a written agreement before it is referred to Labour Court or Industrial Tribunal (Section 10A, IDA). The parties can voluntarily take up arbitration and other similar means of dispute resolution before proceeding to litigate the dispute.

Parties can also agree on arbitration as a method of dispute resolution in the employment agreement.

Litigation

General Litigation Rules

Process

After receiving a matter concerning employment law for adjudication, the Labour Court or Industrial Tribunal (or National Industrial Tribunal) must conduct proceedings speedily, dispose of the matter as specified particularly in the reference order or legislation, and submit the award to the Government (Section 15, IDA).

The Labour Court or Industrial Tribunal must inquire into the matter referred to it and report to the relevant Government that established it legally, within a period of six months from the time it started the inquiry (Section 14, IDA).

Proceedings for the employment litigation (or even arbitration) in India before the Labour Court or Industrial Tribunal or National Industrial Tribunal start from the date the matter is referred to get adjudicated or arbitrated. These proceedings are considered to end on the date when the government publishes the award and award becomes enforceable (Section 20(3), IDA).

Filings and Submissions

The starting position is that filings and submissions must be in hardcopy. However, filings and submissions may also be done online, subject to the rules applicable in each jurisdiction. The registry may permit online filings in case of extraordinary circumstances. During the COVID-19 lockdowns in India, parties were allowed to make online filings in many courts and tribunals.

Legal Representative

In any pre-litigation proceedings, the parties can be represented by a legal practitioner.

In any proceedings before the Labour Courts or the Industrial Tribunals, Section 36 of the IDA provides that the parties can be represented by a legal practitioner only if the following conditions are met:

- Both parties consent. The other party may object to a legal practitioner if there is a valid reason (for example, the practitioner has a conflict of interest).
- With the leave of the Labour Court or Industrial Tribunal.

In practice, the above is a mere formality. A party generally only objects if there is a conflict of interest, for example, if the legal practitioner represented the other party in past similar disputes.

If a workman is a member of a registered trade union, they can be represented by an office bearer or member of the executive of that trade union (Section 36, IDA).

An employer is allowed to opt for being represented by a member of an association of employers (Section 36 (2), IDA).

In cases where the Central Government proposes to appoint a Board of Conciliation, the parties to the dispute must nominate representatives to represent them on the Board (Rule 6, Industrial Disputes (Central) Rules).

The Rajasthan High Court stated that legal representation in an employment litigation must be strictly based on the IDA (*Duduwala & Co. And Ors. vs Industrial Tribunal and Anr. (AIR 1958 Raj 20)*).

Decision Maker

A Labour Court generally consists of one person, who can only be appointed by the Government that established the Labour Court. The appointee must have one of the following qualifications:

- Be a sitting or a former Judge of a High Court.
- Be a District Judge or an Additional District Judge for a period of not less than three years.
- Have held any judicial office in India for not less than seven years.
- Have been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.
- Have been the Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department with a law degree and minimum seven years of work experience in the labour department including three years of experience as a Conciliation Officer. Though the individual must resign from the service of the Central Government or State Government, as applicable, before the appointment.

- Has been officer of Indian Legal Service in Grade III with three years' experience in the grade.

(Section 7, IDA.)

An Industrial Tribunal comprises of one person appointed by the relevant Government. The appointee must be either:

- A former or sitting judge of a High Court.
- A sitting District Judge or an Additional District Judge for at least three years.
- Have been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department with a law degree and minimum seven years of work experience in the labour department including three years of experience as Conciliation Officer. Though the individual must resign from the service of the Central Government or State Government, as applicable, before the appointment.
- An officer of Indian Legal Service in Grade III with work experience of three years.
  (Section 7A, IDA)

The relevant Government may appoint up to two persons as assessors if it deems fit to assist the Labour Court or the Industrial Tribunal Judge (Section 11(5), IDA).

At a court, when the total number of members is not more than two, then the quorum is of one. When the members' number is more than two but less than five, then quorum is of two and when the total number of members are more than five then quorum is of three (Rule 14, IDCR).

Virtual Hearing

In response to the COVID-19 pandemic, courts in India had started virtual hearings. However, with the ease in pandemic-induced restrictions and fewer cases of COVID-19, most courts in India have resumed physical hearings.

Certain High Courts, such as the Delhi High Court, allow virtual hearings in exceptional circumstances (for example, illness or lockdowns). The Delhi High Court recently dismissed a public interest litigation asking the courts across the capital to adopt virtual hearings as a norm and informed the parties that a decision is being deliberated on the administrative side of the High Court *(Mujeeb Ur Rehman v. Registrar General, High Court of Delhi,* W.P.(C) 3787/2022*).*

An employment litigation hearing is typically heard in person. The parties or legal counsels on behalf of the parties must attend unless the court expressly states otherwise.

Reference to the Central Government

Role of Central Government

The role of the Central Government is to ensure that a submitted claim is complete before going to the Labour Court or Industrial Tribunal and that the opposite side is duly informed of the claim.

The Central Government acts like an intermediary. For instance, if a claim is frivolous or incomplete, it guides the claimant to make necessary changes.

Application to the Central Government

In the event the matter has not been resolved through the pre-litigation steps (either they have not been engaged or have not been successful) and a dispute remains, before starting an employment litigation, an application to the Central Government must be made, either:

- The workman can send the matter direct to the Central Government, via an application in a prescribed format that must be sent personally or via registered post.
- If a conciliation officer was involved, the conciliation officer can send the application to the Central Government.

An exception to the requirement to apply to the Central Government is when 45 calendar days have passed since an application to the conciliation officer (see *Conciliation Officer*).

The relevant addresses of the Central Governments are:

- The Secretary to the Government of India in the Ministry of Labour and Employment (in triplicate).
- The Chief Labour Commissioner (Central), New Delhi.
- The Regional Labour Commissioner (Central).
- The Assistant Labour Commissioner (Central).

(Rule 3, the Industrial Disputes (Central) Rules.)

The application to the Central Government must be accompanied by a statement listing:

- The parties to the dispute.
- Specific matters in the dispute.
- Number of workmen employed in the undertaking affected.
- Number of workmen likely to be affected by the dispute.
- Pre-litigation attempts of the parties.

(Rule 3, IDCR.)

The application and statement must be signed by the party making the application, that is:

- In the case of the employer, the employer themselves, the agent, manager, or principal officer of the employer corporation.
- In the case of multiple workmen, the President and Secretary of the Trade Union or five representatives of the workmen where a meeting by these five representatives was held specially for this purpose.
- In the case of an individual workman, the workman or any officer of the trade union of which workman is a member.

(Rule 4, IDCR.)

Order of Reference

Following receipt of the application and the approval of the Central Government, the Central Government must then refer the matter to the appropriate forum (for example, Board of Conciliation, Court of Inquiry, Labour Courts, and Industrial Tribunals).

The Central Government issues the order of reference, a formal recommendation by the Central Government to the Labour Court or Industrial Tribunal to adjudicate the dispute. The Central Government sends the order to the court.

National Industrial Tribunals

The Central Government may constitute a National Industrial Tribunal if it believes a particular employment litigation matter either has:

- Ramification(s) on more than one state.
- Raises questions of national importance.

(Section 7B, IDA.)

Recovery of Money Owed by Employer

When a workman asserts the employer was due to pay the workman money under a settlement or an award, the workman (or their representative) can make an application to the appropriate Government (Central or State Government) as defined under the statute. The parties should note that an application to the Government is different from the claims filed before the Industrial Tribunal and Labour Courts and the authorities consider that money as revenue for official records. These applications must be filed within a period of one year from when the claimed money was due. The application should be in a hard copy and must be submitted to the appropriate authority (Section 33(C), IDA).

Workman’s Submission of Claim

The workman (or their legal representative) litigating the matter must file a statement of claim complete with relevant documents, list of reliance, and witnesses (a list of witnesses and any authorities for reference purposes) with the Labour Court, Industrial Tribunal, or National Industrial Tribunal (as applicable) within 15 calendar days from the date the claimant receives the order of reference.

Where a workman relies on the exception of the expiry of 45 calendar days from making the application to the conciliation officer (Section 2A (2) IDA), the same filings must be made as set out above. However, rather than an order of reference being issued, the workman can move directly to the Labour Court or Industrial Tribunal by showing documents substantiating the elapse of the applicable 45 calendar days (normally, this is a copy of the application for conciliation). This claim must be made to the Labour Court or Tribunal within the applicable limitation period (see *Limitation Date*) (Section 2A(3), IDA).

The workman must also forward a copy of the statement of claim to all the opposing parties involved in the dispute (Rule 10(B) (1), IDCR).

The primary documents required for a workman to submit a litigation claim generally are:

- Employment agreement.
- Muster roll. The muster roll is a register roster of all workmen working in an organization.
- Offer letter.
- Termination letter.
- Any evidentiary document in case of discrimination at workplace.

Employer Receipt of Claim

As said above, the party initiating the litigation (in this case, the workman) must serve a copy of the statement of the claim on the defending party (that is, the employer) (Rule 10B (1), IDCR).

The employer usually receives a hard copy of the claim filed by the workman. However, during the Covid-19 lockdown, courts and tribunals allowed parties to file and serve documents digitally because they were operating virtually.

If an employer is uncomfortable with receiving hard copies of the pleadings, the employer can make a request to the registry of the court or tribunal for digital copies, explaining the difficulties they may face if they do not receive email copies of the pleadings.

First Hearing

The Labour Court or Industrial Tribunal after ascertaining that copies of statement of claims are furnished to the other side by claimant (see *Employer Receipt of Claim*), must fix the date of the first hearing not exceeding one month from receiving the order of reference (Rule 10B(2), IDCR).

At the first hearing, the judge reviews the claims of the claimant. The defendant is then given the opportunity to present its side of the case.

In the period between the first hearing and the evidence or trial hearing (see *Trial Hearing*), the defendant submits its written defence (see *Defence Deadline*) and the claimant may choose to make a further written submission (see *Claimant Response*). The Labour Court or Industrial Tribunal then reviews claims and filed written submissions in detail.

Defence Deadline

The defendant must submit to the Labour Court or Industrial Tribunal a written statement along with all other important records, list of reliance and witnesses (a list of witnesses and any authorities for reference purposes), within 15 calendar days after the first hearing (Rule 10B (2), IDCR).

If the employer has not received a copy of the claim from workman, the court or the tribunal can direct the workman to submit it to the employer for formulating a legal strategy. It then extends the time limit for the employer to submit its written statement by an additional 15 calendar days (Rule 10B (3), IDCR).

The type and size of paper on which the defence must be submitted depends on the specific court. Most Indian courts and tribunals either use A4 size paper or a legal-size paper. However, after the orders of the Supreme Court (2020) and the Bombay High Court (2021) urging use of A4 size paper in legal pleadings, most courts and tribunals have started using A4 size paper.

In case of a delay in filing the defence within the statutory timelines, the employer may plead before court or tribunal seeking condonation of delay (Rule 10B (3), IDCR). If the employer does not file pleadings at all or remains absent during the hearings, then the court or tribunal proceeds to adjudicate ex-parte (Rule 22, IDCR).

Claimant Response

Within 15 calendar days after the defendant submits its written statement, the claimant party can also file a rejoinder (that is, a response to the points made in the defence submission) (Rule 10B (4), IDCR).

Witness Evidence

The Labour Court or Industrial Tribunal can, in addition to the witnesses produced by the parties, produce or call any other person they deem fit to be deposed as a witness (Section 11(3), IDA).

The Labour Court or Industrial Tribunal can call for evidence at any stage of the proceeding (Rule 15, IDCR). The Labour Court or Industrial Tribunal can issue summons to any person and call on any person to produce books of records, papers, books, and any other document the court thinks pertinent for the investigation or adjudication (Rule 17, IDCR). The Labour Court or Industrial Tribunal can send the summons personally or even via registered post. If the receiver does not acknowledge summons and refuses service, the court sends the summons or notice again with a certificate of posting (Rule 18, IDCR).

While the witnesses are being cross-examined orally at the trial hearing (see *Trial Hearing*), the court or tribunal must note down in a memorandum what is being deposed. The Labour Court or Industrial Tribunal should follow the procedure per Rule 5 of order XVIII of the First Schedule to the *Code of Civil Procedure 1908* (CPC) (Rule 10B (6), IDCR). When summoning witnesses, the court or tribunal can follow the procedure in CPC for civil cases (Section 11(3), IDA).

The Labour Court or Industrial Tribunal may order examination of a witness by video if it deems fit (Rule 30, IDCR). A witness has the right to claim allowances for the travel in proportion with what civil courts usually provide monetarily (Rule 33, IDCR).

Trial Hearing

The Labour Court or Industrial Tribunal must, within a month after receiving all written pleadings (which usually takes sixty calendar days from the date of reference of the dispute), set a hearing date for the presenting of evidence (Rule 10B (5), IDCR).

During the hearing, the proceedings are procedurally governed by the CPC as applicable to civil courts. The relevant provisions of the CPC give the Labour Court or Industrial Tribunal the power to:

- Enforce attendance.
- Examine an oath.
- Summon witnesses and get them examined by court-appointed commissioners.
- Produce any document it deems fit.
- Appoint one or more people as assessors to advise and assist in the proceedings, such as on technical nuances.

(Section 11, IDA.)

The judge officially acknowledges and files the evidence in the records of Labour Court or Industrial Tribunal.

After closing the evidence (that is, when the parties have finished submitting all their evidence), oral arguments are heard either on the day of the evidence hearing or the matter is adjourned and a date is fixed for arguments within the next 15 calendar days (Rule 10B (7), IDCR). An adjournment cannot exceed one week and one party can at maximum seek three adjournments only (Rule 10B (8), IDCR).

If a party is absent, the Labour Court or Industrial Tribunal can pass an ex-parte award. If the absent party approaches the court before it passes an order with justified reasons for absence, then the court may allow the absent party to present its case.

Proceedings before the Labour Courts and Tribunals are held in public but the court or tribunal at any stage may hold private hearings for direct witness examination or in camera proceedings (Rule 30, IDCR). The parties to a claim are also made public (see *Judgment*).

Judgment

The Labour Court or Industrial Tribunal must submit the award (that is, the decision) to the Central Government within either:

- One month of the oral arguments.
- Three months (which only extends in extraordinary circumstances) from the order of reference, if a time period is specified in the reference order.

(Rule 10B (10), IDCR.)

The award or report must be signed by each presiding member of the Labour Court or Industrial Tribunal along with any dissenting opinion (Section 16, the IDA). The award must then be published by the Government within 30 calendar days of the acknowledgment of its receipt (Section 17 (1), IDA). Legal representatives can check the publication of the award or order or decision or judgment on the court's website.

The award is enforceable after the expiry of 30 calendar days from its publication, unless:

- The appropriate Government is of the opinion regarding a Labour Court dispute to which it was a party that the award is against the interests of national economy or social justice.

- The Central Government is of the opinion regarding any award by the National Industrial Tribunal that the award is against the interests of national economy or social justice.

(Section 17A, IDA.)

The judgment is usually public and the names of the lead parties are available to the public. However, especially when multiple parties are part of an industrial dispute or if a party wants, they can request that rather than the name of the individual workman, the name of the trade union that they are members of is stated. An employer can also be named by the association or another appropriate name the Labour Court or Industrial Tribunal deems fit (Rule 19, IDCR).

Appeal Process

Appeal Hearing

An appeal is heard not as a full retrial of the initial claim. The court only looks at whether the lower court or tribunal decided the case by correctly applying the laws. An appeal can only be heard on a question of law, not a question of fact.

Which Party Can Appeal and How?

The decision of a Labour Court or Industrial Tribunal can be challenged before the High Court based on other legal principles by virtue of a writ petition only (*Sri Vishnu Ganapathi Naik v. The Management, NWKRTC,* ILR (2006) Kar 1863, para 5).

The law of writs broadly governs an employment litigation's appeal system from IDA forums (Labour Court, Industrial Tribunal, or National Industrial Tribunal) to the High Court. While the IDA provides for various forums (such as Labour Courts, Industrial Tribunals, and National Industrial Tribunals), there is no provision in the IDA to appeal against an award, except for moving before the High Court in a writ petition (*North Delhi Municipal Corporation v. Bal Kishan* 2021 SCC OnLine Del 5543).

A similar understanding apropos the appellate system in employment litigations can be derived from the judgment of the Supreme Court of India in *Bombay Chemical Industries v. Deputy Labour Commissioner* 2022, 5 SCC 629.

High Court

As discussed above, a writ petition can be filed before a High Court to appeal the judgment or order of the Labour Court or Industrial Tribunal or the National Industrial Tribunal (Article 226, *Indian Constitution*). A writ petition is usually heard by a single-judge bench of High Court.

In practice and practical experience, employers or workmen mostly challenge decisions of the Labour Court or Industrial Tribunal before the High Court under its writ jurisdiction. There can be intra-court appeal at the High Court through Letter Patents Appeal to appeal against the decision of a single-judge bench of the High Court (that was passed in a writ petition), if the High Court has this power of Letters Patent Appeals vested in its governing procedural rules (Clause 15, Letters Patent).

Supreme Court

The right to file an appeal to the Supreme Court of India, stems from Article 132 of the Indian Constitution.

The Constitution allows for the Supreme Court to hear appeals in cases:

- Involving substantial questions of law.
- Where the High Court is of the opinion that the matter needs to be decided by the Supreme Court. Here, the decision is stipulated in the decision of High Court. The High Court grants a certificate of appeal along with its decision to officially communicate that opinion (Section 109 of the CPC).
- Any aggrieved party makes an oral application to the High Court for a certificate of appeal immediately after the decree, judgment, or order is passed by the High Court, then the High Court is duty bound to consider if it deserves merit to be granted certificate of appeal.

(Article 134A, Indian Constitution.)

Judgment or order passed by any court or tribunal can also be appealed directly before the Supreme Court of India by virtue of a Special Leave Petition (Article 136, Indian Constitution). Before moving to the Supreme Court through a Special Leave Petition, it is still suggested to exhaust all other appeals at every available forum, especially the High Court.

Under Section 7I of the EPF Act, a person aggrieved by an order, under Section 7A and Section 7B may approach the tribunal for filing an appeal against the order.

Final Decision

Grounds for appeal are limited as they are heard only on questions of law and not on questions of facts.

The power of the Supreme Court of India to decide whether leave to appeal should be granted is a remarkable power and not used regularly. The Supreme Court only exercises this power if it believes that gross injustice has been made or there is a violation of principles of natural justice (*Dhakeswar Cotton Mills Ltd. v. Commissioner of Income Tax, West* 1955 AIR 65).

At the Supreme Court, further inter-court appeals can be filed through review and curative petitions (Article 137, Indian Constitution) but the chances of these petitions succeeding are uncertain.

Costs

A workman must pay a court fee to initiate the employment litigation.

Fees for getting a copy or making an order or award of the Labour Court or Industrial Tribunal is charged at INR 1 per page. To certify the order of Labour Court or Industrial Tribunal, same fee of INR 1 per page is charged. Copying and certification fees must be paid in advance. (Rule 26, IDCR.)

Witnesses have a right to claim allowance for the travel in proportion with what Civil Courts usually provide (Rule 33, IDCR).

If the Labour Court passes an order for recovery of costs of litigation by one party from the other, these costs may be recovered.

Attorney costs and other legal expenses is subject to various factors, such as jurisdiction, forum, expertise, and experience in employment litigation.

Changing Laws

It should be noted that the Indian Government is proposing to consolidate and replace 29 central labour laws with four labour codes (the Code on Wages, Industrial Relations Code, Social Security Code, and the Occupational Safety, Health and Working Conditions Code). These codes are awaiting notification of effective date to become a law.

