Rai Technology University

ENGINEERING MINDS

Labour Laws

Subject: LABOUR LAWS **Credits: 4**

SYLLABUS

Labour law in India: An Overview
Introduction, The Human Aspect, Overview of Labour laws, Legislative history, Implementation of labour laws, The unorganized sector, International law and its purpose, Global instruments of international law, Regional instruments of international labour law

Industrial Employment- Standing Orders
The industrial employment- standing orders, Act 1946, the schedules under the act, Model standing orders

Workers Act
Introduction to the factories act, Objective and scope, Safety and duties of the manufacturer, Welfare of workers under the act, Penalties and procedures under the act, The employers liability act- 1938

Payment of Gratuity
Introduction to the employee's state insurance act 1948, Contributions and funds under the Act 1948, Benefits under the Act 1948, Powers of the court under the Act 1948, The Maternity Benefit Act-1961, Introduction to the workmen compensation Act 1923

Trade Union Act 1926
Procedures and Penalties under this act, Employees provident funds and Miscellaneous Provisions Act -1952, Payment of Gratituity Act 1972, Collective bargaining and ILO Conventions.

Suggested Readings:
1. Workmen's Compensation Act Aiyer and Aiyer, Sitaraman and Co.
2. Law of Employees Provident Fund, Chaturvedi RG, Bharat Law.
3. Commentary on Worksmen's Compensation Act , Chaudhary RN, Sitaram and Co.
4. Commentaries on Industrial Employment, Desai KM, Sitaram and Co.
5. Law of Employees Provident Funds, Dr Chaturvedi RG, Sitaram and Co.
6. Law of Discharge and Dismal, Dr Rao, Sitaram and Co.

COURSE OVERVIEW

Labour laws are essential for the students of management to understand the legal rules and aspects related to management of human resources. Just like any other study even business management is incomplete without a proper study of its laws. Labour laws are important because labour is a human resource and in order to deal with it efficiently one must know the laws related to them and for their welfare. The Labour Laws are industrial and service laws integrated from base on legal, tax and regulatory issues. This coursepack addresses the labour and industrial law specific research requirements of human resource (HR) students and management students.

This course is designed to provide you with a basic understanding of laws related to labour and HR. The focus is placed on the Industrial Disputes Act, Trade Union Act and Factories Act along with other related laws.

Primary objectives of the Course:

- Study and analyse various laws related to labour and trade unions.
- Determine how these laws have benefitted the employees.
- Discuss computations of compensation, bonus,gratuity etc.
- Analyse the decisions of various landmark cases to study the abovementioned topics.

LABOUR LAWS

CONTENT

.	Lesson No.	Topic	Page No.
	Lesson 1	Introduction to Labour laws	1
	Lesson 2	Broad outline of Indian labour laws and various dispute settlement machinery	4
	Lesson 3	International labour laws and Introduction to Organized and unorganized sectors	12
	Lesson 4	The Industrial Employment (Standing Orders) Act, 1946	20
	Lesson 5	The Industrial Employment (Standing Orders) Act, 1946 (Continued) The Schedules Under the Act	31
	Lesson 6	The Industrial Employment (Standing Orders) Act, 1946	41
	Lesson 7	Collective Bargaining and Scope Of Industrial Disputes Act	59
	Lesson 8	The Definition of Industry and Other Definitions	66
	Lesson 9	Workman and Contract of/for Service	76
	Lesson 10	Wages and Allowances	83
	Lesson 11	Strikes and Lock Outs	89
	Lesson 12	Lay-off	96
	Lesson 13	Retrenchment and Retrenchment Compensation	104
	Lesson 14	Re-employment of Retrenched Workman	115
	Lesson 15	Closures	120
	Lesson 16	Other Provisions Under the Industrial Disputes Act	124
	Lesson 17	Employment contract and wage determination	134
	Lesson 18	Penalties, Procedures and Forms	140
	Lesson 19	Child Labour	148
	Lesson 20	The Equal Remuneration act 1976	158
	Lesson 21	The Weekly Holidays Act, 1942	166
	Lesson 22	Minimum Wages Act, 1948	169
	Lesson 23	Minimum Wages Act, 1948 (Continued)	175
	Lesson 24	Payment of Wages Act, 1936	180
	Lesson 25	Payment of Bonus Act, 1965	189

LABOUR LAWS

CONTENT

	Lesson 26	Introduction to the Factories Act	200
	Lesson 27	Safety and Duties of The Manufacturer	209
	Lesson 28	Welfare of Workers Under The Act	217
	Lesson 29	Welfare of Workers Under The Act (Continued)	226
	Leson 30	The Employers' Liability Act, 1938	235
	Lesson 31	Introduction To The Employees State Insurance Act 1948	241
	Lesson 32	Contributions And Funds Under The Employees State Insurance Act 1948	248
	Lesson 33	Benefits Under The Employees State Insurance Act 1948	254
	Lesson 34	Powers of The Court Under The Employees State Insurance Act 1948	261
	Lesson 35	The Maternity Benefit Act, 1961	273
	Lesson 36	Introduction To The Act workman compenation Act 1923	278
	Lesson 37	Procedures and Penalties Under The Act	293
	Lesson 38	Employees Provident Funds and Miscellaneous Provisions Act,1952	309
	Lesson 39	Payment of Gratiuity Act, 1972	321
	Lesson 40	Trade Union Act, 1926	327
	Lesson 41	Collective Bargaining And ILO Conventions	337

LESSON 1:
INTRODUCTION TO LABOUR LAWS

Learning Outcomes

- What is history of labour laws

Introduction

So students we have reached to the second part of law that is labour law. You were introduced to this subject law earlier in Legal and Regulatory Framework. So I hope by now you must have got accustomed to what we call Legal language, that is the language of the law that part of the legal universe which has understood miseries faced by people at work, each law in this branch of law has taken birth after millions and millions of people sacrificed their lives under the monarchy of unscrupulous businessmen. So students you are someday goanna be future managers have subordinates working below you, what I always feel is that do not be bosses of you subordinated but be a leader of your subordinate. "The difference between a boss and a leader: a boss says, 'Go!' - a leader says, 'Let's go!'".

I was brushing through books as much as plausible and coarsely net surfing to introduced labour law for you, but none of the matters satisfied me to the fullest. When finally I grabbed a book I was currently ready that is 'Living History' by Hillary Rodham Clinton. I first laughed alone to myself that what a shortsighted view I personally have about law. I kept my search for introduction limited and confined only to law books. Ignoring the living history of a woman who is an epitome of thru leader, a woman who was not only the first lady of American but also played a major role in shaping domestic legislations, she traveled tirelessly around the world to champion health care, expand economic and educational opportunity and promote the needs of children and families, and she crisscrossed the globe on behalf of women's rights, human right and democracy. Actually redefining the position of first lady in America. Brushing through the pages of this book I caught a sight of her earlier book called *IT TAKES A VILLAGE*.' Where village – a metaphor for society as a whole – shares responsibility for the culture, economy and environment in which our children grow up. The policeman walking the beat, the teacher in the classroom, the legislator passing laws and the corporate executive deciding what movies to make all have influence over America's children'. Law to me is philosophy, it is synonyms to physychology, it is proactive and reactive to the situations in front of it. So viewing law as just legal and keeping them confined to law books is actually injustice to the subject. This subject labour law would interest those who have interest in philosophy, in acknowledging the problems of others, revolting against injustice to humans being. The village mentioned in the book for me is a metaphor to organizations where you as mangers would be working for, where there are finance manager proving guidelines on finance, director giving directions to the organization, the H.R manger dealing with valuable human resource etc. but my contention here is finally every manger is a H.R. mangers because he works with people, deals with people, irrespective of the fact in what capacity and so he needs to be human first and manager later, so LABOUR LAW IS THE HUMAN SIDE OF LAW. The roots of labour laws can be dated back to the era known as industrial revolutionin which fundamental changes occurred in agriculture, textile and metal manufacture, transportation, economic policies and the social structure in England. This period is appropriately labeled "revolution," for it thoroughly destroyed the old manner of doing things; yet the term is simultaneously inappropriate, for it connotes abrupt change. The changes that occurred during this period (1760-1850), in fact, occurred gradually. The year 1760 is generally accepted as the "eve" of the Industrial Revolution. In reality, this eve began more than two centuries before this date. The late 18th century and the early l9th century brought to fruition the ideas and discoveries of those who had long passed on, such as, Galileo, Bacon, Descartes and others.

Advances in agricultural techniques and practices resulted in an increased supply of food and raw materials, changes in industrial organization and new technology resulted in increased production, efficiency and profits, and the increase in commerce, foreign and domestic, were all conditions which promoted the advent of the Industrial Revolution. But this revolution had significant impacts to two aspects. The human aspects and secondly labour.

The Human Aspect

In the l8th century the population grew at a faster rate than ever before. There are four primary reasons which may be cited for this growth: a decline in the death rate, an increase in the birth rate, the virtual elimination of the dreaded plagues and an increase in the availability of food. The latter is probably the most significant of these reasons, for English people were consuming a much healthier diet.

One can find a myriad of reasons for the growth of the population, in addition to those above. Industry provided higher wages to individuals than was being offered in the villages. This allowed young people to marry earlier in life, and to produce children earlier. The old system of apprenticeship did not allow an apprentice to marry. City life provided young people with a greater choice of prospective partners, in contrast to the limited choices in some isolated village. Finally, industry provided people with improved clothing and housing, though it took a long time for housing conditions to improve.

With the adoption of the factory system, we find a shift in population. Settlements grew around the factories. In some cases, housing was provided to workers by their employers, thus giving the factory owners greater control over the lives of his workers. In some cases factories started in existing towns, which was desirable because a labor pool was readily available. The prime consideration for locating a factory was the availabil-

ity of power. The early form of power was derived directly from moving water. Thus, we find factories cropping up in the hills near streams and rivers. Later, when steam power was developed, factories could be located near any source of water. Other factories, such as those involved in the manufacture of iron, had considerations of a different kind involving their location. Due to the great difficulty in moving bulk materials, such as iron ore, these mills had to be located close to the mineral source. In such situations, large communities grew directly above the seams of ore in the earth.

The development of the steam engine to drive machinery freed the mill owners from being locked into a site that was close to swiftly moving water. The steam powered mill still had to be located near a source of water, though the field of choice was much wider. Also, factories could be located closer to existing population centers or seaports, fulfilling the need for labor and transportation of materials.

The towns that grew in the North were crowded, dirty and unregulated. They grew so rapidly that no one took the time to consider the consequence of such conditions. In the areas of public sanitation and public health, ignorance reigned. No one understood the effects of these unsanitary conditions upon humans. Conditions in these densely populated areas worsened to the point of the reappearance of outbreaks of disease. In the mid-1800s there were several outbreaks of typhoid and cholera. Some attention to these conditions was accorded by Parliament in the form of Public Health Acts. These acts did improve conditions, though they were largely ineffective, for they did not grant local Boards of Health the powers to compel improvements.

E. Royston Pike's Hard Times is literally a treasure chest brimming with short stories that document living and working conditions during the Industrial Revolution. These stories may be utilized in the classroom in a variety of ways, and they should be quite effective in conveying the reality of life during this period. Pages 43-57 of Pike's book provide an excellent overview of typical living conditions.

Labor

If the conditions in which people lived in these factory towns were considered bad, then the conditions in which they worked can be appropriately characterized as being horrendous. Inside these factories one would find poorly ventilated, noisy, dirty, damp and poorly lighted working areas. These factories were unhealthy and dangerous places in which to work. Normally, workers put in twelve to fourteen hours daily. Factory Acts that were later enacted by Parliament regulated the number of hours that men, women and children worked. E. R. Pike's book, Hard Times, make for interesting reading on this subject.

The factory system changed the manner in which work was performed. Unlike the domestic system the work was away from home, in large, impersonal settings. Workers were viewed by their employers merely as "hands."

Slowly, workers began to realize the strength they could possess if they were a unified force. It was a long, uphill battle for workers to be able to have the right to organize into officially recognized unions. Their lot was one of having no political influence in a land where the government followed a laissez-faire policy.

This hands off policy changed as the pressure from growing trade unions increased. A movement was beginning to free workers from the injustices of the factory system. Political leaders called for reform legislation which would address these injustices (see lesson plans for specific legislation).

Overview ofLabour Laws

To bring to you an overview of labour laws I am referring to you an article written in the, The Economic Times, SUNDAY, OCTOBER 12, 2003by Vikram shroff and Sankalita Shome who has very beautifully brought out the current status of Indian labour laws.

Indian labour laws have long been perceived to be inflexible and draconian, prompting many an investor to think twice before stepping into India. The Global Competitiveness Report released by the World Economic Forum identifies the impediments to growth and thereby stimulate the development of relevant strategies to achieve sustained economic progress.

The 2001 report, which ranked India 57th out of the 75 countries in the growth competitiveness (down from 48th rank in year '00), suggests that while India has a vast pool of skilled engineering and scientific talent, its labour market practices are ineffective.

The prevailing social and economic conditions have been largely influential in shaping the Indian labour legislation, which regulate various aspects of work such as the number of hours of work, wages, social security and facilities provided. Indian courts have also been traditionally biased in favour of the workmen.

This ensured that the interests of the workmen were adequately protected. However, the potential for growth of India as a destination for information technology (IT) and IT-enabled services (ITES) and the challenge of competition from countries such as China, Philippines, Malaysia have contributed to spurring the process of legal reforms across the country, including reforms in labour laws.

To illustrate, let us analyse the development in Maharashtra. In order to create a progressive and supportive working environment for emerging industries, the State Government of Maharashtra, (Industries, Energy & Labour Department), on July 12, '03, introduced the IT and ITES Policy (Policy).

This Policy provides for a 24 x7 x365 working environment in the IT and ITES sectors. The Policy has introduced relaxations under the Shops and Establishments Act in relation to working hours, work shifts and employment of women. This was sorely needed by new-age industries such as call centres, which typically operate on a 24-hour schedule. The relaxations under the Industrial Disputes Act such as permitting units with up to 1000 employees to shut down without the permission of the government and exemption from applicability of the Contract Labour Act, which are currently applicable to units set up in SEZs have now been extended to IT and ITES units.

The Policy also endeavours to make compliance easier by suggesting the necessary amendments to various labour laws permitting the IT and ITES units to submit reports and

returns in electronic formats. IT and ITES units are now allowed to file self-certified reports / returns to the concerned officers of the Labour Department.

The State Governments of Karnataka, Andhra Pradesh and Tamil Nadu, have also been pro-active in adopting similar initiatives, in a bid to attract foreign investments.

The State Government of Madhya Pradesh recently relaxed labour laws by allowing companies to set up in the Indore SEZ to hire and fire employees at will (albeit with a few riders), close down units (without the state government's permission) and do away with trade unions. China, for that matter, has long followed a concept of having separate labour policies in the EOUs. Against the backdrop of the much maligned labour laws of India and the pro-activeness of the government to remedy the situation, it might be worthwhile to look at the labour law provisions in the developed jurisdictions, such as the US, where some of the labour laws heavily favour the workers.

The state of California recognises 15 to 20 different leave protections (both at the federal and state levels), covering everything from paid family leave to time off for pregnancy. Effective from mid next year, employees will be able to take up to six weeks of paid leave to care for a sick family member. Certain categories of employees who are required to make business call while on vacation, are to be paid a day's wages.

The California Worker Adjustment and Retraining Notification (WARN) Act, which came into effect from January 1, '03, requires an employer to give written notice of 60 days prior to a mass layoff, relocation or termination at an establishment covered under the WARN Act (which includes any industrial or commercial facility that employs, or has employed 75 employees within the preceding 12 months). The notice requirements include a notice to: the employees, the Employment Development Department, the local workforce investment board, and the chief elected official in the city or county government within which the layoff, relocation or termination occurs.

In light of the above, Indian labour laws are not as draconian as they are perceived to be. However, at the same time, the laws should ensure that they encourage 'employability' more than 'employment'.

As stated earlier, there is tremendous political will amongst the Indian state governments to actively promote some of the new age industries. This is an important step in the right direction, although there is still a long way to go including redrafting some of the archaic labour laws and simplify procedural aspects. The government may also consider setting up special 'zones' where some of the existing labour laws may not be applicable. Depending on the success achieved in the IT and ITES industries, the government may also consider adopting similar reforms in some of the other sectors, while at the same time ensuring that the basic protections are accorded to the workmen.

Finally, the reforms also need to address the development of soft-parameters which contribute to increased worker productivity and assist in retention programmes, such as training, providing good working conditions, encouraging creativity, helping with personal problems, providing growth opportunities in the organisation and finally, ensuring a challenging work atmosphere. All these factors will go a long way in ensuring that employees are your greatest assets. Easier said than done?

So, student after reading this article you must have received a general conspectus as to what levellabour laws operate in India. After reading this article I was left with only one question in my mind and that was, when the Britishers ruled India we had so many of our National leaders who fought and sacrificed their lives to achievefreedom. But this article I get a clear picture that we are again been thrown back to the same era. How beautifully the MNC's have invaded into Indian business world with there economic powers these giant like industries can ruin an entire nation. Leaving the behind the same impression as the East India Company.The manner in whichBritish East India Company began their first inroads into the Indian which was trade and ruled the country for nearly 346 years. Costing us the lives and miseries of thousands of Indian Families to receive our freedom back our freedom. Now of course with our constitution and democracy we need not have to face the same struggle for freedom. But now the struggle is for equal employment opportunities, the struggler is for better wages, the struggle is for better working conditions. To my greatest despair such a struggle is not only against an MNC but also against an Indian MNC.

Well the problem area is implementation of labour laws, we as a nation enjoy the biggest democracy where there is freedom to practice trade , freedom of occupation and of course dignity of labour which is a must so implementation of law is were the deficiency lies well you will receive the overviews of labour law in your course pack as you read but as of now this the general conspectus.

Thus I end my chapter one here leaving behind an history of labour laws. Well, students as far as the overview of labour laws is concerned. What I suggest is that it's for you to find out after reading by this entire course pack. I am very confident that by the end of this course pack you must have receiveda thorough insight into this subject. Which will also solves all your queries on Overview of labour laws.

Question for Test

1. Give a detail History of Labour Laws in India?
2. Discuss the overview of Labour Laws in India?

LESSON 2:
BROAD OUTLINE OF INDIAN LABOUR LAWS AND VARIOUS DISPUTE SETTLEMENT MACHINERY

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is the history of Labour Laws in India?
- What have been the main developments in dispute settlement?

I have on purpose kept the broad outline of Indian Labour Laws in brief because you are going to refer to labour law throughout this course pack.

Legislative History

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for indenturing workers became necessary. This was obviously labour legislation in order to protect the interests of British employers.

Then came the Factories Act. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make Indian labour costlier the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile magnates of Manchester and Lancashire. Thus we received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfarist the real motivation was undoubtedly protectionist!

To date, India has ratified 39 International Labour Organisation (ILO) conventions of which 37 are in force. Of the ILO's eight fundamental conventions, India has ratified four - Forced Labour 1930, Abolition of Forced Labour 1957, Equal Remuneration 1951, and Discrimination (employment and occupation) 1958.

The Organised and the Unorganised

An important distinction that is popularly made nowadays in all discussions relating to labour legislation is between workers in the organised/formal sector and those in the informal/informal sector. Many who make this distinction do so with ulterior motives, yet we must reckon with it - especially because out of the total workforce in the country, 92 percent work in the informal sector while only eight percent work in the formal sector.

At the outset it must therefore be remembered that those who were unorganised yesterday are organised today and those who are unorganised today aspire to become the organised tomorrow. Moreover, many rights, benefits, and practices, which are popularly recognised today as legitimate rights of the workers, are those that have accrued as a result of the struggles carried out by the earlier generation of workers. The attempt, prevalent in some circles to pit one section of workers against the others, must therefore be carefully understood and deserves to be rejected outright.

Trade Unionism and the Trade Union Act 1926

There are almost ten major central union organisations of workers based on different political ideologies. Almost every union is affiliated to one of these. These central organisations have state branches, committees, and councils from where its organisation works down to the local level.

The first central trade union organisation in India was the All India Trade Union Congress (AITUC) in 1920 - almost three decades before India won independence. At about the same time workers at the Buckingham and Carnatic Mills, Madras went on strike led by B P Wadia. The management brought a civil suit against the workers in the Madras High Court and not only obtained an injunction order against the strike but also succeeded in obtaining damages against the leader for 'inducing a breach of contract'. This was followed by widespread protests that finally yielded in the Trade Union Act 1926 giving immunity to the trade unions against certain forms of civil and criminal action. Apart from this aspect the Trade Union Act also facilitated registration, internal democracy, a role for outsiders and permission for raising a political fund subject to separate accounting requirements.

The Trade Union Act facilitates unionisation both in the organised and the unorganised sectors. It is through this law that the freedom of association that is a fundamental right under the Constitution of India is realised.

The right to register a trade union however does not mean that the employer must recognise the union – there is in fact no law which provides for recognition of trade unions and consequently no legal compulsion for employers, even in the organised sector, to enter into collective bargaining.

Yet in reality because of the strength of particular trade unions there is fairly widespread collective bargaining, especially in the organised sector.

Wage Determination in the Unorganised Sector

Wage determination in India has been achieved by various instruments. For the unorganised sector the most useful instrument is the Minimum Wages Act 1948. This law governs the methods to fix minimum wages in scheduled industries (which may vary from state to state) by using either a committee method or a notification method. A tripartite Advisory Committee with an independent Chairman advises the Government on the minimum wage. In practice unfortunately, the minimum wage is so low that in many industries there is erosion of real wage despite revision of the minimum wage

occasionally. A feeble indexation system has now been introduced in a few states only.

Collective Bargaining in the Organised Sector

An important factor that is not much recognised, but which still prevails in many organised sector units is fixing and revising wages through collective bargaining. The course of collective bargaining was influenced in 1948 by the recommendations of the Fair Wage Committee that reported that three levels of wages exist - minimum, fair, and living.

These three wage levels were defined and it was pointed out that all industries must pay the minimum wage and that the capacity to pay would apply only to the fair wage, which could be linked to productivity. In addition to this the fifteenth Indian Labour Conference, a tripartite body, met in 1954 and defined precisely what the needs-based minimum wage was and how it could be quantified using a balanced diet chart.

This gave a great boost to collective bargaining; many organised sector trade unions were able to achieve reasonably satisfactory indexation and a system of paying an annual bonus. It is now the law, that a thirteenth month of wage must be paid as a deferred wage to all those covered by the Payment of Bonus Act. The minimum bonus payable is 8.33 percent and the maximum is 20 percent of the annual wage.

Strikes and Lockouts

Workers have the right to strike, even without notice unless it involves a public utility service; employers have the right to lockout, subject to the same conditions as a strike. The parties may sort out their differences either bilaterally, or through a conciliation officer who can facilitate but not compel a settlement which is legally binding on the parties, even when a strike or a lockout is in progress. But if these methods do not resolve a dispute, the government may refer the dispute to compulsory adjudication and ban the strike or lockout.

Conciliation, Arbitration, and Adjudication

When parties engaging in collective bargaining are unable to arrive at a settlement, either party or the government may commence conciliation proceedings before a government appointed conciliation officer whose intervention may produce a settlement, which is then registered in the labour department and becomes binding on all parties. If conciliation fails it is open to the parties to invoke arbitration or for the appropriate government to refer the dispute to adjudication before a labour court or a tribunal whose decision may then be notified as an award of a binding nature on the parties. Disputes may be settled by collective bargaining, conciliation, or compulsory adjudication.

Colonial Dispute Settlement Machinery

The Industrial Disputes Act 1947 (IDA) provides for the settlement machinery above. The framework of this legislation, which is the principle legislation dealing with core labour issues, is of colonial origin. This law originated firstly in the Trade Disputes Act 1929, introduced by the British, when there was a spate of strikes and huge loss of person days and secondly through Rule 81A of the Defence of India Rules 1942, when the British joined the war efforts and wanted to maintain wartime supplies to the allied forces. Interestingly the interim government on the eve of formal independence retained this framework by enacting the IDA, which still remains on the statute book.

Developments After Independence

Even though the IDA was primarily meant for industry in the organised sector, its present application has now extended well into the unorganised sector, through judge-made law. Its pro-worker protection clauses and safeguards against arbitrary job losses have evolved over a period of time both through the process of sustained legislative amendments and through the process of judicial activism spread over more than five decades. The original colonial legislation underwent substantial modification in the post-colonial era because independent India called for a clear partnership between labour and capital. The content of this partnership was unanimously approved in a tripartite conference in December 1947 in which it was agreed that labour would be given a fair wage and fair working conditions and in return capital would receive the fullest co-operation of labour for uninterrupted production and higher productivity as part of the strategy for national economic development and that all concerned would observe a truce period of three years free from strikes and lockouts.

Regulation of Job Losses

Space does not allow a detailed discussion of this transformation in labour policy and consequent amendments to labour law, but provisions that deal with job losses must be noted. Under the present law any industrial establishment employing more than 100 workers must make an application to the Government seeking permission before resorting to lay-off, retrenchment, or closure; employers resorting to any of the said forms of creating job losses, is acting illegally and workers are entitled to receive wages for the period of illegality. The Reserve Bank of India commissioned a study into the causes of sickness in Indian industry and they reported cryptically, 'Sickness in India is a profitable business'. This chapter in the IDA, which has been identified as offering high rigidity in the area of labour redundancy, has been targeted for change under globalisation and liberalisation.

Protection of Service Conditions

A feature of the IDA is the stipulation that existing service conditions cannot be unilaterally altered without giving a notice of 21 days to the workers and the union. Similarly if an industrial dispute is pending before an authority under the IDA, then the previous service conditions in respect of that dispute cannot be altered to the disadvantage of the workers without prior permission of the authority concerned. This has been identified as a form of rigidity that hampers competition in the era of the World Trade Organisation.

Removal from Service

A permanent worker can be removed from service only for proven misconduct or for habitual absence - due to ill health, alcoholism and the like, or on attaining retirement age. In other words the doctrine of 'hire and fire' is not approved within the existing legal framework. In cases of misconduct the worker is entitled to the protection of Standing Orders to be framed by a certifying officer of the labour department after hearing

management and labour, through the trade union. Employers must follow principles of 'natural justice', which again is an area that is governed by judge-made law. An order of dismissal can be challenged in the labour court and if it is found to be flawed, the court has the power to order reinstatement with continuity of service, back wages, and consequential benefits. This again is identified as an area where greater flexibility is considered desirable for being competitive.

Return to Colonial Days!

Almost all pro-worker developments that accrued since independence are now identified as areas of rigidity and in the name of flexibility there is pressure on the government of India to repeal or amend all such laws. Interestingly, if such a proposal is fully implemented, labour law, especially for the organised sector, will go back to the colonial framework where state intervention was meant primarily to discipline labour, not to give it protection.

Globalisation

The most distinctly visible change from globalisation is the increased tendency for offloading or subcontracting. Generally this is done through the use of cheaper forms of contract labour, where there is no unionisation, no welfare benefits, and quite often not even statutorily fixed minimum wages. Occasionally the tendency to bring contract labour to the mother plant itself is seen. This is very often preceded by downsizing, and since there is statutory regulation of job losses, the system of voluntary retirement with the 'golden handshake' is widely prevalent, both in public and private sectors.

Regulation of Contract Labour

The Contract Labour (Prohibition and Regulation) Act 1970 provides a mechanism for registration of contractors (if more than twenty workers are engaged) and for the appointment of a Tripartite Advisory Board that investigates particular forms of contract labour, which if found to be engaged in areas requiring perennial work connected with the production process, then the Board could recommend its abolition. A tricky legal question has arisen as to whether the contract workers should be automatically absorbed or not after the contract labour system is abolished. Recently a Constitutional Bench of the Supreme Court held that there need not be such automatic absorption - in effect this 'abolishes' the contract labourer and has given rise to a serious anomaly.

Phase between Organised and Unorganised

We are already witnessing a reduction in the organised labour force and an increase in the ranks of the unorganised. The above law is a kind of inter-phase in the process of regulating the transition from regular employment to irregular employment. If contract labour is seen as introducing a form of flexibility, a strict enforcement of this Act could have had a salutary effect on the transition process. Instead the enforceability of the Act is now diluted and consequently even the minimum protection envisaged under this law to contract laborers is in jeopardy. Dominant thinking in relation to globalisation is having its effect on the judicial process also, ignoring Directive Principles of State Policy contained in the Constitution of India.

Employment Injury, Health, and Maternity Benefit

The Workman's Compensation Act 1923 is one of the earliest pieces of labour legislation. It covers all cases of 'accident arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The injured person, or in case of death the dependent, can claim the compensation. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Scheme, which is conceptually considered to be superior to the Workman's Compensation Act.

The Employees State Insurance Act provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalisation needs and costs. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.

The Maternity Benefit Act is applicable to notified establishments. Its coverage can therefore extend to the unorganised sector also, though in practice it is rare. A woman employee is entitled to 90 days of paid leave on delivery or on miscarriage. Similar benefits, including hospitalisation facilities are available under the law described in the paragraph above.

Retirement Benefit

There are two types of retirement benefit generally available to workers. One is under the Payment of Gratuity Act and the other is under the Provident Fund Act. In the first case a worker who has put in not less than five years of work is entitled to a lump sum payment equal to 15 days' wages for every completed year of service. Every month the employer is expected to contribute the required money into a separate fund to enable this payment on retirement or termination of employment. In the latter scheme both the employee and the employer make an equal contribution into a national fund. The current rate of contribution is 12 percent of the wage including a small percentage towards family pension. This contribution also attracts an interest, currently 9.5 percent per annum, and the accumulated amount is paid on retirement to the employee along with the interest that has accrued. Unfortunately the employee is allowed to draw many types of loan from the fund such as for house construction, marriage of children, and

education etc. As a result very little is available at the time of retirement. This is also a benefit, which is steadily being extended to sections of the unorganised sector, especially where the employer is clearly identifiable.

Women Labour and the Law

Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as labourers and cultivators. In urban areas, the employment of women in the organised sector in March 2000 constituted 17.6 percent of the total organised sector.

Apart from the Maternity Benefit Act, almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of an occupational hazard concerning the safety of women at workplaces, in 1997 the Supreme Court of India announced that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment Standing Orders Act 1946.

Implementation of Labour Laws

The Ministry of Labour has the responsibility to protect and safeguard the interests of workers in general and those constituting the deprived and the marginal classes of society in particular with regard to the creation of a healthy work environment for higher production and productivity. The Ministry seeks to achieve this objective through enacting and implementing labour laws regulating the terms and conditions of service and employment of workers. In 1966, the Ministry appointed the First National Labour Commission (NLC) to review the changes in the conditions of labour since independence and also to review and assess the working of the existing legal provisions. The NLC submitted its report in 1969. The important recommendations of NLC have been implemented through amendments of various labour laws. In the areas of wage policy, minimum wages, employment service, vocational training, and worker's education, the recommendations made by the NLC have been largely taken into account in modifying policies, processes, and programmes of the government. In order to ensure consistency between labour laws and changes in economic policy, and to provide greater welfare for the working class, the Second NLC was constituted in 1999.

All labour laws provide for an inspectorate to supervise implementation and also have penalties ranging from imprisonment to fines. Cases of non-implementation need to be specifically identified and complaints filed before magistrates after obtaining permission to file the complaint from one authority or the other. Very few cases are filed, very rarely is any violator found guilty, and almost never will an employer be sent to prison. Consequently these powers are used by corrupt officials only for collecting money from employers.

This does not however mean that no labour laws are implemented. On the contrary experience has proved that the implementation of such laws is directly proportional to the extent of unionisation. This generalisation is particularly true of the informal sector.

The Unorganised Sector

Many of the laws mentioned above apply to the unorganised sector also. In some cases a separate notification may be necessary to extend the application of a particular law to a new sector. It is useful to notice that some pieces of legislation are more general in character and apply across the board to all sectors. The Trade Union Act 1926, The Minimum Wages Act 1948, The Contract Labour (Regulation and Abolition) Act 1970, The Workman's Compensation Act 1923, and The Payment of Wages Act 1936 are examples of this type. In certain cases, even the IDA 1947 would be included.

In addition to the above there are special sectoral laws applicable to particular sectors of the unorganised. Under this category are laws like the Building and Construction Workers Act 1996, the Bonded Labour System (Abolition) Act 1976, The Interstate Migrant Workers Act 1979, The Dock Workers Act 1986, The Plantation Labour Act 1951, The Transport Workers Act, The Beedi and Cigar Workers Act 1966, The Child Labour (Prohibition and Regulation) Act 1986, and The Mine Act 1952.

Broadly speaking these sectoral laws either abolish or prohibit an abominable practice like bonded labour or they seek to regulate exploitative conditions by regulating working hours and conditions of service.

A recent trend has been to seek the creation of a welfare fund through the collection of a levy from which medical benefits or pension provisions are made. Workers and management may contribute and attempt to set up tripartite boards for implementation of welfare benefits. In some states like Kerala a large number of such boards have already been set up to take care of welfare in different sectors of employment.

Another contemporary effort is to provide an umbrella statute to take care of employment conditions and social welfare benefits for all unorganised sections. Common central legislation for all agricultural workers is also on the anvil. Many powers are vested in quasi-judicial authorities, labour courts, and magistrates' courts. The power of review is in the High Courts and finally in the Supreme Court.

The general experience, with the occasional exception, is unbearable delay. Even where statutes prescribe reasonable time limits, they are not adhered to. Frustration with labour-related justice is heightened by these unlimited delays. A case of dismissal takes almost ten years for the labour court to decide

and if the parties decide to seek judicial review in the higher courts there can be unlimited delay.

For the unorganised sector a renewed attempt to focus on the core labour standard identified by the ILO in its Declaration on Fundamental Rights at Work would still be worthwhile, especially if we take steps to ensure the implementation of the first of those core labour standards namely the freedom of association and the right to collective bargaining. It is only through the organisation of potential beneficiaries that we can hope for some benefits at least to percolate down into the hands of the needy.

So, students let us move our journey ahead ad take labour law outside the boundaries of India and try to understand what is the reaction on labour law at the international level. knowledge can never be enhanced within four boundaries, so in order to enhance our knowledge on labour law we need to step out in the International world.

Definition of International Law

International labour law is one category of international law. International law is the body of legal rules that apply between sovereign states and such other entities as have been granted international personality by sovereign states. Concerning labour law, the most important entity is International Labour Organization.

The rules of international law are of a normative character; that is, they prescribe standards of conduct. They distinguish themselves, however, from moral rules by being, at least potentially, designed for authoritative interpretation by an independent judicial authority and by being capable of enforcement by the application of external sanctions. These characteristics make them legal rules.

The law-creating processes of international law are the forms in which rules of international law come into existence; i.e., treaties, rules of international customary law, and general principles of law recognized by civilized nations. It is the merit of article 38 of the Statute of the International Court of Justice that this exclusive list of primary law-creating processes has received almost universal consent.

Now students, you should know this that International law means public international law as distinct from private international law or the conflict of laws, which deals with the differences between the municipal laws of different countries.

International law forms a contrast to national law. While international law applies only between entities that can claim international personality, national law is the internal law of states that regulates the conduct of individuals and other legal entities within their jurisdiction.

International law can be universal, regional or bilateral. Although there is some duplication between universal and regional labour law, the practical value of regional law lies mainly in the possibility it offers to establish standards which are more progressive than worldwide standards for dealing with the special problems of the region concerned; to secure greater uniformity of law within a region; or to provide more extensive reciprocal advantages. Bilateral law has a different purpose. Mainly, it determines the conditions of entry and of employment in each contracting country for the nationals of the other. This chapter deals only with universal and regional labour law.

The sources - instruments by which states and other subjects of international law, such as certain international organizations - of international law are international agreements. The agreements assume a variety of form and style, but they are all governed by the law of treaties, which is part of customary international law.

A treaty, the typical instrument of international relations, is defined by the 1969 Vienna Convention on the Law of Treaties as an “agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

Some multilateral agreements set up an international organization for a specific purpose or a variety of purposes. They may therefore be referred to as constituent agreements. The United Nations Charter (1945) is both a multilateral treaty and the constituent agreement of the United Nations. An example of a regional agreement that operates as a constituent agreement is the charter of the Organization of American States (Charter of Bogotá), which established the organization in 1948. The constitution of an international organization may be part of a wider multilateral treaty. The Treaty of Versailles (1919), for example, contained in Part I the Covenant of the League of Nations and in Part XIII the constitution of the International Labour Organization.

The term supranational is of recent origin and is used to describe the type of treaty structure developed originally by six western European states: France, Germany, Italy, The Netherlands, Belgium, and Luxembourg. The first treaty was that of Paris, signed in 1951, establishing the European Coal and Steel Community (ECSC); the second, the Rome treaty, signed in 1957, establishing the European Economic Community (EEC); the third, the Rome treaty of the same date establishing the European Atomic Energy Community (Euratom). A clause in the ECSC treaty provides for the complete independence of the members of the executive organ from the governments that appoint them.

Treaties, however, are not the only instruments by which international agreements are concluded. There are single instruments that lack the formality of a treaty called agreed minute, memorandum of agreement, or modus vivendi; there are formal single instruments called convention, agreement, protocol, declaration, charter, covenant, pact, statute, final act, general act, and concordat; finally there are less formal agreements consisting of two or more instruments, such as “exchange of notes” or “exchange of letters.

(Main sources of this section are British Encyclopedia, International Law, British Encyclopaedia International Agreement and International Encyclopaedia for Labour Law and Industrial Relations, Supplement 163.)

(Helpful tools when reading international agreements is UN, Glossary of Terms Relating to Treaty Actions and the Glossary of European Union)

Birth of the International Labour Law

The first moves toward international labour conventions date back to the beginning of the 19th century. Robert Owen in England, J.A. Blanqui and Villerme in France, and Ducepetiaux in Belgium are considered precursors to the idea of international regulation of labour matters. However, David Legrand, an industrialist from Alsace, put forward this idea most systematically, defending it and developing it in repeated appeals addressed to the governments of the main European countries from 1840 to 1855.

In the second half of the 19th century, the idea was first taken up by private associations. Thereafter, a number of proposals to promote international regulation of labour matters were made in the French and German parliaments. The first official initiative came from Switzerland – where, following proposals made in 1876 and 1881 and in consultation with other European countries, the Swiss government suggested convening a Conference on the matter in Bern in May 1890.

The establishment of an International Association for the Legal Protection of Workers, the seat of which was in Basle, was followed by a congress held in Brussels in 1897. The activity of this private organization led the Swiss government to convene international conferences in 1905 and 1906 in Bern, where the first two international labour conventions were adopted. One of these related to the prohibition of night work for women in industrial employment, and the other to the prohibition of the use of white phosphorus in the manufacture of matches.

During World War I, the trade union organizations of both sides, as well as those of neutral countries, insisted that their voice be heard at the time of the settlement of peace, and that the peace treaties contain clauses for improving the condition of workers. The peace conference entrusted the examination of this question to a special commission known as the Commission on International Labour Legislation. The work of the Commission led to the inclusion in the Treaty of Versailles and the other peace treaties of Part XIII, which dealt with labour matters. This section of the treaties provided for the establishment of an International Labour Organization, which might adopt conventions and recommendations in this field. Conventions would be binding only on those states which ratified them In October 1919, the International Labour Conference met in Washington to adopt the first Conventions and to appoint the Governing Body. Since then, the International Labour Conference has met regularly in general once a year, except during the Second World War.

At the end of the Second World War, the International Labour Conference adopted in May 1944, in Philadelphia, a Declaration (Philadelphia Declaration), which defined again the aims and purposes of the Organization. This Declaration reaffirmed in particular,

- that labour is not a commodity,
- that freedom of expression and of association are essential to sustained progress,
- that poverty anywhere constitutes a danger to prosperity everywhere and
- that the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join them in free discussion and democratic decision with a view to the promotion of the common welfare.

The Declaration affirmed that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. It also referred to the social aspect of economic and financial measures.

The Declaration then defined a number of specific objectives of the ILO, such as

- full employment and the raising of living standards,
- facilities of training policies in regard to wages, hours of work and other conditions of work calculated to ensure a just share of the fruits of progress to all,
- the effective recognition of the right of collective bargaining,
- the co-operation of management and labour in the continuous improvement of productive efficiency, and
- the collaboration of workers and employer in the preparation and application of social and economic measures, the extension of social security measures to provide a basic income to all in need of such protection, and comprehensive medical care, etc.

Apart from the ILO standards, an increasing number of bilateral and regional agreements have been concluded in the field of labour.

The general trend of agreements has been the constant broadening of their scope, both as regards the fields covered, the categories of persons protected and the framework within which the matters are treated. Thus a number of these instruments go beyond the traditional field of labour law and touch upon matters of civil liberties and penal law, of property law etc.

Purpose of International Labour Law

Competition

Various arguments have been advanced over the years in support of international labour law. The argument concerning international competition was used in its most extensive form throughout the 19th and at the beginning of the 20th century. The argument was that international agreements in the field of labour would help prevent international competition from taking place to the disadvantage of workers, and would constitute a kind of code of fair competition between employers and between countries.

This argument is generally given less prominence today, since it has been realized:

- that competition did not prevent the main industrialized countries of Europe from adopting the first labour laws
- that the cost and the competitive value of products depend on many factors other than labour costs (in fact, factors that

increase labour costs, such as investments in training, safety and health, etc., can increase competitive value)

- that countries that are the most successful in world markets are not those where the conditions of work are the less favorable.

However, globalization (and especially trade liberalization) have again brought up discussions on the relationship of competition to very poor working conditions in developing countries and loss of jobs in developed countries. The discussion is focused mainly on developments in industries where manual labour and low skills dominate production.

In his report, the Director-General of the ILO reacted to this discussion by pointing out:

- that "lifting restrictions on international trade lays the foundations for social progress – as the ILO has always implicitly acknowledged, even during the worst years of economic depression. But, at the same time, this liberalization carries the risk, as the Preamble to the Constitution of the ILO warns us, that international competition, by inhibiting the will of certain Members to introduce progress, might be 'an obstacle in the way of other nations, which desire to improve the conditions in their own countries'."
- that "globalization has forced many States to carry out legislative reforms to be able to cope with international competition as best they can. It is likely – although this is not entirely clear from the replies – that the relative decline in the ratification rate of Conventions might, at least in some cases, be due to a reticence to make long-term international commitments in these circumstances."
- that "the aim is not for the International Labour Organization to achieve uniformity in the level of social protection in order to ensure a proper international competition. Rather the idea is simply to place social progress into a relationship with the economic progress expected from the liberalization of trade and globalization."
- that "differences in conditions and levels of protection are linked to a certain extent to differences in levels of development. Denying developing countries the advantages (relative and transitory), which ensue from these differences would be tantamount to denying them a share in the profits of globalization and, by extension, the possibility of subsequent social development. The Declaration of Singapore, to which I shall refer later in the text, shows that we have come a long way in universally accepting these principles."

Most proposals for a social clause are based upon the seven ILO core Conventions. In the context of international trade, a social clause essentially refers to a legal provision in a trade agreement aimed at removing the most extreme forms of labour exploitation in exporting countries by allowing importing countries to take trade measures against exporting countries which fail to observe a set of internationally agreed minimum labour standards

World Peace

At the end of World War I a new argument appeared, namely that injustice in the social field endangers peace in the world, and that action against such injustice therefore serves the cause of peace.

It has been pointed out that measures of social justice – which provide, among other things, for trade union rights – are bound to strengthen democratic regimes, which are more likely than authoritarian governments to be peace loving. Social peace within countries may also sometimes be related to international peace, inasmuch as internal tensions may have repercussions abroad. Stress has equally been laid on the positive and dynamic concept of peace, involving the establishment of stable, just and harmonious conditions both within individual countries and between different countries. This would be accomplished by eliminating, inter alias, rivalry on world markets arising out of too great a disparity in labour conditions. It has also been claimed that the establishment of international labour standards aimed at improving the condition of mankind develops a common sense of solidarity internationally, and fosters a climate of mutual collaboration and understanding that transcends racial and national differences.

Yet progress toward these goals is threatened by many forces. Extremism – religious, ethnic, and political – is on the rise, often fuelled by growing disparities in levels of development. Despite the growth of democratic forms of government, violations of human rights continue in too many countries. The number of armed conflicts currently under way is only slightly less than at the end of the Cold War. Although the threat of nuclear war between the superpowers seems less likely, there is the frightening prospect of nuclear weapons loosely controlled by weak governments.

Social Justice

The driving force behind the idea of international labour law was the notion of social justice. In the field of labour, the humanitarian concern originally appeared in the face of conditions of great hardship imposed on the workers by industrialization. It was the mainspring of the movement, the first achievement of which was the adoption on both the national and international levels of measures to protect children from conditions of work that had shocked the public conscience.

The expression "social justice" itself was introduced in 1919 in the course of the discussions which took place at the peace conference, when the original Constitution of the ILO was being drafted as part of the Treaty of Versailles. This notion has certainly been the most powerful driving force in the development of international labour law.

It has often been stressed that economic growth does not automatically ensure social progress. Nevertheless, there remains a widespread tendency to give economic development precedence over social considerations. It is, therefore, the function of international labour standards to promote balanced economic and social progress.

Consolidation of National Labour Legislation

Even when the labour legislation or practice of a country has reached a certain level, it may be desirable for the country to ratify a Convention that provides for a standard corresponding to the existing national situation. This is because, even if no substantial change is called for, ratification of the respective Convention could contribute to the consolidation of national labour legislation by acting as a guarantee against backsliding. There have been cases in which the existence of international commitments based on ratified Conventions has prevented governments from adopting retrograde measures they had contemplated, particularly in times of crisis.

As a result of the widespread economic, commercial, technological, social and even cultural changes that have taken place in the past two decades, governments have been amending their labour legislation to meet new needs and accommodate new circumstances.

Source of Inspiration for National Action

In addition to the international commitments to which they may give rise, international labour standards can serve as a general guide and as a source of inspiration to governments by virtue of their authority as texts adopted by an assembly composed of representatives of governments, employers and workers of nearly all countries of the world. They may also for that reason provide a basis for the claims of workers and guide the policy of employers. International labour standards have thus developed into a kind of “international common law”. Their influence is in many ways similar to that found elsewhere in various periods in the history of civil law – for example, the influence of Roman law, or of certain later European legal codifications. Those in charge of social policies in various countries have often highlighted this role of international labour law.

LESSON 3:
INTERNATIONAL LABOUR LAWS AND INTRODUCTION TO ORGANIZED AND UNORGANIZED SECTORS

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the global instruments of international law?
- What are the main characteristics of organized and unorganized sector?

Global Instruments of International Labour Law

ILO Instruments

ILO sources of international labour law can be found in the Constitution of the Organization, and in its numerous Conventions and Recommendations. While the Constitution of the ILO mainly contains provisions relating to the functioning of the Organization, it also lays down a number of general principles which have come to be regarded in certain respects as a direct source of law. Such principles are contained in the Preamble of the Constitution and in the Declaration concerning the Aims and Purposes of the Organization, adopted by the Conference in Philadelphia in 1944 and incorporated in the ILO Constitution in 1946.

ILO Conventions

Specific Features of Conventions

Conventions are instruments designed to create international obligations for the states which ratify them. In addition to its Conventions, the ILO has adopted a number of Recommendations, which are different from the point of view of their legal character. Recommendations do not create obligations, but rather provide guidelines for action.

Conventions have a number of specific features, which can be grouped under four main ideas:

1. Conventions are adopted within an institutional framework. Thus, the adoption of Conventions does not follow the type of diplomatic negotiation which is usual in the case of treaties. They are rather prepared in discussions in an assembly that has many points in common with parliamentary assemblies. This also partly explains the fact that unanimity is not necessary for the adoption of Conventions. For the same reason, only the International Court of Justice can interpret the Conventions. The revision of Conventions is made only by the General Conference, which is the legislative body of the Organization. The International Labour Conference, which adopts Conventions, is constituted by representatives of governments, employers and workers, each delegate being entitled to vote individually.
2. A two-thirds majority is sufficient for the adoption of a Convention, and governments should submit the Convention to their competent authorities for ratification, i.e. as a rule to their parliaments. Also, the governments have the obligation, when requested, to supply reports on various issues related to Conventions. (See overview of supervisory system)
3. Some Conventions include flexibility clauses, because they are generally directed towards countries with very different economic, social and political conditions, as well as different constitutional and legal systems. The flexibility clauses comprise options regarding the following:
   A. Obligations:- possibility of choosing, at the time of ratification, by means of formal declaration, the extent of the obligations undertaken. (for e.g.. Social Security Convention)
   B. Scope:-Governments may decide for themselves, subject to certain consultations, what the scope of the Convention shall be (for eg. Conventions of minimum wage fixing machinery), or they may be permitted to exclude certain categories of persons or undertakings (for eg.. Conventions on night work), or the definitions of persons covered may be based on a specified percentage of the wage earners or population of the country concerned (for.eg. many social security Conventions), or exceptions are allowed for a certain part of the country or governments may themselves define a certain branch, industry or sector (for e.g.. Weekly rest Convention)
   C. Methods: State which ratifies a Convention shall take such action as may be necessary to make effective the provisions of such Convention, custom, administrative measures or, in certain circumstances, collective agreements.

Core Conventions

While ILO Conventions are not ranked in terms of their order of importance, there is an underlying hierarchy, which can be discerned. In the first category are Conventions dealing with freedom of association and collective bargaining (Conventions Nos. 87 and 89), forced labour (Conventions Nos. 29 and 105), non-discrimination in employment (Conventions Nos. 100 and 111) and child labour (Convention 138).

These core Conventions were identified and given prominence in the Conclusion of the World Summit for Social Development in 1995. In the second category are technical standards, which establish norms to improve working conditions.

Freedom of Association and Protection of the Right to Organize Convention, 1948 Establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without

interference by the public authorities. In December 1997, 121 countries had ratified this convention.

Right to Organize and Collective Bargaining Convention, 1949

Provides for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other, and for measures to promote collective bargaining. In December 1997, 137 countries had ratified this convention.

Forced Labour Convention, 1930

Requires the suppression of forced or compulsory labour in all its forms. Certain exceptions are permitted, such as military service, convict labour properly supervised, emergencies such as wars, fires, earthquakes, etc. In December 1997, 145 countries had ratified this convention.

Abolition of Forced Labour Convention, 1957

Prohibits the use of any form of forced or compulsory labour as a means of political coercion or education, punishment for the expression of political or ideological views, workforce mobilization, labour discipline, punishment for participation in strikes, or discrimination. In December 1997, 130 countries had ratified this convention.

Discrimination (Employment and Occupation) Convention, 1958

Calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, color, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment. In December 1997, 129 countries had ratified this convention.

Equal Remuneration Convention, 1951

Calls for equal pay for men and women for work of equal value. In December 1997, 135 countries had ratified this convention.

Minimum Age Convention, 1973

Aims at the abolition of child labour, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling, and in any case not less than 15 years (14 for developing countries). In December 1997, 59 countries had ratified this convention.

The ILO Declaration on Fundamental Principles and Rights at Work

The 86th International Labour Conference (1998) adopted by an overwhelming vote a solemn ILO Declaration on Fundamental Principles and Rights at Work, committing the Organization's member States to respect, to promote and to realize in good faith the right of workers and employers to freedom of association and the effective right to collective bargaining, and to work toward the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. The Declaration underlines that all member countries have an obligation to respect the fundamental principles involved, whether or not they have ratified the relevant conventions.

The Declaration includes provision for follow up, in particular :

- Annual follow-up concerning non-ratified fundamental Conventions , which will cover each year the four areas of fundamental principles and rights specified in the Declaration. It will be based on reports requested from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice . These reports will be reviewed by the Governing Body. With a view to presenting an introduction to the reports thus compiled, drawing attention to any aspects which might call for a more in-depth discussion, the Office may call upon a group of experts appointed for this purpose by the Governing Body.
- Global report which will cover, each year, one of the four categories of fundamental principles and rights in turn. The report will be drawn up under the responsibility of the Director-General and will be submitted to the Conference for tripartite discussion .

In his address to the conference, Michel Hansenne, Director General of the ILO, said that "it was high time for the ILO to give itself the means to address the social consequences of the globalization of the economy.....I believe we can all be proud of the Declaration that has been adopted ", adding that "the ILO can now proceed on the basis of a truly global set of common social values."

It is a historic step", said Bill Jordan , General Secretary of the international Confederation of Free Trade Unions (ICFTU) "and it establishes workers' fundamental rights as the ground-rules of globalization .....The Declaration sends the ILO into the next millennium well-placed to meet the challenge of globalization... Trade unionists world-wide are going to use this new tool as a powerful instrument in defense of their fundamental rights".

The Chairperson of the Workers' Group of the Conference, Bill Brett , said that he was pleased to note " that we have indeed created a powerful search- light which will illuminate those areas that have previously remained in darkness. "

United Nations Instruments

While the United Nations does not deal with labour matters as such, and recognizes the ILO as the specialized agency responsible for taking appropriate action for the accomplishment of the purposes set out in its Constitution, some UN instrument of more general scope have also covered labour matters.

A number of provisions concerning labour matters are contained in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which are legally binding human rights agreements. Both were adopted in 1966 and entered into force 10 years later, making many of the provisions of the Universal Declaration of Human Rights effectively binding.

Because of their comprehensive nature, the Covenants are drafted in general terms, and the various rights relation to labour, which they recognize are dealt with in a less precise and detailed way than ILO standards.

The UN General Assembly has adopted also a number of legally binding Conventions concerning labour matters. The most important ones are the Convention on the Elimination

of All Forms of Racial Discrimination (1969), Elimination of all Forms of Discrimination against Women (1979), Rights of the Child (1989), Status of the Refugees(1954) and Status of Stateless Persons (1960).

Regional Instruments of International Labour Law

At the European level, a number of regional organizations that were created after the end of World War II have adopted legal instruments on labour matters. In the Americas, only few of the recently established regional organizations have adopted labour law instruments. The North American Free Trade Area (NAFTA) has the North American Agreement on Labor Cooperation, and the Caribbean Community and Common Market (CARICOM) has an Agreement on Social Security. However, the instruments of the Organization of American States (OAS) are still the main source of international labour law in the region. In Asia, none of the regional organizations has adopted legal instruments on labour matters – there are only recommendations, declarations and programmes dealing with these issues. In Africa, both of the recently established regional organizations, the Southern African Development Community (SADC) and the Common Market of Eastern and Southern Africa (COMESA), have human rights matters contained in their treaties. The Organization of African Unity (OAU) also has legal instruments.

Council of Europe instruments

European Social Charter

The most comprehensive instrument adopted by the Council of Europe, which was established in 1949 by the Statute of Council of Europe, is the European Social Charter, signed in 1961. The Charter stipulates that any State wishing to become a Party must undertake to be bound by at least 10 Articles (out of 19) or 45 numbered paragraphs of Part II of the Charter. However, of the seven Articles regarded as particularly significant, each Party must accept at least five, namely: the right to work, the right to organize, the right to bargain collectively, the right to social security, the right to social and medical assistance, the right to the social, legal and economic protection of the family, and the right to protection and assistance for migrant workers and their families.

The most original feature of the Charter is that it recognizes the rights of workers and employers to collective action in case of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into and to some further restrictions.

In 1988 and Additional Protocol to the Charter was signed covering matters such as:

- the right for workers to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the ground of sex;
- the right for workers to be informed and consulted within the undertaking;
- the right for workers to take part in the determination and improvement of working conditions and the working environment in the undertaking;
- the right for elderly persons to social protection.

Two additional protocols were signed in 1991 and 1995, both of which improve considerably the control machinery and the effective enforcement of the social rights guaranteed by the Charter.

European Convention for the Protection of Human Rights and Fundamental Freedom

The European Convention for the Protection of Human Rights and Fundamental Freedom, which was concluded in Rome in 1950, and which has been amended by protocols, deals essentially with civil and political rights. However, it also deals with certain rights falling within the field of international labour law, such as the right not to be required to perform forced or compulsory labour and the right to form trade unions. It specifies that the rights and freedoms laid down in the Convention shall be enjoyed without discrimination on any grounds.

Social Security Instruments

In the field of social security, the Council of Europe has adopted a number of instruments.

The European Interim Agreement on Social Security Schemes relating to Old Age, Invalidity and Survivors and the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors, both concluded in 1953, provide for nationals of any one of the Parties to be entitled to receive the social security benefit of the laws and regulations of any other Party, under the same conditions as if person were a national of the latter, provided that certain conditions of residence are fulfilled.

The European Code of Social Security, concluded in 1964, fixes a series of standards, which parties undertake to include in their social security systems. The Code defines norms for social security coverage and establishes minimum levels of protection, which Parties must provide in such areas as medical care, sickness benefits, unemployment benefit, old-age benefits, employment injury benefits, family benefits, maternity benefits, invalidity benefits, survivors' benefits, etc. It was supplemented by a Protocol, which provided for higher standards.

The European Convention on Social Security, concluded in 1972, consists of the four basic principles of international social security law: equality of treatment, single set of legislation applicable, maintenance of acquired rights and rights in the course of acquisition, and the payment of benefits abroad. Some of the parts of the Convention are immediately applicable. The application of special provisions concerning sickness and maternity, unemployment and family benefits, with the exception of the cumulation of periods, however, remains subject to the conclusion of bilateral or multilateral agreements between the Parties.

- The Supplementary Agreement to the European Convention on Social Security contains provisions necessary for the application of Convention norms, which are immediately applicable. It covers, among other things, relations among social security institutions and procedures to be followed for settling and paying benefits that are due in conformity with the Convention. It also acts as a guide for Convention provisions which are not applicable until bilateral agreements have been concluded.

- A Protocol to the European Convention amends certain provisions of the Convention with a view to extending its personal scope, by extending its benefit to: all persons who are, or have been, subject to the legislation of one or more of the Parties, as well as to members of their families and their survivors; and to civil servants and persons treated as such in so far as they are subject to any legislation of that Party to which this Convention applies.

The European Convention on the Legal Status of Migrant Workers, concluded in 1977, is concerned with the principal aspects of the legal situation of migrant workers, in particular recruitment, medical examinations, occupational tests, travel, residence permits, work permits, the reuniting of families, working conditions, the transfer of savings and social security, social and medical assistance, the expiry of work contracts, dismissal and re-employment.

European Union Instruments

The term "Community legal instruments" refers to the instruments available to the Community institutions to carry out their tasks under the Treaty establishing the European Community with due respect for the subsidiary principle. The Community has three binding instruments. They are:

- Regulations: these are binding in their entirety and directly applicable in all Member States;
- Directives: these bind the Member States as to the results to be achieved; they have to be transposed into the national legal framework and thus leave a margin for maneuver as to the form and means of implementation;
- Decisions: these are fully binding on those to whom they are addressed.

The adoption of legislation aimed at improving labour standards and workers' rights is one of the Union's main achievements in the social field. Its purpose is to ensure that the creation of the Single Market leads neither to a lowering of labour standards nor to distortions of competition. At the same time, it is a key element in the efforts to improve competitiveness. Since the adoption of the Single European Act, the emphasis has shifted from harmonization to defining minimum requirements.

Information, Communication and Participation of Employees

A 1975 directive on the approximation of the laws of EU member states relating to collective redundancies, amended in 1992, affords greater protection to workers in the event of collective redundancies and approximates member states' legislation concerning the practical arrangements and procedures for such redundancies , An employer contemplating collective redundancies must hold consultations with the workers' representatives, with a view to reaching an agreement. The employer is to provide workers' representatives with all relevant information and, in any event, is to provide certain information, specified in the directive, in writing. The employer has to notify the competent public authority in writing of any projected collective redundancies. Collective redundancies can take effect at the earliest 30 days after the notification.

A 1991 directive on the obligation of employers to inform employees of the conditions applicable to the contract or employment relationship establishes the obligation for employers to inform employees in writing of their terms and conditions of employment The obligatory basic information is specified in the directive. Employees required to work in another country must be in possession before departure of one of the documents referred to in the directive, and the documents must include additional information, specified in the directive, on terms and conditions of employment. Any change to the terms of the contract or employment relationship must be recorded in writing.

A 1977 directive on the approximation of the laws of the member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses protects employees in the event of a change of employer, and ensures that their rights are safeguarded .The former employer and the new employer are required to inform the representatives of their respective employees in good time (good time specified in the directive) of the reasons for the transfer, the legal, economic and social implications, and the measures envisaged in relation to the employees, and consult the representatives in good time with a view to seeking agreement on possible measures in relation to their employees. The terms and conditions agreed in the collective agreement continue to apply until the date of termination or expiry of the agreement or the entry into force of another agreement. Member States are required to adopt the necessary measures to protect the rights of employees and of persons no longer employed in the transferor's business. The transfer does not constitute grounds for dismissal. The status and function of employees' representatives are preserved.

A 1994 directive on the establishment of a European Works Council (EWC), or a procedure in Community-scale undertakings and groups of undertakings for the purpose of informing and consulting employees, improves the right to information and consultation of these employees. EWC or the procedure for informing and consulting employees is established by an agreement between the central management and a special negotiating body. The central management is responsible for the creation of the conditions and means necessary for the setting up of a EWC or an information and consultation procedure, and will initiate negotiations on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings in at least two Member States.

In addition to these directives, there have been a number of regulations (and proposals for regulations and directives) regarding information and consultation arrangements for the involvement of employees in the decision-making process of certain entities. These include: a proposal for a Council Regulation on the Statute for a European Company and a proposal for a Council Directive complementing it with regard to the involvement of employees in the European company , a proposal for a Council Regulation on the Statute for a European Cooperative Society and a proposal for a Council Directive supplementing it with regard to the involvement of employees,

a proposal for a Council Regulation on the Statute for a European Association and a proposal for a Council Directive complementing it with regard to the involvement of employees, and a proposal for a Council Regulation on the Statute for a European mutual society and a proposal for a Council Directive supplementing it with regard to the involvement of employees

Working Conditions

Considerable progress has also been made in the field of labour protection, in particular through directives on the protection of pregnant women, the protection of young people at work, and the reorganization of working time.

A 1992 directive concerning the implementation of measures to encourage improvements in the safety and health of pregnant workers, women workers who have recently given birth, and women who are breastfeeding includes a number of provisions concerning the tasks of such workers, their working hours, right to take leave, and so on. Maternity leave is defined to be for an uninterrupted period of at least 14 weeks before and/or after delivery, and women may not be dismissed for reasons related to their condition for the period from the beginning of their pregnancy to the end of the period of leave from work.

A 1994 directive on the protection of young people at work provides that member states shall take necessary measures to prohibit the employment of children (under the age of 15), and shall ensure that the employment of adolescents (between the age of 15 and 18) is strictly controlled and protected under the conditions provided for in the directive. It includes provisions on employers' obligations, types of employment, working hours, night work, rest periods, annual leave and rest breaks.

A 1993 directive concerning certain aspects of the organization of working time adopts minimum requirements in this regard, connected with workers' health and safety. It concerns normal working hours, working time schedule and night work. Maximum average weekly working period is 48 hours, including the overtime for each seven-day period. The minimum daily rest period of 11 consecutive hours per period of 24 hours. The minimum annual paid holiday is four weeks.

Health and Safety at Work

At present, Community health and safety legislation can be grouped under three headings:

- the measures taken subsequent to the directive on the introduction of measures to encourage improvements in the safety and health of workers at work (1989), which contains a number of basic provisions concerning the organization of health and safety measures at work and the responsibilities of employers and workers, and which has been supplemented by separate directives concerning specific groups of workers, workplaces or substances;
- the measures taken subsequent to the directive on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work (1980) and amending directive on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work 1988)
- the measures required under directives that contain exhaustive provisions - not linked to framework directives - covering occupations or certain vulnerable groups.

On 22 June 1994, the Council adopted a regulation setting up the European Agency for Safety and Health at Work, which is located in Bilbao. The Agency's main tasks are to collect and disseminate technical, economic and scientific information on health and safety at work in addition to promoting and supporting exchanges of information and experience between the Member States.

Other Regional Instruments within Europe

In other geographical and political frameworks within Europe, various other instruments have been adopted on labour matters. Thus, the contracting parties of the Treaty of Brussels – and later the Western European Union, Benelux and the Nordic Council – framed a number of instruments which were adopted earlier than those of the European Communities, and were on a narrower basis.

American Instruments

The Organization of American States (OAS) adopted in 1969 an American Convention on Human Rights, which contains in particular provisions concerning freedom of association and forced labour. This Convention entered into force in July 1978. Its Additional Protocol in the Area of Economic, Social and Cultural Rights, which was signed in 1988, deals in a more specific way with such rights as right to work, just, equitable, and satisfactory conditions of work, trade union rights and rights to social security.

The side agreement of the North American Free Trade Agreement (NAFTA), the North American Agreement on Labor Cooperation (NAALC) encompasses the following rights: freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, prohibition of forced labor, labor protections for children and young persons minimum employment standards, elimination of employment discrimination equal pay for women and men, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illness and protection of migrant workers.

The Caribbean Community (CARICOM) concluded in 1996 an Agreement on Social Security concerning the following social security payments: invalidity pensions, disablement pensions, old age or retirement pensions, survivors' pensions, and death benefits in the form of pensions.

The Treaty of Asuncion, which establishes the Southern Common Market does not contain any express mention of social and labour matters, but the preamble sets out a generic objective of accelerating development processes with social justice. Nevertheless, in the operative agreements, which they adopted later on to ensure full compliance with the objectives established in the Treaty during the transition period, the governments proceeded to create a working sub-group 10 to take up matters dealing with labour relations, employment and social security.

African Instruments

The Organization of African Unity adopted in 1981 the African [Banjul] Charter on Human and Peoples' Rights, which includes the right to work under equitable and satisfactory conditions, the right to equal pay for equal work and the right to free association. In 1990, OAU adopted the African Charter on the Rights and Welfare of the Child, which provides that every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development. States Parties shall in particular provide through legislation, minimum wages for admission to every employment; provide for appropriate regulation of hours and conditions of employment; provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article; promote the dissemination of information on the hazards of child labour to all sectors of the community. Also, the Southern African Development Community (SADC) has human rights provisions in the Treaty of Windhoek by which the community was established, and the Common Market of Eastern and Southern Africa has the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People's Rights as one of its objectives according to The Treaty establishing COMESA.

The Organised and the Unorganised Sectors

The labour force in all developing economies consists of two broad sectors, the organised and the unorganised. The organised sector can be defined as the sector consisting of activities carried out by the corporate enterprises and the Government at the Central, State and Local levels, solely with the help of wage-paid labour which, in a great measure, is unionised. In this sector labour productivity is likely to be high, incomes even of the unskilled category are relatively high, and conditions of work and service are protected by labour legislation and trade unions. The unorganised sector, on the other hand, covers most of the rural labour and a substantial part of urban labour. lt includes activities carried out by small and family enterprises, partly or wholly with family labour, and in which wage-paid labour is largely non-unionized due to such constraints as the casual and seasonal nature of employment and scattered location of enterprises. This sector is marked by low incomes, unstable and irregular employment, and lack of protection either from legislation or trade unions. Apart from those who are poor because they are unemployed, the people from the unorganised sector can be referred to as the "Working poor".

There are several distinguishing characteristics of the two sectors,Some of the important ones can be referred to here without going into their detailed discussion:-

- In the first place, the Market Structure. The large manufacturing firms in the organised sector operate in markets where prices are controlled by a few sellers, which are protected from foreign competition by high tariffs, and which sell products mainly to middle and upper income groups. The unorganised sector, on the other hand, consists of a large number of small producers operating on narrow margins in highly competitive markets. The products are sold mainly to low-income groups.
- Secondly, the organised sector has greater access to cheap credit provided by various financial institutions, while the unorganised sector often depends upon money-lenders who charge a high rate of interest.
- Thirdly, the organised sector uses capital-intensive and imported technology, while the unorganised sector uses mainly labour intensive and indigenous technology. Fourthly, the organised sector has a privileged position as far as the Government is concerned because it has an easy access to and influence over Government machinery; it can build lobbies and pressurise the Government on any issue, while the unorganised sector has no political pull.
- Lastly, the organised sector is protected by various types of labour legislations and is backed often by strong unions. The unorganised sector, on the other hand, is either not covered by labour Legislation at all or is so scattered that the implementation of the Legislation is very inadequate and ineffective. There are hardly any unions in this sector to act as watch-dogs.

This theoretical discussion of the distinction between the two sectors will serve as a background for the main issues to be raised here, viz., what contributions do these two sectors make to the national income and what compensations do they get for their effort?

Before looking into these issues let us first see the size of these two sectors in the total labour force of the country. While defining the organised sector, it was pointed out that it consists almost wholly of wage and salary earners. The unorganised sector, however, is made up of two distinct groups, the wage earners and the self-employed. According to the 1981 census, out of the total labour force of 222.5 million, 125.2 million (56.2%) are self-employed. Out of the remaining wage earners, 22.8 million are in the organised sector and 74.5 million in the unorganised. Thus the number of wage earners in the unorganised sector is almost $3\ ^{1}/_{2}$ times of the number in the other sector. This is so simply because 57.1% of the wage earners in the unorganised sector are agricultural labour and the rest are non-agricultural labour, rural and urban.

We have said above that the unorganised sector uses unsophisticated technology, and that the productivity of labour in this sector is not very high. Even so, if one looks at the contributions made by the unorganised sector to the national income, one finds that their contribution is very substantial as compared to that of the organised sector. The following table shows the net value added to the National Income by the organised and the unorganised sectors. lt is to be observed that in any given year the unorganised sector adds more than 60% to the national income while the contribution of the organised sector is almost half of that.

Contributions and Compensations

Though the overall contribution of the unorganised sector to the national income is always much larger than that made by the organised sector, however, this is not true of different industries taken separately. In some industries the organised sector

carries much more weight while in others the unorganised sector prevails.

Net value added to the national income by organised and unorganised sectors (in Rs. lakhs)

Year	Organised sector	Unorganised sector	Total
1970-71	948383	2503628	3452011
	(27.47)*	(72.52)	
1977-78	2428545	5165251	7593796
	(31.98)	(68.01)	
1978-79	2715251	5432617	8147868
	(33.32)	(66.67)	
1979-80	3067879	5788455	8856334
	(34.64)	(65.35)	
1980-81	3499866	7050862	10550728
	(33.17)	(66.82)	
1981-82	4212233	7857575	12069808
	(34.89)	(65.10)	
1982-83	5013368	8400230	13413598
	(37.37)	(62.62)	
1983-84	5718847	10161401	15880248
	(36.01)	(63.98)	

Figures in the brackets show percentages.

Source: National Accounts Statistics, Jan, 1986.

Published by: Central Statistical Organisation, Ministry of Planning, Govemment of India.

Points To Remember

Legislative history

The organised and the unorganised

Trade unionism and the Trade Union Act 1926

Wage determination in the unorganised sector

Collective bargaining in the organised sector

Strikes and lockouts

Conciliation, arbitration, and adjudication

Colonial dispute settlement machinery

Developments after independence

Regulation of job losses

Cont....
Protection of service conditions

Removal from service

Return to colonial days

Globalisation

Regulation of contract labour

Phase between organised and unorganised

Employment injury, health, and maternity benefit

Retirement benefit

Women labour and the law

Implementation of labour laws

The unorganised sector

DEFINATION OF INTERNATIONAL LAW

BIRTH OF INTERNATIONAL LAW

PURPOSE OF INTERNATIONAL LAW

•COMPETITION

•WORLD PEACE

•SOCIAL JUSTICE

•CONSOLIDATION OF NATIONAL LABOUR LEGISLATION

•SOURCE OF INSPIRATION FOR NATIONAL ACTION

REGIONAL INSTRUMENTS OF INTERNATIONAL LABOUR LAW-

COUNCIL OF EUROPEAN INSTRUMENTS-

EUROPEAN UNION INSTRUMENTS-

OTHER REGIONAL INSTRUMENTS WITHIN EUROPE-

AMERICAN INSTRUMENTS-

AFRICAN INSTRUMENTS.-

GLOBAL INSTRUMENTS OF ITERNATIONAL LABOUR LAW

ILO INSTRUMENT

CONVENTIONS

SPECIFIC FEATURES

CORE CONVENTIONS

UNITED NATIONS INSTRUMENTS

Questions for Test

1. Explain what do you mean by organised and unorganised sectors?
2. Discuss the Legislative history of India?
3. Discuss the international Labour Laws?
4. Write short notes on-
    1. legislative history of India
    2. Organised and unorganised sectors
    3. Trade unionism and the Trade Union Act 1926
    4. Collective bargaining in the organised sector
    5. Conciliation, arbitration, and adjudication
    6. Employment injury, health, and maternity benefit
    7. Women labour and the law
    8. International Laws

LESSON 4:
THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the global instruments of international law?
- What are the main characteristics of organized and unorganized sector?

The Industrial Employment (Standing Orders) Act, 19461

(20 of 1946)

So, students this act is the most interesting of all the act because it is an Act to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay.

WHEREAS it is expedient [to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay, and for certain other matters];

It is hereby enacted as follows:

1. Short Title, Extent and Application

1. This Act may be called the Industrial Employment (Standing Orders) Act, 1946.
2. It extends to the whole of India
3. It applies to every industrial establishment wherein [fifty] or more workmen are employed, or were employed on any day of the preceding twelve months:

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than [fifty] as may be specified in the notification.

Maharashtra Notification

Industries, Energy and Labour Department

Mantralaya, Bombay -400 032, dated the 15th June, 1982

No. IDA 1081/5453/Lab-9, -WHEREAS, the Government of Maharashtra is the appropriate Government within the meaning of clause (b) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) in its application of the State Maharashtra (hereinafter referred to as "the said Act"):

And whereas the Government of Maharashtra is of the opinion that the said Act should apply to any industrial establishment wherein fifty or more workmen are employed or were employed on any day of the preceding twelve months:

Now, therefore, in exercise of the powers conferred by the proviso to sub-section (3) of section I of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) in its application to the State of Maharashtra, the Government of Maharashtra hereby applies with effect from the 15th day of August 1982, all the provisions of the said Act to any industrial the preceding twelve months, the notice of the intention of the Government to apply all the provisions of the said Act to the aforesaid industrial establishment having been previously published as required by the said proviso.

[(4) Nothing in this Act shall apply to-

(i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, (Bom. Act II of 1947) apply; or

(ii) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (M.P. Act 26 of 1961) apply:

Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (M.P. Act 26 of 1961) the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.]

2. Definition

In this Act, unless there is anything repugnant in the subject or context,

[(1-a) "amendments" means in relation *to* the model standing orders, any amendments proposed *to* such orders under Section 3 and includes any alterations, variations or additions proposed thereto;]

[(a) "appellate authority" means an authority appointed by the appropriate Government by notification in the Official Gazette *to* exercise in such area as may be specified in the notification the functions of the appellate authority under this Act:

Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) (Amendment) Act, 1963 (39 of 1963), that Court or authority shall be deemed to be the appellate authority;]

b. "appropriate Government" means in respect of Industrial Establishments under the control *of* the Central Government or [Railway administration] or in a major port, mine or oilfield, the Central Government, and in all other cases the State Government:

["Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made *to* it by the employer or the workmen or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being

heard, decide the question and such decision shall be final and binding on the parties."

[c. "Certifying Officer" means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act;]

d. "employer" means the owner of an industrial establishment to which this Act for the time being applies, and includes -

i. in a factory, any person named under [clause (t) of sub-section (1) of Section 7 of the Factories Act, 1948 (Q3 of 1948)] as manager of the factory;

ii. in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;

[iii. in any other industrial establishment -

a. any person responsible to the owner for the supervision and control of the industrial establishment;

b. where a person who, for the purpose of fulfilling a contract with the owner of the industrial establishment, employs workmen on the premises of the establishment for the execution of the whole or any part of any work which is ordinarily part of such establishment then in relation to such workmen, the owner of the industrial establishment;]

e. "industrial establishment" means-

i. an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, (4 of 1936), or

[ii. a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948) or]

iii. a railway as defined in clause (iv) of Section 2 of the Indian Railways Act, 1890 (9 of 1890); [(ef) "model standing orders" means standing orders prescribed under Section 15;

ef. 'modification' includes, in relation to standing order, any alteration, variation, addition or deletion in, or to, such order;]

f. "prescribed" means prescribed by rules made by the appropriate Government under this Act;

g. "standing orders" means the rules relating to matters set out in the Schedule;

A clause regarding the transfer of workmen to any other establishment any where in India cannot be provided for in the Standing Order and, as it is not listed in the schedule of the Act.

Geep Industiral Syndicate Ltd. v. Geep Industrial Syndicate Employees' Union, Mysore, 1999 II LLJ (Karn. HC)

h. "trade union" means a trade union for the time being registered under the Indian TradeUnions Act, 1926, (16 of 1926);]

[i. 'wages' and 'workman' have the meanings respectively assigned to them in Clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947).

i. who is subject to the Army Act, 1950 (46 of 1950), or the Air force Act, 1950 (45 of 1950), or [the Navy Act, 1957 (62 of 1957)]; or

ii. who is employed in the police service or as an officer or other employee of a prison; or

iii. who is employed mainly in a managerial or administrative capacity; or

iv. who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

[2-A. Application of Model Standing Orders to Every Industrial Establishment

1. Where this Act applies to an industrial establishment, the model standing order for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date [as the State Government may by notification in the Official Gazette appoint in this behalf:

Provided that nothing in this section shall be deemed to affect any Standing Orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957]

[2. Notwithstanding anything contained in the proviso to sub-section (1) model standing orders made in respect of additional matters included in the Schedule after the coming into force of the Act referred to in that proviso (being additional matters relating to probationers or badlis or temporary or casual workmen) shall, unless such model standing orders are in the opinion of Certifying Officer less advantageous to them than the corresponding standing orders applicable to them under the said proviso, also apply in relation to such workmen in the establishments referred to in the said proviso from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf.]

3. (Submission of Amendment)

1. [Within six months £tom the date on which the model standing orders apply to any industrial establishment under Section 2A, the employer or any workman employed therein may submit to the Certifying Officer five copies of the draft amendments for adoption in such industrial establishment:

Provided that no amendment which provides for the deletion or omission of any rule in the model standing orders relating to any matter set out in the Schedule shall be submitted under this section.]

3. The [draft amendments] submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.
4. Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint [draft of amendments] under this section.

5. Certification of (Amendments)

1. On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed [or the employer, as the case may be,] together with a notice in the prescribed form requiring objections, if any, which the workmen, [or employer] may desire to make to the [draft amendments] to be submitted to him within fifteen days from the receipt of the notice.
2. After giving the employer, [the workmen submitting the amendment and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of [the draft submitted under sub-section (1) of Section 3 is necessary,] and shall make an order in writing accordingly.
3. The Certifying Officer shall thereupon IO[certify the draft amendments] after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the 11 [model standing orders together with copies of the certified amendments thereof,] authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

The submission that the Standing Orders are sacrosanct and engroceable regardless of the developments in the parallel proceedings unless and until necessary change has been certified by the authority under the Act would be too technical an interpretation and would therefore not be acceptable.

Mafatlal Engineering Industries Ltd. v. Mafatlal Engineering Industries Employees Union & Others, 19911 CLR 851.

6. Appeals

[1. Any employer, workman, trade union or other prescribed representatives of the workmen] aggrieved by the order of the Certifying Officer under sub-section (2) of Section 5 may, within [thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing 3[confirm the amendments either in the form certified by the Certifying Officer or after further modifying the same as the appellate authority thinks necessary.]

2. The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied [4](unless it has confirmed without further modifications the amendments] as certified by the Certifying Officer [5][by copies of the model standing orders together with the amendments] as certified by it and authenticated in the prescribed manner.

In this Section, it is, inter alia, provided that any person who is aggreived of the order of the certifying officery may, "within 30 days from the date on which copies are sent..." file an appeal. The word used in this S. 6, on which emphasis has to be laid is "from" S. 9(1) of the General clauses Act clearly provides that when in any Central Act on Regulation the word used is "from", then, the first day in a series of days shall be excluded. Therefore the day on which order was dispatched has to be excluded in computing the period of Thirty days for filing Appeal.

Badarpur Power Engineers Association v. Dy. Chief Labour Commissioner & Authority & Others, 1993 I LlC 636.

7. Date of Operation of Standing Orders [or Amendments]

Standing Orders [or amendments] shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6.

8. Register of Standing Orders [and Model Standing Orders together with All Certified Amendments]

A copy of all standing orders '[or model standing orders together with all the amendments] as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained. for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee.

9. Posting of Standing Orders l[and Model Standing Orders together with All Certified Amendments]

The text of the standing orders ([or model standing orders together with all the amendments] as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special board to be maintained for the purpose at or near the entrance through which the majority of workmen enter the industrial establishment and in all departments thereof r where the workmen are employed.

10. Duration and Modification of Standing Orders [or the Amendments]

1. Standing Orders [or the amendments] finally certified under this Act shall not, except on agreement between the employer and the workmen [or a trade union or other representative body of the workmen] be liable to modification until the expiry of six months from the date on which the standing orders [or the amendments] or the last modifications thereof came into operation [and where model standing orders have not been amended as aforesaid, the model standing orders shall not be liable to such

modification until the expiry of one year from the date on which they were applied under section 2-A].

[2. Subject to the provisions of sub-section (1), an employer, or workman [or a trade union or other representative body of the workmen] or any prescribed representatives of workmen desiring to modify the standing orders or the model standing orders together with the amendments, as finally certified under this Act, or the model standing orders applied ~der section 2A, as the case may be, shall make an application to the Certifying Officer in that behalf, and such application shall be accompanied by five copies of the standing orders, or the model standing orders, together with all amendments thereto as certified under this Act or model standing orders in which shall be indicated the modifications proposed to be made and where such modifications are proposed to be made by agreement between the employer and workmen [or a trade union or other representative body of the workmen] a certified copy of the agreement shall be filed along with the application].

The word 'modification' in Sec. 1.0(2) should not be given a restricted meaning, as i", implying only minor changes, hence, even an application for deletion of a clause can be "i deemed as an application for modification of the Standing Orders.

I. .E. E. U, Kaloor, Cochin v. Indian Express (Madurai) Ltd. & Another, 19991 LLJ 490 (Ker. H.C)

3. The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first [amendments].

[4. Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat]

[10-A. Payment of Subsistence Allowance

1. Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workmen subsistence allowance -
   a. at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and
   b. at the rate of seventy-five per cent of such wages for remaining period of suspension if the delay in the completion of disciplinary proceedings against such Workman is not directly~ attributable to the conduct of such workman.
2. If any dispute arises regarding the subsistence allowance payable to a workman under 1 sub-section (1), the workman or the employer concerned may refer the dispute to the : Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situated and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and bin4ing on the parties.
3. Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable. to the payment of subsistence allowance in that State.

11. Certifying Officers and Appellate Authorities to have Powers of Civil Court

[1. Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of 3sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

[2. Clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that officer or authority or the successor in office of such Officer or authority, as the case may be.]

12. Oral Evidence in Contradiction of [Standing Orders, etc.] not Admissible

No oral evidence having the effect of adding to or otherwise varying or contradicting 6[standing orders or the model standing orders, or model standing orders with all the amendments as finally certified under this Act, as the case may be,] shall be admitted in any Court.

[12-A. Temporary Application of Model Standing Orders

1. Notwithstanding anything contained in sections 3 to 12, for the period, commencingon the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of section 9, sub-section (2) of section 13 and section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.
2. Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.]

13. Penalties and Procedure

1. An employer [who modified the standing orders, model standing orders or amendments], otherwise than in accordance with [the provisions of this Act] [shall, on conviction, be punished] with fine which may extend to five thousand ruppes, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

2. An employer who does any act in contravention of [the standing orders, model standing orders or the amendments, as finally certified under this Act for his industrial establishments, as the case may be, shall, on conviction, be punished] with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

   [2-A. Whoever contravenes the provisions of this Act or of any rule made thereunder in cases other than those falling under sub-section (1) or sub-section (2), shall, on conviction, be punished with fine which may extend to one hundred rupees and in the event of such person being previously convicted of an offence under this Act, with fine -which may extend to two hundred rupees and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

   2-B. The Court convicting an employer under, sub-section (1) or sub-section (2) may direct such employer to pay such compensation as It may determine to any workman directly and adversely affected by the modification or contravention of the Standing Orders, Model Standing Orders, or Amendments, as the case may be.

   2-C. The compensation awarded under sub-section (2-B) may be recovered as if it were a fine and if it cannot be so recovered, the person by whom It IS payable shall be sentenced to imprisonment of either description for a term not exceeding three months as the Court thinks fit.]

3. No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

4. No Court inferior to that of I[a Metropolitan Magistrate or Judicial Magistrate of the Second Class] shall try any offence under this section.

2[13-A. Interpretation, etc., of Standing Orders 3[Model Standing Order or Amendment]

If any question arises as to the application or interpretation of a standing order, [model standing order or amendment] certified under this Act, any employer or workman [or a trade union or other representative body of the workmen or any prescribed representatives of workmen] may refer the question to anyone of the Labour Courts constituted under the Industrial Disputes Act, 1947 (XIV of 1947), and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette and the Labour Court to which, the 'question .is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

The jurisdiction of the labour Court Is limited only to the decision on the question of application or interpretation of the Standing Orders which is referred to it, but it has no power to grant interim relief.

Chotalal Lajibhai Chandsara v. Lubri Electrical Ltd., 200 I CLR 655 (Guj. DB)

13-B. Act not to Apply to Certain Industrial Establishments

Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.]

Employees of Air India claimed that they were governed by Regulations of 1963 framed t under the Air Corporation Act 1953. The said Act was repealed by Air Corporation. i (Transfer of Undertaking Act & Repeal) Act 1994. The regulations of 1963 are not saved by S. 8 of Repeal of 1994 by express terms. Hence the Industrial Employees (S.O.) Act 1946 will become applicable to Air India.

Air India v. Union of India, 1995 II LLN 612 (SC)

Publishing of Regulations governing initiation of disciplinary proceedings in the gazette: is mandatory as required under S.13-B. But in the instant case, the holding was filed after 25 years, therefore the Karnataka State Rd. Transport Corporation Servants (Conduct & Discipline) Regulations, 1971 will continue to be applicable even though they were not published.

H. Munni Swamy Gowda v. Management of KSRTC & Another, 1997 (76) FLR 269.

14. Power to Exempt

The appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

[14-A. Delegation of Powers

The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or any rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also -

a. Where the appropriate Government is the Central Govermi1ent, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;

b. Where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government, as may be specified in the notification.]

15. Power to Make Rules

1. The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

2. In particular and without prejudice to the generality of the foregoing power, such rules may-
   a. prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders 2[or amendments] certified under this Act in accordance with any such addition;
   b. set out Model Standing Orders for the purposes of this Act;
   c. prescribe the procedure of Certifying Officers and appellate authorities;
   d. prescribe the fee which maybe charged for 3[copies of standing orders or model standing orders together with all the amendments filed in the register under Section 8] entered in the register of standing orders;
   e. provide for any other matter which is to be or may be prescribed:

   Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government;

[3. Every rule made by the Central Government under this Section shall be laid as soon as maybe after it is made, before' each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree' in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

The Schedule

The Schedule

[See Section (2-A)]

Matters to be provided in Standing Orders 2 [Model Standing Orders and Amendments] under this Act

1. Classification of workmen, *e.g.*, whether permanent, temporary, apprentices, probationers or badlis,

   [1-A. Workmen's tickets and registers]

2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and I. wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirements to enter premises by certain gates, and liability to search.
7. Closing and re-opening of sections of the industrial establishment and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.]

   [7-A. Closing and re-opening of the entire industrial establishment or departments thereof and the rights and liabilities of the employer and workmen arising therefrom.]

8. Termination of employment and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exaction by the employer or his agents or servants.

    [10-A. Age for retirement or superannuation]

    [10-B. Medical examination (including provision for bearing expenses therefor).]

    [10-C. Employment or re-employment for probationers or badlis or1emporary or casual workmen, and their conditions of service.]

11. Any other matter which may be prescribed.

Industrial Employment (Standing Orders) (BOMBAY AMENDMENT) ACT, 1957 (BOM. ACT XXI OF 1958), SECTIONS 20 AND 21

(Applicable to Maharashtra and Gujarat by Act 11 011960, S. 87)

"20. Consequential

In the said Act, in its application to the Saurashtra area of the State of Bombay, in Section 7, sub-section (2) inserted by the Industrial Employment Standing Orders (Saurashtra Amendment) Act, 1953, shall be deleted and Section 7(1) shall be re-numbered as Section 7 of the said Act:

Provided that any model standing orders in respect of any industrial establishment referred to in the said sub-section (2) of Section 7 deleted as aforesaid, and in operation on the date of the coming into force of the Act shall be deemed to be the model standing orders prescribed under Section 15 of the said Act and applied to the industrial establishment under Section 2-A; and the provisions of the said Act shall apply thereto as they apply to the model standing orders duly applied under the said Section 2-A.

21. Savings

Nothing in this Act shall be deemed to affect any industrial establishment in respect of which the appropriate Government is the Central Government."

Industrial Employment (Standing Orders)

Central Rules, 1946

Notification No. LR. 11(37) dt. The 18th Dec. 1946

In exercise of the powers conferred by Section 15, read with clause (b) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), the Central Government is pleased to make the following rules, the same having been previously published as required by sub-section (1) of the said Section 15, namely:- :

1. i. These rules may be called The Industrial Employment (Standing Orders) Central Rules, 1946.
   ii. They extend to all Union Territories, and shall also apply in any State (other than a Union Territory) to

industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oilfield.

2. In these rules, unless there is anything repugnant in the subject or context:

   a. 'Act' means the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946);

   b. 'Form' means a form set out in Schedule II appended to these rules.

2-A. In the Schedule to the Act, After Item 10, the Following Additional Matters Shall be Inserted, Namely

"10-A: Additional matters to be provided in Standing Orders relating to all industrial establishments in coal mines:

1. Medical and in case of accident;
2. Railway travel facilities;
3. Method of filling vacancies;
4. Transfers;
5. Liability of Manager of the establishment or mine;
6. Service certificate;
7. Exhibition and supply of Standing Orders."

"10-B. Additional matters to be provided in the Standing Orders relating to all industrial establishments:-

1. Service record-matters relating to service card, token tickets, certification of service, change of residential addresses of workers and record of age;
2. Confirmation;
3. Age of retirement;
4. Transfer;
5. Medical aid, in case of accidents;
6. Medical examination;
7. Secrecy;
8. Exclusive Service.

3. a. Save as otherwise provided in sub-rule (2), the Model Standing Orders for the purposes of the Act shall be those set out in Schedule I appended to these rules.

   b. The Model Standing Orders for the purposes of the Act in respect of industrial establishment in coal mines shall be those set out in Schedule I-A appended to these rules.

4. An application for certification of standing orders shall be made in Form 1.

5. The prescribed particulars of workmen for purposes of sub-section (3) of Section 3 of the Act shall be :

   1. Total number employed,
   2. Number of permanent workmen,
   3. Number of temporary workmen,

      3-A. Number of casual workmen,

   4. Number of *bad/is* or substitutes,
   5. Number of probationers,
   6. Number of apprentices,
   7. Name of trade union, or trade unions, if any, to which the workmen belong.
   8. Remarks.

6. As soon as may be after he receives an application under rule 4 in respect of an industrial establishment, the Certifying Officer, shall-

   a. where there is a trade union of the workmen, forward a copy of the draft standing orders to the trade union together with a notice in Form II;

   b. where there is no such trade union, call a meeting of the workmen to elect three representatives, to whom he shall, upon their election forward a copy of the draft standing orders together with a notice in Form II.

7. Standing Orders certified in pursuance of sub-section (3) of Section 5 or sub-section (2) of Section 6 of the Act shall be authenticated by the signature and seal of office of the Certifying Officer or the appellate authority as the case may be, and shall be forwarded by such officer or authority within a week of authentication by registered lettered post to the employer and to the trade union, or, as the case may be, the representatives of the workmen elected in pursuance of Rule 6.

7-A.(1) Any person desiring to prefer an appeal in pursuance of sub-section (1) of Section 6 of the Act shall draw up a memorandum of appeal setting out the grounds of appeal and forward it in quintuplicate to the appellate authority accompanied by a certified copy of the standing orders, amendments or modifications, as the case may be. The memorandum of appeal shall be in Form IV set out in Schedule II to these rules.

2. The appellate authority shall, after giving the appellant an opportunity of being heard, confirm the standing orders, amendments or modifications as certified by the Certifying Officer unless it considers that there are reasons for giving the other parties to the proceedings a hearing before a final decision is made in the appeal.

3. Where the appellate authority does not confirm the standing orders, amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given-

   a. where the appeal is filed by the employer or a workman, to trade unions of the workmen of the industrial establishments, and where there are no such trade unions to the representatives of workmen elected under clause (b) of Rule 6, or as the case may be, to the employer;

   b. where the appeal is filed by a trade union, to the employer and all other trade unions of the workmen of the industrial establishment;

   c. where the appeal is filed by the representatives of the workmen, to the employer and any other workmen whom the appellate authority joins as a party to the appeal.

4. The appellant shall furnish each of the respondents with a copy of the memorandum of appeal.

5. The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal.
6. On the date fixed under sub-rule (3) for the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or consider to be relevant.
7. The register required to be maintained by Section 8 of the Act shall be in Form III and shall be properly bound, and the Certifying Officer shall furnish a copy of standing orders' approved for an industrial establishment to any person applying therefor on payment calculated at the following rates per copy-
   i. for the first two hundred words or less, seventy-five paise;
   ii. for every additional one hundred words or fraction thereof, thirty-seven paise:

Provided that, where the said standing orders exceed five pages, the approximate number of the words per page shall be taken as the basis for calculating the total number of words to the nearest hundred, for the purpose of assessing the copying fee.

Model Standing Orders (Central)

Schedule I

Model Standing Orders il1 respect of Industrial Establishments not being industrial Establishments in Coal Mines

1. These orders shall come into force on Classification of workmen
2. Classification of workmen
   a. Workmen shall be classified as -
      1. permanent,
      2. probationers,
      3. badlis,
      4. temporary,
      5. casual,
      6. apprentices.
   b. A "permanent" workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal strike) or involuntary closure of the establishment.
   c. A "probationer" is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' services therein.. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his previous permanent post.
   d. A "badli" is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.
   e. A "temporary" workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.
   f. A "casual" workman is a workman whose employment is of a casual nature.
   g. An "apprentice" is a learner who is paid an allowance during the period of his training.
   h. Every workman shall be given a permanent ticket unless he is a probationer, *badli,* temporary worker or apprentice.
   i. Every permanent workman shall be provided with a departmental ticket showing his number, and shall, on being required to do so, show it to any person authorised by the manager to inspect it.
3. Every badli shall be provided with the badli card on which shall be entered the days on which he has worked in the establishment,' and which shall be surrendered if he obtains permanent employment.
4. Every temporary workman shall be provided with a 'temporary' ticket which he shall surrender on his discharge.
5. Every casual worker shall be provided with a 'casual' card, on which shall be entered the days on which he has worked in the establishment.
6. Every apprentice shall be provided with an 'apprentice' card, surrendered if he obtains permanent employment.

4. Publication of Eorking Time

The periods and hours of work for all classes of workers in each shift shall be exhibited in English and in the principal languages of workmen employed in the establishment on notice-boards maintained at or near the main entrance of the establishment and at time.-keeper's office, if any.

5. Publication of Holidays and Pay-days

Notices specifying (a) the days observed by the establishment as holidays, and (b) pay-days shall be posted on the said notice-boards.

6. Publication of Eage Rates

Notice specifying the rates of wages payable to all classes of workmen and for all classes of work shall be displayed on the said notice-boards.

7. Shift Working

More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, the workmen shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance, provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workmen affected. If as a result of the discontinuance of the shift working, any workmen are to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Disputes Act,1947 (14 of 1947) and the rules made thereunder. If shift working is restarted, the workmen shall be given notice and re-employed in

accordance with the provisions of the said Act and the said rules.

7-A. Notice of Changes in Shift Working

Any notice of discontinuance or of restarting of a shift working required by . Standing Order 7 shall be in Form IV-A and shall be served in the followed manner, namely:-

The notice shall be displayed conspicuously by the employer on a notice-board at the main entrance to the establishment.

Provided that where any registered Trade Union of workmen exists, a copy of the notice .shall also be served by registered post on the Secretary of such Union.

8. Attendance and Late Coming

All workmen shall be at work at the establishment at the time fixed and notified under Paragraph 4. Workmen attending late will be liable to the deduction provided for in thePayment of Wages Act, 1936.

9. Leave

1. Holidays with pay will to be allowed as provided for in Chapter VIII of the Factories Act, 1948, and other holidays in accordance with law, contract, custom and usage.
2. A workman who desires to obtain leave of absence shall apply to the employer or any other officer of the industrial establishment specified in this behalf by the employer, who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons thereof shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof, he shall apply to the employer or the officer specified in this behalf by the employer who shall send a written reply either granting or refusing extension of leave to the workman if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.
3. If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a) returns within 8 days of the expiry of the leave and (b) explains to the satisfaction of the employer or the officer specified in this behalf by the employer his inability to return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be kept on the *badli* list.

10. Casual Leave

A workman may be granted casual leave of absence with or without pay not exceeding 10 days in the aggregate in a calendar year. Such leave shall not be for more than three days, if at a time except m case of sickness. Such leave is Intended to meet special circumstances of which cannot be foreseen. Ordinarily, the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but when this is not possible, the head of the department shall, as soon as may be practicable, be the informed in writing of the absence from and of the probable duration of such absence.

11. Payment of Wages

1. Any wages, due to the workmen but not paid on the usual pay day on account of their being unclaimed, shall be paid by the employer on an unclaimed wage pay day in each by week, which shall be notified on the notice-boards as aforesaid.
2. All workmen will be paid wages on a working day before the expiry of the seventh or the tenth day after the last day of the wage period in respect of which the wages are payable, accordingly as the total number of workmen employed in the establishment, does not or does exceed one thousand

12. Stoppage of Work

1. The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery or stoppage of power supply, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the establishment, wholly or partially for any period or periods without notice.
2. In the event of such stoppage during working hours, the workmen affected shall be notified by notices put upon the notice-board in the department concerned, and at the office of the employer and at the time-keeper's office, it any, as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The workmen shall not ordinarily be required to remain for more than two hours after the commencement of the stoppage. If the period of detention does not exceed one hour the workmen so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workmen so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the stoppage. In the case of piece rate workers, the average daily earning for the previous month shall be taken to be the daily wage. No other compensation will be admissible in case of such stoppage. Whenever practicable, reasonable notice shall be given of resumption of normal work.
3. In case where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be. When, however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof.
4. The employer may in the event of a strike affecting either wholly or partially any section or department of the establishment close down either wholly or partially such section or department and any other section or department affected by such closing down. The fact of such closure shall be notified by notices put on the notice-board in the section or department concerned and in the time-keeper's office, if any, as soon as practicable. The workmen concerned shall also

be notified by a general notice, prior to resumption of work, as to when work will be resumed.

13. Termination of Employment

1. For terminating employment of a permanent workman, notice in writing shall be given either by the employer or the workman-one month's notice in the case of monthly-rated workmen and two weeks' notice in the case of other workmen: one month's or two weeks' pay, as the case may be, may be paid in lieu of notice.
2. No temporary workman whether monthly-rated, weekly-rated or piece-rated and no probationer or *bad!;* shall be entitled to any notice or pay in lieu thereof if his services are terminated, but the services of a temporary workman shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in Paragraph 14.
3. Where the employment of any workman is terminated, the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

14. Disciplinary Action for Misconduct

l. A workman may be fined up to two per cent of his wages in a month for the following acts and omissions, namely:

2. A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

3. The following acts and omissions shall be treated as misconduct:

   a. wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior,

   b. theft, fraud or dishonesty in connection with the employer's business or property,

   c. wilful damage to or loss of employer's goods or property

   d. taking or giving bribes or any illegal gratification,

   e. habitual absence without leave or absence without leave for more than 10 days,

   f. habitual late attendance,

   g. habitual breach of any law applicable to the establishment.

   h. riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline,

   i. habitual negligence or neglect of work,

   j. frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month, .

   k. striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.

[1. Sexual harassment which includes such unwelcome sexual determined behaviour (whether directly or by implication) as-

   i. physical contact and advances; or

   ii. a demand or request for sexual favours; or

   iii. sexually coloured remarks; or

   iv. showing pornography; or

   v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature].

4.a.Where disciplinary proceeding against a workman is contemplated or is pending or where criminal proceedings against him m respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from .the date of suspension.

b. A workman who is placed under suspension shall be paid subsistence allowance in accordance with the provisions of Section 10- A of the Act.

   ba. In the enquiry, the workman ,shall be entitled to appear in person or to be represented by an office-bearer of a trade union of which he is a member.

   bb. The proceedings of the inquiry shall be recorded in Hindi or in English or in the language of the State where the industrial establishment is located, whichever is preferred by the workman.

   bc. The proceedings of the enquiry shall be completed within a period of - three months:

   Provided that the period of three months may, for reasons to be recorded in writing, be extended by such further period as may be deemed necessary by the inquiry officer.

c. If on the conclusion of the inquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment of reduction in rank would meet the ends of justice, the employer shall pass an order accordingly:

   Provided that when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period, and the subsistence allowance already paid to him shall not be recovered:

   Provided further that where the period between the date on which the workman was suspended from duty pending the inquiry or investigation or trial and the date on which an order of suspension was passed under this clause exceeds four days, the workman shall be deemed to have been suspended only for four days or for such shorter period as is specified in the said order of suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under

suspension, after deducting the subsistence allowance paid to him for such period:

Provided also that where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period:

Provided also that in the case of a workman to whom the provisions of clause (2) of Article 311 of the Constitution apply, the provisions of that Article shall be complied with.

d. If on the conclusion of the inquiry, or as the case ~ay be, of the criminal proceeding, the. workman has been found to be not guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period.

e. The payment of subsistence allowance under this standing order shall be subject to the workman concerned not taking :UP any employment during the period of suspension.

5. In awarding punishment under this standing order, the authority imposing the punishment shall take Into account any gravity of the misconduct, the previous record, If any, of the workman and any other extenuating or aggravating circumstances, that may exist. A copy of the order passed by the authority imposing the punishment shall be supplied to the workman concerned.

6. a. A workman aggrieved by an order imposing punishment may within twenty-one days from the date of receipt of the order, appeal to the appellate authority.

   b. the employer shall, for the purposes. of clause (a), specify the appellate authority,(c) the appellate authority, after giving an opportunity to the workman of being heard, shall pass such order as he thinks proper on the appeal within fifteen days of its receipt and communicate the same to the workman in writing.

15. Complaints

All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or other person specified in this behalf with the right of appeal to the employer.

16. Certificate on Termination of Service

Every permanent workman shall be entitled to a service certificate at the time of his dismissal, discharge or retirement from service.

17. Liability of Employer

The employer of the establishment shall personally be held responsible for the proper and faithful observance of the standing orders.

17-A. (1) Any person desiring to prefer an appeal in pursuance of sub-section (1) of Section 6 of the Act shall draw up a memorandum of appeal setting out the ground of appeal and forward it in quintuplicate to the appellate authority accompanied by a certified copy of the standing orders, amendments or modifications, as the case may be.

2. The appellate authority shall, after giving the appellant an opportunity of being heard, confirm the standing orders, amendments or modifications as certified by the certifying officer unless it considers that there are reasons for giving the other parties to the proceedings a hearing before a final decision is made in the appeal.

3. Where the appellate authority does not confirm the standing orders, amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given-

   a. where the appeal is filed by the employer or a workman, to trade unions of the workmen of the industrial establishments, and where there are no such trade unions, to the representatives of workmen elected under clause (b) of Rule 6, or as the case may be, to the employer,

   b. where the appeal is filed by a trade union to the employer and all other trade unions of the workmen of the industrial establishment;

   c. where the appeal is filed by the representatives of the workmen, to the employer and any other workman whom the appellate authority joins as a party to the appeal.

4. The appellant shall furnish each of the respondents with a copy of the memorandum of appeal.

5. The appellate authority may at any stage call for any evidence it considers necessary -for the disposal of the appeal.

6. On the date fixed, under sub-rule (3) for the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or consider to be relevant.

18. Exhibition of Standing Orders

A copy of these orders in English and in Hindi shall be pasted at and on a notice-board maintained at or near the main entrance to the establishment and shall be kept in legible condition.

LESSON 5:
THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946 (CONTINUED) THE SCHEDULES UNDER THE ACT

Form

Schedule I-A

Model Standing Orders for Industrial Establishment in Coal Mines

1. These orders shall come into force on…..……..

2. Definition

In these orders, unless the context otherwise requires -

a. 'attendance' means presence of the workman concerned at the place or places whereby the terms of his employment he is required to report for work and getting hi attendance marked;

b. The expression 'employer' and 'workman' shall have the meanings assigned to them in Sections 2(d) and (i) respectively of the Industrial Employment (Standing Orders Act, 1946;

c. 'Manager' means the manager of the mine and includes an acting manager for the time being appointed in accordance with the provisions of the Mines Act, 1952;

d. words importing masculine gender shall be taken to include females;

e. words in the singular shall include the plural and vice versa.

3. Classification of Workmen

a."Workmen" shall be classified as-

i. permanent;

ii. probationers;

iii. *bal/is* or substitute;

iv. temporary;

v. apprentices; and

vi. casual.

b. A "permanent" workman is one who is appointed for an unlimited period or who has satisfactorily put in three months' continuous service in a permanent post as a probationer; .

c. A "probationer" is one who is provisionally employed to fill a vacancy in a permanent post and has not completed three months' service in that post unless the probationary period is extended. If a permanent workman is employed as a probationer in a new post he may, at any time, during the probationary period not exceeding three months, be 1 reverted to his old permanent post unless the probationary period is extended.

d. A "badli", or substitute is one who is appointed in the post of a permanent workman or a probationer who is temporarily absent; but he would cease to be a "badli" oncompletion of a continuous period of service of one year (190 attendances in the case of below ground workman and 240 attendances in the case of any other workman) in the same post or other post or posts in the same category or earlier if the post is vacated by the permanent workman or probationer. A "badli" working in place of a probationer would be deemed to be permanent after completion of the probationary period.

e. A "temporary" workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period. The period within which it is likely to be finished should also be specified but it may be extended from time to time, if necessary.

f. An "apprentice" is a learner who is either paid an allowance or not paid any allowance during the period of his training, which shall *inter alia* be specified in his term of contract. .

g. A "casual" workman is a workman who has been engaged for work which is of an essentially casual nature.

4. Every workman shall be given a ticket appropriate to his classification at the time of his me appointment and shall, on being required to do so. show it to the person authorised by the employer in that behalf. The said ticket shall carry the signature or thumb-impression of the workman concerned. If the workman loses his ticket, the Manager shall provide him with another ticket on a payment of 25 paise.

5. Display of Notices

a. The period and hours of work for all classes of workmen in each shift shall be exhibited in English and in the language understood by the majority of workmen employed in the establishment on Notice-boards maintained at or near the main entrance of the establishment and at the time-keeper's office, if any.

b. Notices, specifying (a) the days observed by the establishment as holidays and (b) pay days shall be posted on the said Notice-boards, (c) notices specifying the rates of wages and scales of allowances payable to all classes of workmen and for all classes of , work shall be displayed on the said Notice-boards.

6. Payment of Wages

a. Wages shall be paid direct to the individual workmen on any working day between the hours 6.00 a.m. and 6.00 p.m. at the office of the mine. The Manager or any other responsible person authorised by him shall witness and attest the payments and note the date of payment in the wage register. Payment of wages to a contractor's workmen shall be made at a place to be specified by the Manager and it shall be witnessed by a nominee of the employer deputed for this purpose in writing.

b. Any wages due to a workman but not paid on the usual pay day on account of their being unclaimed shall be paid by the

employer on such unclaimed wage pay day in each week as may be notified to the workmen. If the workman so desires, the unpaid wages and other dues payable to him shall be remitted to his address by money order deducting therefrom the money order commission charges. All claims for the unpaid wages shall be presented to the employer within a period of twelve months from the date on which the wages became due.

c. Overtime shall be worked and wages thereof paid in accordance with the provisions of the Mines Act, 1952, as amended by the Mines (Amendment) Act, 1959, and as may be prescribed from time to time. For work on weekly rest day, the workman shall be paid as laid down in any agreement or award or as the case may be, as per usage or custom.

7. Shift Working

More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked a workman shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance, provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workman affected. If as a result of the discontinuance of shift working, any workmen are to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Disputes Act, 1947 (14 of 1947), and the rules made thereunder. If shift working is restarted, the workmen shall be given notice and re-employed in accordance with the provisions of the said Act and the said rules.

8. Attendance

All workmen shall be at work at the mine at the time fixed and notified to them.

9. Absence from Place of Work

Any workman, who after going underground or after coming to his work in the department in which he is employed, is found absent from his proper place of work during working hours without permission from the appropriate authority or without any sufficient reason shall be liable to be treated as absent for the period of his absence.

10. Festival Holidays and Leave

a. There shall be seven paid festival holidays or as laid down in an agreement or an award in force. Out of these seven days, the Republic Day, Independence Day and Mahatma Gandhi's Birth Day shall be allowed without option and the rest of the days shall be fixed by agreement or local custom. Whenever a workman has to work on any of these holidays, he shall, at his option be entitled to either thrice the wages for the day or twice the wages for the day or twice the wages for the day on which he works and in addition to avail himself of a substituted holiday with wages on any other day or as laid down in an agreement or an award in force.

b. i. The workmen shall be entitled to leave with wages in accordance with the provisions contained in Chapter VII of the Mines Act, 1952.

ii. Normally a workman will not be refused the leave applied for by him. But the employer may refuse, revoke or curtail the leave applied for by workman, if the exigencies of work so demand. Wages in lieu of leave shall be paid to a workman, where he has been refused the leave asked for and in cases where he cannot accumulate the leave any further. If a workman is refused leave in a particular year in the interest of work, it would be open to him next year either to avail of leave on two occasions with the usual railway concessions or in case he avails of leave on only one occasion, the railway fair for the unavailed trip would be paid to him in the shape of National Savings National Defence Certificates.

c. Quarantine leave shall be granted to a workman, who is prevented from attending to his duty because of his coming into contact, through no fault of his own, with a person , suffering from a contagious disease. The leave shall be granted for such period as is covered by a certificate from the medical officer of the mine. Payment for the period of quarantine leave shall be at the rate of 50 per cent of the wages (basic plus dearness allowance) payable to a workman. Quarantine leave cannot be claimed, if a workman has refused to accept during the previous three months prophylactic treatment for the disease in question.

d. A workman who desires to obtain leave of absence shall apply to the Manager not less than fifteen days before the commencement of the leave, except where leave is required in unforeseen circumstances, and the Manager shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier: provided that if the leave applied for is to commence on the date of the application or within three days thereof, orders shall be given on the same day. If the leave asked for is granted, a leave-pass shall be" given to the workman. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof, he shall apply to the Manager, who shall send a written reply either granting or refusing extension of leave to the workman, Sanction/refusal of leave should be communicated to the workman in writing invariably.

e. if a workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose lien on his appointment unless he -

a. returns within ten days of expiry of his leave; and

b. explains to the satisfaction of the Manager his inability to return on the expiry of his leave.

In case, the workman loses, as aforesaid, his lien o~ the appointment, he shall be entitled to be kept on the "badli list".

f. A workman may be granted casual leave of absence with pay not exceeding five days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but where this is not possible, the head of the department shall, as soon as may be practicable, be informed in writing of such absence and of the probable duration thereof.

g. Notwithstanding anything mentioned above, any workman who overstays his sanctioned leave or remains absent without reasonable cause will render himself liable for disciplinary action.

11. [Deleted]

12. Railway Travel Facilities

a. When a workman proceeds on leave and is qualified for free railway fare, the employer shall give him the cost equivalent to his ticket (including bus fare) and for boat to his home.

b. Every workman who has completed a period of twelve months' continuous service, would qualify for railway fare or bus fare or both for going home on leave and returning to the mine on the expiry of the leave. The twelve months' service shall be deemed to have been completed if, during the twelve months preceding the date on which he applies for leave, he has worked for not less than two hundred and forty days.

c. If on the expiry of the leave, a workman returns he shall then receive a cash payment equivalent to the return fare. If on the return the mine is unable to have him back, he shall be paid return fare at once.

d. If the journey home is by bus or partly by bus and partly by train the cost of the journey shall be adjusted accordingly.

e. The workman shall be entitled to railway fare by mail or express train wherever under the Railway Rules tickets are available for such travel.

f. The class by which a workman is entitled to travel shall be:

i. if his basic wage is Rs.165 or less per monthIII Class

ii. if his basic wage is above Rs.165 and up to Rs. 265 per month II Class

iii. if his basic wage is above Rs. 265 per month I Class

13. Termination of Services

a. For terminating the services of permanent workman having less than one year of continuous service, notice of one month in writing with reasons or wages in lieu thereof shall be given by the employer:

Provided that no such notice shall be required to be given when the services of the, workman are terminated on account of misconduct established in accordance with the Standing Orders.

b. Subject to the provisions of the Industrial Disputes Act, 1947 no notice of termination of employment shall be necessary in the case of temporary and *badli* workmen:

Provided that a temporary workman, who has completed three months' continuous service, shall be given two weeks' notice of the intention to tern1inate his employment if such termination is not in accordance with the terms of the contract of his employment:

Provided further that when the services of a temporary workman, who has not completed three months' continuous service, are terminated before the completion of the term of employment given to-him, he shall be informed of the reasons in writing. When the services of a badli workman are terminated before the return to work of the permanent incumbent or the expiry of his (Radii's) term of employment, he shall be informed of the reasons for such termination in writing.

c. No workman shall leave the service of an employer unless notice in writing is given at the scale indicated below:-

i. For monthly paid workmen One month

ii. For weekly paid workmen Two weeks:

Provided that it will be for employer to relax this condition and the workman may pay cash in lieu of such notice. .

d. For purposes of Standing Orders 13(a), (b) and (c) the terms 'service' and 'wages' shall have the same meaning as assigned to these in Sections 25(B)(1) and 2(rr) respectively of the industrial\ Disputes Act, \941.

14. Stoppage of Work and Reopening

a. Subject to the provisions of Chapter V -A of the Industrial Disputes Act, 1947, the, employer may, at any tine, in the event of underground trouble, fire, catastrophe, breakdown of machinery, stoppage of power supply, epidemic, Civil commotion or any other cause beyond the control of the employer, stop any section or sections of the mine wholly or partly for any period or periods.

b. In the event of such stoppage during working hours, the workmen affected shall be notified by notice put up on the notice-board m the departments concerned and of the office as soon as practicable as to when work will be resumed and whether they are to remain or leave their place of work. The workmen will not ordinarily be required to remain for more than two hours after the commencement of the stoppage. Whenever workmen are laid off on account of failure of plant or a temporary curtailment or production or other causes they shall be paid compensation in accordance with the provisions of the Industrial Disputes Act, 1947. Where no such compensation is admissible, they shall be granted leave with or without wages, as the case may be, at the option of the workmen concerned, leave due to them. When workmen are to be laid off for an indefinitely long period, their services may be terminated subject to the provisions of the Industrial Disputes Act, 1947. If normal work is resumed two weeks' notice thereof shall be given by the pasting of notices at on near the mine office and the workmen discharged earlier by the employer shall, if they

present themselves for work, have preference for re-employment.

c. The employer may in the event of a strike affecting either wholly or partially any section of the mine close down either wholly or partially such section of the mine and any other section affected by such closure. The fact of such closure shall be notified by notices put up on notice board in the Manager's office. Prior to resumption of work, the workmen concerned will be notified by a general notice indicating as to when work will be resumed. A copy of such notice shall be sent to the registered trade union or unions functioning in the establishment.

15. Method of Filling Vacancies

In the matter of filling up of permanent vacancies, badli and temporary workmen and probationers would be given preference in order of their seniority.

16. [Deleted]

17. Disciplinary Action for Misconduct

i. A workman may be suspended by the employer pending investigation or departmental enquiry and shall be paid subsistence allowance in accordance with the provisions of Section 10-A of the Act. The employer shall normally complete the enquiry within 10 days. The payment of subsistence allowance shall be subject to the workman not taking any employment elsewhere during the period of suspension.

The Following shall Denote Misconduct

a. Theft, fraud, or dishonesty in connection with the employer's business or property.

b. Taking or giving of bribes or an illegal gratification whatsoever in connection with the employer's business or his own Interests.

c. Wilful insubordination or disobedience, whether along or in conjunction with another or others, of any lawful or reasonable order *of* a superior. The order of the superior should normally be in writing.

d. Habitual late attendance and habitual absence without leave or without sufficient cause.

e. Drunkenness, fighting or riotous, disorderly or indecent behaviour while on duty at the place *of* work.

f. Habitual neglect *of* work.

g. Habitual indiscipline.

h. Smoking underground or within ~he mine area in places where it is prohibited.

i. Causing wilful damage to work in progress or to property of the employer.

j. Sleeping on duty.

k. Malingering or slowing down work.

i. Acceptance of gifts from subordinate employees.

m. Conviction in any Court of Law for any criminal offence involving moral turpitude.

n. Continuous absence without permission and without satisfactory cause for more than ten days.

o. Giving false information regarding one's name, age, father's name, qualification or previous service at the time of the employment.

p. Leaving work without permission or sufficient reason.

q. Any breach of the Mines Act, 1952, or any other Act or any rules, regulations or bye-laws thereunder, or of any Standing Orders.

r. Threatening, abusing or assaulting any superior or co-worker.

s. Habitual money-lending.

t. Preaching of or inciting to violence.

u. Abetment of or attempt at abetment of any of the above acts of misconduct.

v. Going on illegal strike either singly or with other workers without giving 14 days' previous notice.

w. Disclosing to any unauthorised person of any confidential information in regard to the working or process of the establishment which may come into the , possession of the workman in the course of his work.

x. Refusal to accept any charge-sheet or order or notice communicated in writing.

y. Failure or refusal to wear, use any protective equipment given by the employers.

[1][z. Sexual harassment which includes such unwelcome sexual determined behaviour (whether directly or by implication) as-

i. physical contact and advances; or

ii. a demand or request for sexual favours; or

iii. sexually coloured remarks; or

iv. showing pornography; or

v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature].

ii. No order of punishment under Standing Order No. 17(i) shall be made unless the workman concerned is informed iR writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. A departmental enquiry shall be instituted before dealing with the charges. During the period of enquiry, the workman concerned may be suspended. The workman may take the assistance of a co-worker to help him in the enquiry, if heso desires. The records of the departmental enquiry shall be kept in writing. The approval of the owner, agent or the chief mining engineer of the employer or a person holding similar position shall be obtained before imposing the punishment of dismissal. A copy of the enquiry proceedings shall be given to the workman concerned on the conclusion of the enquiry, on request by the workman.

iii. If a workman is not found guilty of the charges framed against him, he shall be deemed to be on duty during the full period of his suspension and he shall be entitled to receive the same wages as he would have received if he had not been suspended.

iv. In awarding punishment under this Standing Order, the authority awarding punishment shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that' may exist. A copy of the order passed by the authority awarding punishment shall be supplied to the workman concerned.

18. Time-limit for Making Complaints, Appeals, etc

All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of thc employer or his servant shall be submitted within 7 days of such cause of complaint to the Manager of the mine, with the right of appeal to the employer. Any appeal to the employer shall be made within 3 days of the decision of the Manager. The employer shall normally give his decision within 3 days of the receipt of the appeal.

19. Liability of Manager of the Mine

The Manager of the mine shall personally be held responsible for the proper enforcement of these Standing Orders provided that where a Manager is overruled by his superior, the latter shall be held responsible for the decision taken.

20. Service Certificate

Every workman who was employed continuously for a period of more than three months shall be entitled to a service certificate at the time of his leaving the service of employer.

21. Entry and Exit

All workmen shall enter and leave the premises of the establishment through authorised gates and shall be liable for search while going in or coming out of the premises. In case of women workmen search will only be made by woman workman.

22. Exhibition and Supply of Standing Orders

A copy of these Orders in English and in the regional languages of the local area in which the mine is situated shall be posted at the manager's office and in such other places of the mine as the employer may decide and it shall be kept in a legible condition. A copy of the Standing Orders shall be supplied to a workman on application, on payment of a reasonable price. A trade union in the establishment will, however, be entitled to the free supply of a copy of the Standing Orders, provided the union is one which is recognised by the employer.

Schedule I-B

Model Standing Orders on additional items applicable to all industries

1. Service Record

Matters relating to service card, token tickets, certification of service, change of residential address of workman and record of age.

i. Service Card -Every industrial establishment shall maintain a service card in respect of each workman in the form appended to these orders, wherein particulars of that workman shall be recorded with the knowledge of that workman and duly attested by an officer authorised in this behalf together with date.

ii. Certification of service-

a. Every workman shall be entitled to a service certificate, specifying the nature of work (designation) and the period of employment (indicating the days, months, years), at the time of discharge, termination, retirement or resignation from service;

b. The existing entries in para 16 of Schedule I and para 20 of the Schedule I-A shall be omitted.

iii. Residential address of workman-

A workman shall notify the employer immediately on engagement the details of his residential address and thereafter promptly communicate to his employer any change of his residential address. In case the workman has not communicated to this employer the change in his residential address, his last known address shall be treated by the employer as his residential address for sending any communication.

iv. Record of age -

a. Every workman shall indicate his exact date of birth to the employer or the officer authorised by him in this behalf, at the time of entering service of the establishment. The employer or the officer authorised by him in this behalf may before the date of birth of workman is entered in his service card, require him to supply:-

i. is matriculation or school leaving certificate granted by the Board of Secondary Education or similar educational authority; or

ii. a certified copy of his date of birth as recorded in the registers of a municipality, local authority or Panchayat or Registrar of Births;

iii. in the absence of either of the aforesaid two categories of certificates, the employer or the officer authorised by him in this behalf may require the workman to supply a certificate from a Government Medical Officer not below the rank of an Assistant Surgeon, indicating the probable age of the workman provided the cost of obtaining such certificate is borne by the employer

iv. where it is not practicable to obtain a certificate from a Government Medical Officer, an affidavit sworn, either by the workman or his parents, or by a near relative, who is in a position to know about the workman's actual or approximate date of birth, before a First Class Magistrate or Oath Commissioner, as evidence in support of the date of birth given by him.

b. The date of birth of a workman, once entered in the service card of the establishment shall be the sole evidence of his age in relation to .all matters pertaining to his service including fixation of the date of his retirement from the service of the establishment. All formalities regarding recording of the date of birth shall be finalised within three months of the appointment of a workman.

c Cases where date of birth of any workman had already been decided on the date these rules come into force shall not be reopened under these provisions.

2. Confirmation
The employer shall in accordance with the terms and conditions stipulated in the letter of appointment, confirm the eligible workman and issue a letter of confirmation to him. Whenever a workman is confirmed, an entry with regard to the confirmation shall also be made in his service card within a period of thirty days from the date of such confirmation.

3. Age of Retirement
The age of retirement or superannuation of workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of (58).years of age by the workman.

4. Transfer
A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer:

Provided that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer:

Provided further that a workman is transferred from one job to another, which he is capable of doing, and provided also that where the transfer involves moving from one State to another such transfer shall take place, either with the consent of the workman or where there is a specific provision to that effect in the letter of appointment, and provided also that (i) reasonable notice is given to such workman, and (ii) reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid travelling allowance including the transport charges, and fifty per cent thereof to mea incidental charges.

5. Medical and in Case of Accidents
Where a workman meets with an accident in the course of his employment, the employ~ shall, at the employer's expense, make satisfactory arrangements for immediate and necessary medical aid to the injured workman and shall arrange for his further treatment if considered necessary by the doctor attending on him. Wherever the workman is entitled for treatment and benefits under the Employees' State Insurance Act, 1948 or the Workmen's Compensation Act, 1923, the employer shall arrange for the treatment and compensation accordingly.

6. Medical Examination
Wherever the recruitment rules specify medical examination of a workman on his first appointment, the employer shall, at the employer's expense make arrangements for the medical examination by a registered medical practitioner.

7. Secrecy
No workman shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property of an industrial establishment out of the work premises except with the written permission of his immediate superior, nor shall he in any way pass or cause to be passed or disclose or cause to be disclosed any information or matter concerning the manufacturing process, trade secrets and confidential documents of the establishment to any unauthorised person, company or corporation without the written permission of the employer.

8. Exclusive Service
A workman shall not at any time work against the interest of the industrial establishment in which he is employed and shall not take any employment in addition to his job in the establishment, which may adversely affect the interest of his employer.

So, students for your reference I am presenting to you a form under standing order so that you get an idea of how things are done in a practical way-

Schedule-II

Forms Under Standing Orders

Form I
(Industrial Employment (Standing Orders) Act, 1946-Section 3]

Dated ……..…20……

To,

The Certifying Officer,

(Vide Notification No. L.R.11 (98), dated 25th July, 1953]

(Area)

(Place)

Sir,

Under the provisions of Section 3 of the Industrial Employment (Standing Orders) Act, 1946, I enclose five copies of the draft Standing Orders proposed by me for adoption

……..……..…….

(Name)

……..……..…….

(Place) Postal address

an industrial establishment owned/controlled by me, with the request that these orders may be certified under the term of the Act. I also enclose a statement giving the particulars prescribed Rule 5 of the Industrial Employment (Standing Orders) Central Rules, 1946.

I am, etc.

(Signature)

Employer/Manager

Form II
[Notice under Section 5 of the Industrial Employment (Standing Orders) Act. 1946.]

Office of the Certifying Officer for …… area/p1ace ……

Dated the ……. 20……

I…… Certifying Officer …….area, forward herewith a copy of the draft Standing Orders proposed by the employer for adoption in the ……..industrial establishment and submitted to me for certification under the Industrial Employment (Standing Orders) Act, 1946. Any objection which the workmen may desire to make to the draft Standing Orden

should be submitted to me within fifteen days from the receipt of this notice.

(Certifying om

To

The Secretary

Union

Form III

[Industrial Employment (Standing Orders) Act, 1946-Section 8]

Registers-Part I

Industrial Establishment

Serial No.	Date of the dispatch of the copy of standing orders authenticated under Section 5 for the first time	Date of filing appeal	Date and nature of decision	Amendment made on appeal, if any	Date of the dispatch of the copy of the standing orders as settled on appeal	Any notice subseqnently given or received of any amendment	Result

Part II

(Should contain the authenticated copy of the Standing Orders)

[Form IV

[See Rule 7-A(1)]

(To be furnished in respect of each clause appealed against, separately)

1. Draft of the Standing Orders under appeal as submitted by the employers.
2. Objection made/modification suggested, if any, the Draft Standing Order under appeal, by the Trade Union/ Representatives of workmen.
3. Standing Order under appeal, as certified by the Certifying Officers.
4. Grounds of appeal by the employers/trade tmionlworkmen's representatives.]

[Form IV-A

(See Standing Order 7-A of Schedule I)

Notice of discontinuance/restarting of a shift working to be given by an employer.

Name of employer ……..

Address ……

Dated the ……..day of ……..20……

In accordance with Standing Order No of the Standing Orders certified and approved in respect of my/our industrial establishment. I/we hereby give notice to all concerned that it is my/ our intention to discontinue/restart the shift working specified in the f Annexure with effect from l

Signature …….

Designation ……..

Annexure

(Here specify the particulars of change in the shift working proposed to be effected).

Copy forwarded to:

1. The Secretary of registered trade union, if any.
2. The Assistant Labour Commissioner (Central)/Labour Employment Officer

   (Here enter office address of the Assistant Labour Commissioner (Central) / Labour Employment Officer in the local area concerned).
3. The Regional Labour Commissioner (Central) Zone.
4. The Chief Labour Commissioner (Central), New Delhi.]

[Form V

(See Standing Order 1, Schedule I-B)

Service Card

Name of Estt./Factory/

Ticket Token No.

1. Register Serial No.
2. Name
3. Specimen Signature/Thumb Impression.
4. Father's or Husband's name.
5. Sex
6. Religion
7. Date of Birth
8. Place of Birth
9. Date of Joining
10. Details of Medical Certificate at the time of joining
11. Educational and other qualifications
12. Can Read
13. Can Write
14. Can Speak
15. Height
16. Identification Marks
17. Category of Workman
18. Department
19. Details of family members.
20. Permanent Address
21. Local Address
22. Quarter number
23. Life Insurance Policy No.

24. Provident Fund Account No.
25. Nominee for Gratuity
26. Nominee for pension, if any
27. Employee State Insurance No.
28. Training courses attended (details)
29. (Eligibility for higher jobs)
30. Proficiency tests passed.
31. Employment History

Department	Token No.	Designation	Scale of Pay	Joined	Left Reason
1	2	3	4	5	6

32. Absence Periods

……..……..……

From To Reason Medical reports regarding suitability for continued employment

i. Sick Leave
ii. Earned Leave
iii. Any other leave.

33. Maternity Benefit
34. Workmen's Compensation

Details of accidents:

35. Details of Disciplinary Action
36. Promotions
    i. Details
    ii. Awards
    iii. Issue of Certificate of commendation
37. Date of superannuation
38. .Any other matter.]

The Bombay Industrial Employment (Standing Orders) Rules, 1959

G.N., L. & S.W.D. No. INT. 3058-i, dated 6th January, 1959

(B.G., Pt. I-L, p. 333)

In exercise of the powers conferred by Section 15 of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), in its application to the State of Bombay, the Government of Bombay hereby makes the following rules, namely:-

1. Short Title, Extent and Commencement

a. These rules may be called the Bombay Industrial Employment (Standing Orders) Rules, 1959.
b. They extend to the whole of the [1][State of Maharashtra].
c. They shall come into force on and with effect from the 15th day of January, 1959.

2. Definitions

In these rules, unless the context otherwise requires

a. "Act" means the Industrial Employment (Standing Orders) Act, 1946;
b. "Form" means a form set out in Schedule II appended to these rules;
c. Words and expressions used in these rules but not defined shall have the meanings assigned to them in the Act.

3. Model Standing Orders

The model standing orders for the purposes of the Act shall be those set out in Scheduleappended to these rules.

4. Representatives of Workmen

1. Where there is a Trade Union representing workmen in any industrial establishment, the trade union of which the workmen are members, shall be the representative of such workmen for the purposes of the Act, and these rules.
2. Where there is no such Trade Union the Certifying Officer shall cause a meeting of the workmen to be held on such date as may be fixed by him or by any person authorised by him for the election of Five Representatives for each of the [three] categories of

   workmen, namely:-

   i. Workmen doing Manual or Technical work, 7.
   ii. Workmen doing Clerical or Supervisory work, and
   iii. Working Journalists in the case of Newspaper Establishment.]
3. The Certifying Officer or any person authorised by him may require the employer to display a notice of the date, time and place of the meeting at or near the main gate or in the Departments of the establishment prominently and in such manner as may be directed by him or any person authorised by him.
4. The meeting shall be convened, and presided over by the Certifying Officer or such person as may be authorised or deputed by him.
5. The workmen declared elected at the meeting by the person presiding shall be the representatives of the workmen for the purposes of the Act and these rules.

5. Application for Modification

An application for modification under sub-section (2) of Section 10 of the Act, may be made on behalf of any workman in any industrial establishment,-

i. by any other workman employed in such industrial establishment, or
ii. by his representative elected under Rule 4.

6. Particulars of Statements

1. Every employer who submits draft amendments under sub-section (1) of Section 3 of the Act or applied for modification under sub-section (2) of Section 10 of the Act, shall furnish the Certifying Officer separate statements in Form' A' in respect of-

   i. workmen doing manual or technical work,
   ii. workmen doing clerical or supervisory work,

   [iii. Working Journalists in the case of newspaper establishment]

   Each such statement shall contain the following particulars, namely:

a. the total number of workmen employed in the industrial establishment;

b. the number of permanent workmen, probationers, badlis or substitutes, temporary workmen, apprentices, part-time workmen and casual workmen; and

c. the name of the trade union or unions, if any, of which the workmen are members.

2. Every workman submitting draft amendments under sub-section (1) of Section 3 of the Act and every workman or his representatives making application for modification under sub-section (2) of Section 10 of the Act shall furnish the Certifying Officer with a statement In Form 'B'.

7. Submission of Joint Draft

A group of employers in similar industrial. establishment may submit a joint draft of amendments provided such joint draft is submitted through a person authorised in this behalf by such group and five time as many copies of the drafts as the number of industrial establishments to which the joint draft is to apply as submitted. The following particulars shall be furnished along with the joint draft namely:-

i. a list of employers constituting the group with the name and address in full of each industrial establishment;

ii. a declaration that the industrial establishments constituting the group have agreed to abide by the conditions laid down in the joint draft;

iii. statements' prescribed by sub-rule (I) of rule 6 in respect of each of the industrial establishments constituting the group.

8. Notice to Workmen, Employer etc.

1. On receipt of the draft amendments or modifications submitted by an employer, the Certifying Officer shall, as soon as practicable,-

   i. cause copies thereof together with notice in Form 'c' to be affixed on the notice board of the industrial establishment concerned for the information of the workmen of the said establishment, and

   ii. forward by registered post copies of the draft amendments or modifications and of the notice in Form 'C' together with notice in Form '0' to the trade union or unions named by the employer in the statement submitted by him in Form' A' and to any other trade union or unions which in the opinion of the Certifying Officer are concerned with the establishment.

2. On receipt of the draft amendments or modifications submitted by or on behalf of a workman, the Certifying Officer shall, as soon as practicable,-

   i. cause copies thereof together with notice in Form 'C' to be affixed on the notice board of the industrial establishment concerned for the information of the workmen of the said establishment, and

   ii. forward by registered post copies of the amendments or modifications and of the notice in Form 'c' together with notice in Form '0' to the trade union or unions named by the workmen in statement submitted by or on behalf of him in FOm1 'B' and to any' other trade union or unions which in the opinion of the Certifying Officer are concerned with the establishment, and

   iii. forward by registered post copies of the amendments or modifications to the employer requesting him to submit his objections, if any, to the amendments or modifications within fifteen days of the receipts of a communication to that effect from the Certifying Officer.

9. Submission of Copies of Draft Amendments and Modifications

The copies of the draft amendments or modifications to be submitted by the employer under sub-section (I) of Section 3 and under sub-section (2) of Section' 10 of the Act shall be type-written on one side of the paper only.

10. Authentication of Amendments or Modifications

The amendments or modifications certified by the Certifying Officer or confirmed by the appellant authority shall be authenticated by affixing thereto the seal of the Certifying Officer or as the case may be, of the appellate authority. The amendments or modifications as certified by the Certifying Officer shall be forwarded to the parties by registered post acknowledgment due or by hand delivery.

11. Register Under Section 8

The register of Standing Orders or model standing orders together with all amendments required to be maintained under Section 8 of the Act shall be in Form 'E'.

12. Fees

The fee payable for furnishing a copy of the standing orders, or model standing orders together with all the amendments as certified by the Certifying Officer shall be five paise for every 25 words or part thereof. For certified copies, an additional fee of five naye paise per 100 words or part thereof shall be charged, and on the total amount payable for a certified copy a surcharge of 25 per cent shall be levied.

13. Procedure in Appeal

1. Any person desiring to prefer an appeal against an order of the Certifying Officer shall draw up a memorandum of appeal setting out the grounds of appeal and forward it in quadruplicate accompanied by a certified copy of the amendments or modifications and of the order of the Certifying Officer against which the appeal is preferred, to the Registrar of the Industrial Court.

2. The appellate authority shall, after giving the appellant an opportunity of being heard, unless it comes to the conclusions that the decision of the Certifying Officer is contrary to law or otherwise erroneous, confirm the amendments or modifications as certified by him.

3. Where the appellate authority does not confirm the amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given-:

   a. where the appeal is filed by the employer or a workman, to trade unions of the workmen of the industrial establishment and where there are no such

trade unions, to the representatives of workmen elected under Rule 4, or as the case may be, to the employer;

b. Where the appeal is filed by a trade union, to the employer and all other trade unions of the workmen of the industrial establishment;

c. Where the appeal is filed by the representatives of the workmen, to the employer and any other workmen whom the appellate authority joins as a party to the appeal;

4. The appellate authority shall furnish each of respondents with a copy of the memorandum of appeal.
5. The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal.
6. On the date fixed under sub-rule (3) for the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or considers to be relevant.

14. Application Under Section 13-A of the Act

1. Every application made under Section 13-A of the Act shall be forwarded to the Labour Court by registered post or be presented to the clerk of the Court or any other subordinate officer authorised by the Court in this behalf.
2. Such application may be made on behalf of any workman in any industrial I establishment,-
   i. by any other workman employed in such industrial establishment, or
   ii. by his representative elected under Rule 4.

[14-A. Procedure to be Followed by Labour Courts in Deciding Applications Under Section 13-A of the Act

1. The Labour Court in deciding applications under Section 13A of the Act may follow the procedure of judicial enquiry which may cover examination of documents, witness and other evidence, produced by the parties. For this purpose, the Labour Court shall have the powers as are vested in it under the Industrial Disputes Act, 1947 in so far as they are applicable in deciding such applications.
2. Without prejudice to the generality of the provisions of sub-rule (1) the Labour Court shall, as far as it may be applicable, follow the same procedure which is being followed by it in dealing with matters under the Industrial Disputes Act, 1947, in regard to -
   i. production and exhibiting documents,
   ii. examination of witnesses,
   iii. adjournments,
   iv. filing of affidavits,
   v. commissions,
   vi. sitting of the Court and hearing of matters,
   vii. authorisatioan of representatives,
   viii. maintenance of Rozaname,
   ix. awards and orders and
   x. certified copies and charges therefor.]

15. Inclusion of Additional Matters in Schedule to the Act

The following additional matters shall be included in the Schedule to the Act 2[after items

"1-A. Workmen's tickets and registers.

7-A. Closing and reopening of the entire industrial establishment or departments thereof and the rights and liabilities of the employer and workmen arising therefrom."

[1][10-B. Medical examination (including provision for bearing expenses therefor).]

16. Repeals

The Industrial Employment (Standing Orders) Central Rules, 1946 as in force in the Kutch area of the State of Bombay, the Central Provinces and Berar Industrial Employment (Standing Orders) Rules, 1947, as in force in the Vidarbha region of the State of Bombay, the Bombay Industrial Employment (Standing Orders) Rules, 1948, as in force in the , pre-Reorganisation State of Bombay, excluding the transferred territories, the Saurashtra Industrial Employment (Standing Orders) Rules, 1949, and the Hyderabad Industrial Employment (Standing Orders) Rules, 1953, as in force in the Hyderabad area of the State of Bombay are hereby repealed:

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

LESSON 6:
THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

(Continued) The Model Standing Orders Under the Act

ScheduleI

Model Standing Orders

A. For Workmen doing Manual or Technical Work

1. These Orders shall apply to all workmen employed in the establishment to do manual or technical work.
2. In these orders, unless the context requires otherwise,-
   a. 'the establishment' means [1].....
   b. 'Manager' means the person for the time being managing the establishment and includes any other officer duly authorised by the employer to act as manager such authorisation being notified to the workmen by displaying it on the notice board of the establishment;
   c. 'Proprietor' means the person having ultimate control over the affairs of the establishment;
   d. 'Ticket' includes a card, pass or token.

3.1. Workmen shall be classified as,-
   a. permanent workmen;
   b. probationers;
   c. 'badlis' or substitutes;
   d. temporary workmen;
   e. casual workmen; and
   t. apprentices.

(2)2[(a) 'Permanent workman' means a workman who has been employed on a permanent basis or who, having been employed as a bad!i or a temporary workman has subsequently been made permanent by an order in writing by the Manager or any person authorised by him in that behalf and includes an apprentice who is asked or appointed to work in post or vacancy of a permanent workman for the purpose of payment of wages to him, during the period he works on such post or in such vacancy.]

b. 'Probationer' means a workman who is provisionally employed to fill a permanent vacancy or post and who has not completed three months' "uninterrupted" service in the aggregate in that post. .

c. 'Badli' or 'substitute' means a workman who is appointed to the post of a permanent workman or probationer, who is temporarily absent and why name is entered in the *bad!i* register.

d. 'Temporary workman' means a workman who has been appointed for a limited period for work which is of an essentially temporary nature and who is employed temporarily as an additional workman in connection with temporary increase in work of permanent nature.

[e. 'Casual workman' means a workman who is employed for any work which is not incidental to, or connected with the main work of manufacturing process carried on in the establishment and which is essentially of a casual nature].

f. 'Apprentice' means a workman who is a learner and who mayor may not be paid an allowance during the period of his training:

Provided that no workman shall be classified as an apprentice if he has had training for an aggregate period of one year.

[g. 'uninterrupted service' includes service interrupted on account of any of the following reasons, namely:-
   i. Sickness, as certified by a doctor of Employees' State Insurance Scheme where such scheme is applicable, or elsewhere by a Registered Medical Practitioner,
   ii. accident
   iii. authorised leave
   iv. lay-off as defined in the Industrial Disputes Act, 1947 (XIV of 1947),
   v. strike which is not illegal,
   vi. Lock-out,
   vii. cessation of work which is not due to any fault of the workman concerned,
   viii. involuntary unemployment.

4. If a permanent workman is employed as probationer in a new post, he may, at any time during the probationary period, be reverted to his old permanent post by an order in writing signed by the Manager.

14-A. Every probationer who has completed the period of three months uninterrupted service in the post in which he is provisionally employed shall be made permanent in that post by the Manager by an order in writing, within seven days from the date of completion of such service:

Provided that, where certified standing orders which prevail on the date of coming into force of this rule prescribe a longer probationary period than three months, the probationer shall complete such probationary period:

Provided further that, if the services of the probationer are found to be unsatisfactory, the Manager may terminate his services after his probationary period.

Explanation.- For the purposes of this clause, the probationary period shall not include any interrupted service and shall not be deemed to have been broken by such interrupted service.

4-B.(1) Wherever the *badli* system prevails the Manager shall maintain a register of *badlis* shiftwise containing the following particulars namely:

i. their names and addresses,

ii. the nature of work or occupations in which they were employed;

iii. the shifts in which they were working while in employment,

iv. the wages paid to them during employment, and

v. the dates of termination of their services.

The names of *badlis* who are found to be irregular in attendance or inefficient in work; may be removed from such register after giving them sufficient opportunity to improve.

2. All temporary vacancies of permanent workmen shall be filled by appointing their *bad lis* whose names are entered in the register maintained under sub-clause (1). Such appointments shall be made on the basis of seniority-cum-regularity in attendance.

3. In filling permanent vacancies in any class of occupation in the establishment *badlis* who have worked in that class of occupation shall be given preference wherever they are employed. Subject to clause 4-C, *badlis* appointed in such vacancies shall be made permanent on the basis of seniority-cum-regularity in attendance. Where *badli* system does not prevail, temporary workmen shall be given preference.

4-C. A *badli* or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days "uninterrupted service" in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.

Explanation.- For purposes of this clause any period of interrupted service, caused by cessation of work which is not due to any fault of the workman concerned, shall not counted for the purpose of computing 190 days or 240 days, or, as the case may be, for making a *badli* or temporary workman permanent.

4-D.(I) The Manager shall maintain a waiting list of all temporary workmen who! services have been terminated on account of the completion of the work for which they were appointed or on account of the expiry of the period for which they were employed, containing the following particulars, namely:-

ii. the nature of work or occupation in which they were employed,

iii. the wages paid to them during employment, and

iv. the dates of termination of their services.

2. Whenever any vacancies in the establishment are required to be filled, the persons included in the waiting list maintained under sub-clause (1) shall be given preference after taking into consideration the nature of work done by them while in employment or the occupation in which they were employed, and on the basis of the aggregate of their services in the establishment prior to the termination of their services.

No person whose name is not entered in the waiting list maintained under clause 4-0 shall be appointed in the establishment badli or temporary workman, unless all persons included in that list have been provided with employment in the establishment.

5. 1. For each class of workman specified in clause (1) of Standing Order 3, a distinctive ticket shall be provided bearing the name of the class.

2. Every workman shall be given a ticket bearing,-

i. the name of the department in which he is working; and

ii. his number.

3. Every workman shall, when entering the establishment, deliver up his ticket at the place provided, and shall show his ticket whenever required (except when it is not in his possession by reason of having been so delivered) to any person authorised by Manager in this behalf.

4. The days on which a 'bad!i' works in the establishment shall be entered on his ticket.

6. Notices showing the periods and hours of work for every class and group of workmen in the establishment and for each shift shall be displayed on notice-boards maintained for the purpose in the departments concerned and at the time-keeper's office or at or near the main entrance of the establishment.

7. Notices specifying (a) the weekly holiday under Section 52 of the Factories Act, 1948, (b) the dates on which compensatory holidays, if any, under Section 53 of the Factories Act, 1948, will be allowed, and (c) the days on which wages are to be paid shall be displayed on the notice boards at the time-keeper's office or at or .near the main entrance of the establishment.

8. Notices specifying the rates of wages, showing separately the allowances, if any, payable to each class of workmen and for each class of work shall be displayed in a conspicuous position in the departments in which the workmen concerned are working.

9. (1) An unclaimed wage pay day for each week *(i.e.* a day on which wages due to a workman but not paid on the usual pay day on account of their being unclaimed, are to be paid) shall be notified on the notice-boards along with the notices to be displayed under Standing Order 7.

2. The unclaimed amount of wages due to a workman shall be paid on the days notified under this Standing Order and on the unclaimed wages pay day following the date on which a substantiated claim was presented

by the workman, or on his behalf, by his legal representative.

10 (l) a. More than one shift may be worked in a department or section of a department at the discretion of the Manager.

b. If more than one shift is worked in the establishment, workmen shall be liable to be transferred from one shift to another.

c. Whenever an additional shift is started or shifts are altered or discontinued, a seven-days' notice shall be given to the workmen but if as a result of the discontinuance of the shift any permanent workman is likely to be discharged, a notice of one month shall be given.

d. If as a result of discontinuance of shift working, any permanent workmen are likely to be discharged, they shall be discharged having regard to the length of their service in the establishment and the department and the occupation concerned, those with the shortest term of service being discharged first.

e. On re-starting a shift, notice thereof shall be given either in a newspaper having wide local circulation or by letters to individual workmen concerned; and the workmen discharged as a result of the discontinuance of the shift shall, if they present themselves within seven days of the publication of the notice or the posting of the letters, be given preference for employment according to the length of their service in the establishment and the department and the occupation concerned.

2. The Manager may close down any department or section of a department after giving one month's notice to the workmen. Before reopening such department or section, as the case may be, seven days' notice thereof shall be given either in a newspaper having wide local circulation or by letters to individual workmen concerned.

3. The Manager may close down the whole establishment after giving one month's notice to the workmen. Seven days' public notice of the re-starting of the establishment shall be given either in a newspaper having wide local circulation or by letters to individual workmen concerned.

4. Notices of-

i. starting, re-starting, alteration and discontinuance of shift working,

ii. the closure and re-opening of a department or section of a department, and (iii) the closure and re-opening of the establishment shall be displayed in the time keeper's office or at the main entrance to the establishment and the gate or gates appointed under the Standing Order 16, and in the case of a department or section also in the department concerned.

5. On the re-opening of a department or section or the establishment, as the case may be, preference for employment will be given to the workmen whose services were terminated on account of the closure according to the length of their service in the establishment and the department and the occupation concerned provided that they present themselves for service at the latest by the day of re-opening.

II. (I) All workmen shall be at work in the establishment at the time fixed and notified. Workmen attending late shall be liable to shut out and treated as absent:

Provided that no workman who attends within 15 minutes of the starting time shall be shut out.

2. Any workman, who after delivering his ticket is found absent from his proper place of work during working hours without permission or without sufficient reason, shall be liable to be treated as absent for the period of his absence.

12. Subject to the provisions of clause (1) of the Standing Order 13, leave with wages andallowances shall be granted to all workmen in accordance with the law applicable to the establishment in which such workmen are employed or any agreement, settlement f or award for the time being in force, or the contract of service or any custom or usage b of the establishment.

13. 1. Grant of leave to a workman shall depend on the exigencies of the establishment and shall be at the discretion of the Manager.

2. A workman who desires to obtain leave of absence shall apply in writing to the Manager or any officer appointed for the purpose by the Manager. Such application for leave shall be made at least seven days before the date from which leave is to commence, except in urgent cases or unforeseen circumstances when it is not possible to do so. The Manager or any officer employed by him in this behalf r shall issue orders on such application within three days of the presentation of the application and in cases of an urgent nature immediately. If the leave asked for is granted, a leave pass showing the date from which the leave of absence commences and the date on which the workman will have to resume duty shall be issued to the workman. Where leave is refused or postponed, the fact of such I refusal or postponement and the reasons therefor shall be recorded in writing in a r register to be maintained for the purpose, and if the workman so desires a copy of such entry in the register shall be supplied to him.

3. If a workman after proceeding on leave desires an extension thereof, he shall make an application for the purpose to the Manager, in writing. A written reply conveying the grant or refusal of extension of leave shall be sent to the workman at the address given by him if such reply is likely to reach him before the expiry of the leave originally granted to him.

4. A workman remaining absent beyond the period of leave originally granted or subsequently extended, shall be liable to lose his lien on his appointment unless he returns within eight days of the expiry of the sanctioned leave and explains *to* the satisfaction of the authority granting leave his inability to resume his duty immediately on the expiry of his leave. A workman who loses his lien under the provisions of this Standing Order but reports for duty within fifteen days of the expiry of his leave (i) shall be kept as *'badli*' if he so desires and his name shall thereupon be entered in the *'bad/i'* register, and (ii) if no *'bad/is'* are employed, his name shall be kept on a waiting list of persons to be given preference for employment as and when suitable vacancies occur. '

14. 1. Every workman shall be entitled to casual leave.

2. Causal leave shall be non-cumulative and no leave of any kind may be combined with casual leave.

3. Except for emergent reasons, casual leave shall be limited to three days at a time. Casual leave is intended to meet special or unforeseen circumstances for which provision cannot be made by exact rules.

4. Holidays declared by the establishment and weekly holidays may be prefixed or suffixed to casual leave.

5. Ordinarily, the previous permission of the Manager or of the head of the department shall be obtained before taking such leave. When this is not possible the Manager or the head of the department shall, as soon as may be practicable, be informed in writing or orally through any person of the absence from work and the probable duration of such absence.

15. Except in the case of casual workmen, a record shall be maintained in a register of all leave of absence which is sanctioned, refused or postponed and reasons for refusal or postponement shall in every case be entered therein. The record shall be open to inspection by the workmen concerned.

16. No workman shall enter or leave the premises of the establishment except by the gate or gates appointed for the purpose.

17. 1. Any workman may, when leaving the department or the premises or the establishment, be searched at the points of exit of the department or the establishment by the gateman or any person appointed by the Manager for the purpose.

2. Any female worker may be detained by the gateman or any person appointed by the Manager for the purpose of search by a female searcher, if acting without malice he suspects that she is in wrongful possession of property belonging to the establishment.

3. Every search shall be conducted in the presence of not less than two persons and a female worker shall not be searched in the presence of any male person, except with her consent.

4. Subject to the provisions of the above clauses, any member of a Works Committee constituted under the provisions of the Industrial Disputes Act, 1947, may be present at a search made under this Standing Order.

18. 1. In the event of a fire, catastrophe, breakdown of machinery, stoppage of power supply, an epidemic, civil commotion or other cause beyond the control of the Manager, the Manager may, at any time without notice or compensation in lieu of notice stop any machine or department wholly or partially or the whole or part of the establishment for a reasonable period.

2. In the event of a stoppage under clause (1) during working hours, the workmen affected shall be notified as soon as practicable, when work will be resumed and whether they are to remain or leave the establishment. The period of detention in the establishment shall not ordinari1y exceed one hour after the commencement of the stoppage. If the period of detention does not exceed one hour, workmen so detained shall not be paid for such period. If the period of detention in the establishment exceeds one hour, workmen so detained shall be entitled to receive wages (including all allowances) for the whole of the time during which they are detained in the establishment as a result of the stoppage. In the case of piece-rate workmen the average daily earning for the previous months shall be taken to be the daily wages.

3. Whenever practicable reasonable notice shall be given of the resumption of normal work, and all such workmen laid off under this Standing Order who present themselves for work, when work is resumed, shall be given preference for employment.

4. All notices required to be given under this Standing Order shall be displayed on notice-boards at the time-keeper's office and at the main entrance to the establishment. Where a notice pertains to a particular department or departments only, it shall be displayed in the department concerned.

19. In cases where workmen are laid off due to Standing Order 18, they shall be considered to as temporarily unemployed and the period of such unemployment shall be treated as leave with pay to the extent such leave is admissible and leave without pay for the balance of the period. When however, workmen have to be laid off for an indefinite period exceeding two months their services may be terminated after giving them due notice or pay in lieu thereof.

20. Workmen may be laid .off due to shortage of orders, temporary curtailment of production or similar reasons and consequent stoppage of any machine or department, for a period not exceeding six days in the aggregate (excluding statutory holidays), in any month, provided that seven days' notice is given. A workman laid off under theby Standing Order for more than five days in a month may, on being laid off, leave his lout employment on intimation of his intention to do so.

21. Notwithstanding anything contained in Standing Orders 18,. 19 and 20 the rights and liabilities of employers and workmen in so far as they relate to layoff shall be a determined in accordance with the provisions of Chapter V-A of the Industrial Disputes Act, 1947:

    Provided that nothing contained in the said Chapter shall have effect to derogate from any right which a workman has under the Minimum Wages Act, 1948, or any notification or order issued thereunder or any award for the time being in operation or any contract with the employer.

22. The manager may, in the event of a strike affecting either wholly or partially any If the section or department of the establishment close down either wholly or partially suchof section or department as well as any other section or departments affected by such closing down. The fact of such closure shall as soon as practicable, be notified by notice displayed on the notice-board in the departments concerned, at the gate or gates appointed under Standing Order 16 and in the time-keeper's office or at or near the main entrance of the establishment. The workmen concerned shall also be notified by general notice put up at the places where notices of closure mentioned above are to be displayed prior to the resumption of work as to when work will be resumed.

23. 1. Subject to the provisions of the Industrial Disputes Act, 1947, the employment of a permanent workman employed on rates other than the monthly rate of wages may be terminated by giving him fourteen days' notice or by payment of thirteen days' wages (including all admissible allowances) lieu of notice.

    2. Save as otherwise provided in these Standing Orders a permanent workman employed on rates other than the monthly rates of wages desirous of leaving the service may do so by giving the Manager fourteen days' notice in writing.

    3. Where the employment of a workman is terminated under sub-rule (1) or where a workman leaves the service under sub-rule (2) and such workman draws wages on piece rate basis, wages shall be computed on the average daily earnings of such workman for the days he actually worked during the previous wage period.

    4. The employment of a permanent workman employed on the monthly rates of wages may be terminated by giving him one month's notice or on payment of one month's wages (including all admissible allowances) in lieu of notice.

       [(4- A) The reasons for the termination of service of a permanent workman shall be recorded in writing and communicated to him, if he so desires, at the time of discharge, unless such communication, in the opinion of the Manager, is likely, directly or indirectly, to lay any person open to civil or criminal proceedings at the instance of the workman.]

    5. Save as otherwise provided in these Standing Orders, a permanent workman employed on the monthly rates of wages, desirous of leaving the service shall give in writing 2[one month's notice] to the Manager of his intention to do so.

    6. If a permanent workman leaves the service without giving notice no deduction on that account shall be made from his wages, but he shall be liable to be sued for damages.

    7. All classes of workmen other than those appointed on a permanent basis may leave their services or their services may be terminated without notice or pay in lieu of notice: provided that the services of a temporary workman shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in the Standing Order 25.

    8. When the employment of any workman is terminated, the wages earned by him shall be paid to him before the expiry of the second working day from the day 00 which his employment is terminated. In the case of workman leaving the service the payment of the wages earned by him shall be made within seven days *from* date on which he leaves the service. All other sums due to a workman shall be paid before the expiry of one month from the date of termination of his service or, as the case may be, from the date he left service.

    9. An order of termination of service shall be in writing and shall be signed by the Manager and copy whereof shall be supplied to the workman concerned. In cases of general retrenchment, closing down of departments or termination of service as a result of a strike, no such order shall be given.

24. The following acts and commissions on the part of a workman shall amount to misconduct:-

    a. wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior;

    b. going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof;

    c wilful slowing down in performance of work, or abetment or instigation thereof;

    d. theft, fraud or dishonesty in connection with the employers' business or property or the theft or property of another workman within the premises of the establishment;

    e. taking or giving bribes or any illegal gratification;

    f. habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation;

    g. late attendance on not less than four occasions within a month;

    h. habitual breach of any Standing Order or any law applicable to the establishment or any rules made thereunder;

i. collection without the permission of the Manager of any money within the premises of the establishment except as sanctioned by any law for the-time being in force;

j. engaging in trade within the premises of the establishment;

k. drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment;

I. commission of any act subversive of discipline or good behaviour on the premises of the establishment;

m. habitual neglect of work, or gross or habitual negligence;

n. habitual breach of any rules or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the establishment;

o. habitual commission of any act or omission for which a fine may be imposed under the Payment of Wages Act, 1936;

p. canvassing for union membership, or the collection of union dues within the premises of the establishment except in accordance with any law or with the permission of the Manager;

q. wilful damage to work in process or to any property of the establishment;

r. holding meeting inside the premises of the establishment without the previous permission of the Manager or except in accordance with the provisions of any law for the time being in force;

s. disclosing to any unauthorised person any information in regard to the processes of the establishment which may come into the possession of the workman in the course of his work;

t. gambling within the premises of the establishment;

u. smoking or spitting on the premises of the establishment where it is prohibited by the employer;

v. failure to observe safety instructions notified by the employer or interference with any safety device or equipment installed within the establishment;

w. distributing or exhibiting within the premises of the establishment hand-bills, pamphlets, posters, and such other things or causing to be displayed by means of signs or writing or other visible representation on any matter without previous sanction of the Manager;

x. refusal to accept a charge-sheet, order or other communication served in accordance with these Standing Orders;

y. unauthorised possession of any lethal weapon in the establishment.

[z. sexual harassment which includes un-welcome sexual determined behaviour (whether directly or by implication), such as:-

i. physical-contact and advances; or

ii. a demand or request for sexual favours; or

iii. sexually coloured remarks; or

iv. showing pornography; or

v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature];

Explanation.- No act of misconduct which is committed on less than three occasions within a space of one year shall be treated as "habitual".

25. (1) A workman guilty of misconduct may be,-

b. fined subject to and in accordance with the provisions of the Payment of Wages Act, 1936, or

c. suspended by an order in writing signed by the Manager for a period not exceeding four days, or

2. No order under sub-clause (b) of clause (1) shall be made unless the workman concerned has been informed in writing of the alleged misconduct or given an opportunity to explain the circumstances alleged against him.

3. No order of dismissal [1][under sub-clause (d) of clause (1) shall be made except after holding an enquiry] against the workman concerned in respect of the alleged misconduct in the manner set forth in clause(4).

4. A workman against whom an inquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office-bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rest. A concise summary of the evidence led on either side and the workman's plea shall be recorded.]

All proceedings of the inquiry shall be conducted in English, Hindi, Marathi according to the choice of the workman concerned and the person defending him,

The inquiry shall be completed within a period of three months:

Provided that the period of three months may, for reasons to be recorded in writing, be extended to such further period as may be deemed necessary by the enquiry officer.

5. A workman against whom any action is proposed to be taken under sub- clauses (b), (c) or (d) of clause (1) may be suspended pending the inquiry or for the period, if any, allowed to him for giving his explanation. The order of suspension may take effect immediately on its communication to the workman.]

[(5-A) Subject to the provisions of the Payment of Wages Act, 1936 a workman who is placed under suspension under sub-clause (5) shall, during the period of such suspension,

be paid a subsistence allowance at the following rates namely:-

i. For the first ninety days of the suspension period subsistence allowance to be paid per month shall be equal to one-half of basic wages, dearness allowance and other compensatory allowances to which the workman would have been entitled if he were on leave with wages.

ii. If the enquiry gets prolonged and the workman continues to be under suspension for a period exceeding ninety days, the subsistence allowance to be paid per month for a further period of ninety days shall be equal to three-fourths of ,such basic wages, dearness allowance and other compensatory allowances.

iii. If the enquiry is not completed within a period for 180 days, the workman shall be paid basic wages, dearness allowance and other compensatory allowance in full as subsistence allowance to be paid per month until such time as the inquiry is finally concluded:

Provided that, where the findings of the Inquiry Officer show that such inquiry is prolonged beyond a period of 90 days, or as the case may be 180 days, for reasons directly attributable to the workman, the subsistence allowance to be paid per month shall for the period exceeding 90 days or, as the case may be 180 days, shall be reduced to one-half of such basic wages, dearness allowance and other compensatory allowances.

iv. If as a result of the inquiry held or explanation tendered, it is decided not to take any action against the workman under clause (1) the workman shall be deemed to have been on duty and shall be entitled to full wages minus such subsistence allowance as he may have already drawn and to all other privileges for the full period of suspension.

(5,.B) The payment of subsistence allowance under sub-clause (5-A) shall be subject to the workman concerned not taking up any employment during the period of suspension.]

6. In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist.

7. If a workman refuses to accept a charge-sheet, order or other communication served in accordance with these Standing Orders, and provided that he has been asked to accept the charge-sheet in the presence of at least two witnesses he shall be told verbally the time and place at which the enquiry into his alleged misconduct IS to be held and the refuses or fails to attend at that time, the inquiry shall be conducted *ex parte* and the punishment awarded shall take account of misconduct under Standing Order 24 thus committed.

26. A workman may be warned or censured, or subject to and in accordance with the provisions of the Payment of Wages Act, 1936, fined for any of the following acts and omissions:- .

a. absence without leave without sufficient cause;

b. late attendance;

c negligence in performing duties;

d. neglect of work;

e. absence without leave or without sufficient cause from the appointed place of to work;

f. entering or leaving or attempting to enter or leave the premises of the establishment except by a gate or entrance appointed;

g. committing nuisance on the premises of the establishment;

h. breach of any rule or instruction for maintenance or running of any department.

27. The age for retirement or superannuation of the workmen may be sixty years or such be other age as may be agreed upon between the employer and the workmen by any Ice agreement, settlement or award which may be binding on the employer and the as workmen under any law for the time being in force.

[27-A. Where an employer orders a medical examination of workman or a person desiring to be recruited as his workman under any law, contract, custom or usage applicable to his industrial establishment or under any award, agreement or settlement binding on be the employer and the workman in his industrial establishment, such examination in the case of a female shall be made only by a lady doctor; and the expenses of such her examination shall be borne by the employer.]

28. (1) Any workman desirous of the redress a grievance arising out of his employment t to or relating to unfair treatment or wrongful exaction on the part of a superior shall either, of himself or through a trade union of which he is a member, submit a complaint to the Manager or any officer appointed by the Manager in this behalf.

2. The Manager or any such officer shall personally investigate the complaint at such times and places as he may fix. The workman and -

i. any other workman of his choice, or

ii. where the complaint is made through a trade union, a member of the union shall have the right to be present at such investigation. Where the complaint alleges unfair treatment or wrongful exaction on the part of a superior, a copy of the order finally made by the Manager shall be supplied to the complainant of if he asks for one. In other cases the decision of the investigating officer and

the action, if any, taken thereon by the Manager shall be intimated to the complainant:

Provided that complaints relating to assault or abuse by any person holding a supervisory position or refusal of an application for urgent leave shall be enquired into immediately by the Manager or such other officer or officers as he may appoint

29. The decision of the Manager upon any question arising out of, or in connection with, or incidental to these Standing Orders shall be subject to an appeal to the managing agent.

30. Every workman other than a casual workman who leaves service or retires, or is dismissed or discharged shall without avoidable delay be given a service certificate if he asks for one.

31. (a) Notice to be exhibited or given under these Standing Orders shall be in English and also in the principal regional language of the district in which the establishment situated.

(b) i. Any notice, order, charge-sheet communication or intimation which is personal, *i. e.* is meant for an individual workman and is given in writing under these Standing Orders, shall be in the language understood by the workman concerned.

ii. Before such a notice, order, charge-sheet communication or intimation is handed over to the workman it shall be read out and explained to him if he so desire.

32. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment.

B. For Workmen Employed on Clerical or Supervisory Work

1. These Orders shall apply to all workmen employed in the establishment to do clerical, or supervisory work.

2. In these Orders unless the context requires otherwise-

a. 'Workman' means a workman employed to do clerical or supervisory work;

b. The 'establishment' means 2 ;

c. 'Manager' means the person for the time being managing the establishment, and includes, any other officer duly authorised by the employer to act as Manager on his behalf such authorisation being notified to the workmen by displaying it on the notice-board of the establishment.

3. 1. Workmen shall be classified as-

a. permanent workmen;

b. probationers;

c. temporary workmen; and

d. part-time workmen.

2. [(a) 'permanent workman' means a workman who has been employed on a permanent basis or who, having been employed on a temporary basis has subsequently been made permanent by an order in writing by the Manager or any person authorised by him in that behalf and includes the apprentice who is asked or appointed to work in the post or vacancy of a permanent workman for the purpose of payment of wages to him, during the period, he works on such post or in such vacancy.]

b. 'probationer' means a workman who is provisionally employed to fill a permanent vacancy or post and who has not completed three months' [uninterrupted] service in the aggregate in a clerical or supervisory post in the establishment.

c. 'temporary workman' means a workman who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional workman in connection with temporary increase in work of a permanent nature and includes a workman who is appointed in a temporary vacancy of a permanent workman or probationer;]

d. 'part-time workman' means a workman who is employed to do work for less than the normal period of working hours;

[e. 'uninterrupted service' includes service interrupted on account of any of the following reasons, namely:-

i. sickness, as certified by a doctor of Employees' State Insurance Scheme, where such scheme is applicable or, elsewhere, by a Registered Medical Practitioner.

ii. accident,

iii. authorised leave, .

iv. lay-off as defined in the Industrial Disputes Act, 1947 (XIV of1947),

v. involuntary unemployment,

vi. strike which is not illegal,

vii. lock-out,

viii. cessation of work which is not due to any fault of the workman concerned.

Every workman at the time of this appointment, confirmation, promotion or re-classification shall be given a written order specifying his appointment confirmation, promotion or re-classification, as the case may be, and signed by the Manager.

[4-A. Every probationer who has completed the period of three months' uninterrupted service in the post in which he is provisionally employed shall be made permanent in that post by the Manager by an order in writing, within seven days from the date of completion of such service:

Provided that where certified standing orders prevailing on the date of coming into force of this rule prescribe a longer probationary period than three months, the' probationer shall complete such probationary period:

Provided further that, if the services of the probationer are found to be unsatisfactory, the Manager may terminate his services after his probationary period.

Explanation.- For the purpose of this clause, the probationary period shall not include any interrupted service and shall not be deemed to have been broken by such interrupted service.

[1][4-B. A temporary workman, who has put in 190 days' uninterrupted service in the aggregate in any establishment of a seasonal nature or 240 days, uninterrupted service in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by an order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.

Explanation.- For purpose of this clause any period of interrupted service, caused by cessation of work which is not due to any fault of the workman concerned, shall not be counted for the purpose of computing 190 days or 240 days or as the case may be, for making a *badli* or temporary workman permanent.

14-C.(1) The Manager shall maintain a waiting list of all temporary workmen whose services have been terminated on account of the completion of the work for which they were appointed or on account of the expiry of the period for which they were employed, containing the following particulars namely:-

i. their names and addresses,

ii. the nature of work or occupation in which they were employed,

iii. the wages paid to them during employment, and

iv. the dates of termination of their services.

2. Whenever any vacancies in the establishment are required to be filled the person included in the waiting list maintained under sub-clause (1) shall be given preference after taking into consideration the nature of work done by them while in employment or the occupation in which they were employed and on the basis of the aggregate of their services in the establishment prior to the termination their services.

14-0. No person whose name is not entered in the waiting list maintained under Clause 4-C shall be appointed in the establishment as temporary workman, unless all persons included in that list have been provided with employment in the establishment.]

5.(a) Notices showing the periods and hours of work for every class and group of workmen in the establishment and for each shift shall be displayed on notice-boards maintained for the purpose in the departments concerned at the time-keeper's office or at or near the main entrance of the establishment.

b. Any workman required to work for a different period shall be notified to that effect at the least on the day previous to that on which he is required to work for such different period.

6.1. Notices specifying (i) the weekly holiday, (ii) the dates on which compensatory holidays, if any, will be allowed, and (iii) the days on which wages are to be paid, shall be displayed on the notice-boards maintained for purpose at the time-keeper's office or at or near the main entrance of the establishment.

2. Any workman required to work on a weekly holiday in accordance with law shall be personally notified to that effect in advance. The workman deprived of any of the holidays notified under clause (1) as a result of his working on such holidays shall be allowed, as soon as circumstances permit and at the discretion of the Manager, compensatory holidays equal in number to the holidays so lost.

7. A register specifying basic starting salary, grades and scales of pay, if any, for each class of workmen and for each class of work shall be maintained and be open to inspection on two working days in each month to be notified by the Manager.

8.(I)(a) More than one shift may be worked in department or section of a department at the discretion of the Manager.

b. If more than one shift is worked in the establishment the workman shall be liable to be transferred from one shift to another.

c. Whenever an additional shift is started or shifts are altered or discontinued, a. seven days' notice shall be given, put if as a result of the discontinuance of the shift any permanent workman is likely to be discharged a notice of one month will be given. After giving one month's notice to the workmen, seven days' public notice of the re-starting of the establishment shall be given either in a newspaper having wide local circulation or by letters to individual concerned.

d. If as a result of discontinuance of shift working any permanent workmen are likely to be discharged they shall be discharged having regard to the length of their service in the establishment and the department and the occupation concerned, those with the shortest term of service being discharged first.

e. On re-starting a shift, notice thereof shall be given either in a newspaperhaving wide local circulation or by letters to individual workmen concerned; of .and the workmen dischargedresult of the discontinuous of the shift shall, If they present themselves, within seven days of the publication of the notice or the posting of the letters, be given preference for employment according to their length of service in the establishment and the department and the occupation concerned.

2. The Manager may close down any department or section of a department after giving one month's notice to the workmen. Before reopening such department or section, as the case may be, seven days' notice thereof shall be given either in a newspaper having wide local circulation or by letters to individual workmen concerned.

3. The Manager may close down the whole establishment after giving one month's notice to the workmen. Seven days' public notice of the restarting of the establishment shall be

given either in a newspaper having wide local circulation or by letters to individual workmen concerned.

4. Notices of-

   i. starting, re-starting alteration and discontinuance of shift working

   ii. the closure and reopening of a department or section of a department, and

   iii. the closure and reopening of the establishment shall be displayed in the time-keeper's office or at the main entrance to the establishment and at thegate or gates appointed under Standing Order 18, and m the case of a, department or section also in the department concerned.

5. On the reopening of a department or section or the establishment as the case may be, preference for employment will be given to the workmen whose services were terminated on account of the closure of the length of their service in the establishment and the department and the occupation concerned, provided that they present themselves for service at the latest by the day of reopening.

9. (I) All workmen shall be at work in. the establishment at the times fixed and notified. Workmen attending late shall be liable to be shut out and treated as absent:

   Provided that no workman who attends within 15 minutes of the starting time shall be shut out.

   2. Any workman who is found absent from his proper place of work during working hours without permission or without sufficient reason shall be liable to be treated as absent for the period of his absence.

[10. Subject to the provisions of Clause (1) of the Standing Order 11-

   a. weekly holidays, where admissible, shall be allowed on full wages (including admissible allowance);

   b. leave with wages and allowances shall be granted to all workmen in accordance with the law applicable to the establishment in which such workmen are employed or any agreement, settlement or award for the time being in force or the contract of service or any custom or usage of the establishment.]

11. 1. Grant of leave to a workman shall depend on the exigencies of the establishment and shall be at the discretion of the Manager.

   2. The Manager may require a workman applying for sick leave to produce a medical certificate in support of his application from a registered medical practitioner, a registered "vaid" or a registered "hakim" and where practicable may require the applicant to be examined by the Medical Officer appointed for the purpose.

12. Sick leave, if due, shall be granted in continuation of maternity leave for female workers subject to the provisions of Clause (2) of Standing Order 11.

13. Leave without pay may at the discretion of the Manager in special circumstances be granted to a workman when no other leave of any kind is due. -

14. Subject to the. provisions of the Factories Act, 1948, all holidays, including the weekly, holidays, falling within the period of any kind of leave, shall be treated as leave.

15. 1. Workman who desires. to obtain leave of absence other than casual leave or sick leave, shall apply in writing to the Manager or any officer appointed for the purpose by the Manager. Such application for leave shall normally be made at least one month before the date from which the leave is to commence, except in urgent cases of unforeseen circumstances when it is not possible to do so.

   2. If a workman after proceeding on leave desires an extension thereof, he shall a make an application in writing to the Manager. A written reply either of the grant or refusal of extension of leave shall be sent to him at the address given by him if such reply is likely to reach him before the expiry of the leave originally granted ay to him.

   1. Every workman shall be entitled to casual leave.

   2. Causal leave shall be non-cumulative and no leave of any kind may be combined with casual leave.

   3. Except for emergent reasons, casual leave shall be limited to three days at a time. Casual leave is intended to meet special or unforeseen circumstances for which be provisions cannot be made by exact rules.

   4. Holidays declared by the establishment and weekly holidays may be prefixed or suffixed to casual leave. -

   [5. Ordinarily, the previous permission of the Manager or of the head of the department shall be obtained before taking such leave. When this is not possible, the Manager or the head office department shall as soon as may be practicable, be informed in writing or orally through any person of the absence from work and of the probable duration of such absence.]

17. A record shall be maintained in a register of all leave of absence which is sanctioned, refused or postponed, and reasons for refusal or postponement shall m every case be lance entered therein. The record shall be open to inspection by the workman concerned,

18. No Workman shall enter or leave the premises of .the establishment except by the entrances appointed for the purpose.

19. 1. Any workman may, when leaving the premises of the establishment be searched at the point of exit by an officer appointed for the point of exit by an officer appointed for the purpose by the Manager.

   2. Any female worker may be detained by such officer for search by a female, searcher, if acting without malice he suspects that she is in wrongful possession of the property belonging to the establishment.

   3. Every search shall be conducted in the presence of not less than two persons, and a female worker shall not be searched in the presence of any male person, except with her consent.

4. Subject to the provisions of the above clauses, any member of a Works Committee constituted under the provisions of the Industrial Disputes Act, 1947, may be present at a search made under this Standing Order.

[19-A. (1) In the event of fire, catastrophe, breakdown of machinery, stoppage of power. supply, an epidemic, civil commotion or other cause beyond the control of the Manager, the Manager may at any time without notice or compensation in lieu of notice, stop any machine or department wholly or partially or the whole or part of the establishment for a reasonable period.

2. In the event of a stoppage under clause (1) during working hours, the workmen affected shall be notified as soon as practicable, when work will pe resumed and whether they are to remain or leave the establishment. The period of detention in the establishment shall not ordinarily exceed one hour after the commencement of stoppage. If the period of detention does not exceed one hour, workmen so detained shall not be paid for such period. If the period of detention in the establishment exceeds one hour, workmen so detained shall be entitled to receive wages (including all allowances) for the whole of the time during which they are detained in establishment as a result of the stoppage. In the case of piece-rate workmen the average daily earnings for the previous month shall be taken to be the daily wages.

3. Wherever practicable, reasonable notice shall be given of the resumption of normal work, and all such workmen laid off under this Standing Order who present themselves for work when work is resumed shall be given preference for employment.

4. All notices required to be given under this Standing Order shall be displayed on notice-boards at the time-keeper's office and at the main entrance to the establishment, Where a notice pertains to a particular department or departments only, it shall also be displayed in the department concerned.

19-8. In cases where workmen are laid off under Standing Order 19-A, they shall be considered as temporary unemployed and the period of such unemployment shall be treated as leave with pay to the extent such leave is admissible and leave without pay for the balance of the period. When however, workmen have to be laid off for an indefinite period exceeding two months, their services may be terminated after giving them due notice or pay in lieu thereof.

19-C. Workmen may be laid off due to shortage of orders, temporary curtailment of production or similar reasons and consequent stoppage of any machine or department, for a period not exceeding six days in the aggregate (excluding statutory holidays), in any month provided that seven days' notice is given. A workman laid off under this Standing Order for more than five days in a month may, on being laid off, leave his employment on intimation of his intention to do so.

19-0. Notwithstanding anything contained in Standing Orders 19-A, 19-8 and *19-C,* the rights and liabilities of employers and workmen in so far as they relate to lay-off shall be determined in accordance with the provisions of Chapter V-A of the Industrial Disputes Act, 1947:

Provided that nothing contained in the said Chapter shall have effect to derogate from any right which a workman has under the Minimum Wages Act, 1948, or any notification or order issued thereunder or any award for the time being in operation or, any contract with the employer.

19-E. The Manager may, in the event of a strike affecting either wholly or partially, any section or department of the establishment close down either wholly or partially such section or department as well as any other sections or departments affected by such closing down. The fact of such closure shall, as soon as practicable, be notified by le notice displayed on the notice-boards in the departments concerned, at the gate or gates appointed under Standing Order 18, and in the time keeper's office or at or near the main entrance of the establishment. [1][The workmen concerned shall also be notified by a general notice put up at the place where notices of closure mentioned above are to be displayed, prior to the resumption of work as to when work will beresumed.]

20. In the event of the closure of the establishment or a department or part thereof, if the services of a permanent workman are dispensed with, he shall when the establishmentor part thereof, as the case may be, is re-started be given an opportunity to serve in , ate a post substantially similar in pay and status to the post he was holding at the time ofthe closure, provided he reports for duty within the time specified in the relevant toStanding Orders governing the re-staring in question.

21.1. The employment of a permanent anent workman may be terminated by one month'snotice or on payment of one month's wages (including all allowances), in lieu .who of notice.

2. The reasons for the termination of service of a permanent workman shall be recorded in writing and shall be communicated to him, if he so desires, at the timeof discharge, unless such communication, in the opinion of the Manager, is likely,directly or indirectly to lay any person open to civil or criminal proceedings at the instance of the workman.

3. Any permanent workman desirous of leaving service shall give one month's notice in writing to the Manager. He shall, when he leaves the services, be given an order of relief signed by the Manager.

4. If any permanent workman leaves the service without giving notice, giving 2[no deduction on that account shall be made from his wages but] he shall be liable to be sued for damages.

5. All classes of workmen other than those appointed on a permanent basis may leave their services or their services may be terminated without notice or pay in of notice: provided that the service of a temporary workman shall

not be In laid off terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in Standing Order 23.

6. Where the employment of any workman is terminated, the wages earned by him shall be paid to him before the expiry of the second working-day from the day on which his employment is terminated. In the case of workman leaving the service the payment of the wages earned by him shall be made within seven days from the date on which he leaves the service. All other sums due to a workman shall be paid before the expiry of one month from the date of termination of his services or from the date he leaves the service.

7. An order relating to discharge or termination of service shall be in writing and shall be signed by the Manager. A copy of such order shall be supplied to the workman concerned. In cases of general retrenchment, closing down, strike or lock-out no such orders may be given.

22. Any of the following acts or omissions on the part of a workman shall amount to misconduct (a) wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of superior;

b. going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof;

c. wilful slowing down in performance of work, or abatement or instigation thereof;

d. theft, fraud, or dishonesty in connection with the employer's business or property: [or the theft of property of another workman within the premises of the establishment];

e. taking or giving bribes or any illegal gratification;

f. habitual absence without leave or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation;

g. late attendance on not less than four occasions within a month;

h. habitual breach of any Standing Order or any law applicable to the establishment or any rules made thereunder;

i. collection without the permission of the Manager of any money within the premises of the establishment except sanctioned by any law for the time being in force;

j. engaging in trade within the premises of the establishment;

k. drunkenness, riotus, disorderly or indecent behaviour on the premises of the establishment;

l. commission of any act subversive to discipline or good behaviour on the premises of the establishment;

m. habitual neglect of work, or gross or habitual negligence;

n. habitual breach of any rules or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of establishment;

0. habitual commission of any act or omission for which a fine may be imposed under the Payment of Wages Act, 1936;

p. canvassing for union membership or the collection of union dues within the premises of the establishment, except in accordance with any law or with the permission of the Manager;

q. wilful damage to work in process or to any property of the establishment;

r. holding meeting inside the premises of the establishment, without the previous permission of the Manager or except in accordance with the provisions of any law for the time being in force;

s. disclosing to any unauthorised person any information in regard to the processes of the establishment which may come into the possession of the workman in the course of his work;

t. gambling within the premises of the establishment;

u. smoking or spitting on the premises of the establishment where it is prohibited by the employer;

v. failure to observe safety instructions notified by the employer or interference with any safety device or equipment installed within the establishment;

w. distributing or exhibiting within the premises of the establishment hand-bills, pamphlets, posters and such other things or causing to be displayed by means of signs or writing or other visible representation on any matter without previous sanction of the Manager;

x. refusal to accept a charge sheet, order or other communication served in accordance with these Standing Orders;

y. unauthorised possession of any lethal weapon in the establishment:

[Z. sexual harassment which includes un-welcome sexual determined behaviour (whether directly or by implication), such as:-

i. physical-contact and advances; or

ii. a demand or request for sexual favours; or

iii. sexually coloured remarks; or

iv. showing pornography; or

v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.];

Explanation.- No act of misconduct which is committed on less than three occasions within a space of one year shall be treated as habitual.

23.(1) A workman guilty of misconduct may be-

a. warned or censured, or

b. fined, subject to and in accordance with the provisions of the Payment of Wages Act, 1936, or

c. suspended by an order in writing signed by the Manager for a period not exceeding four days, or

d. dismissed without notice.

2. No order under sub-clause (b) of clause (1) shall be made unless the workman concerned has been informed in writing of the alleged misconduct or given an opportunity to explain the circumstances alleged against him.

3. No order of dismissal under sub-clause (d) of clause (1) shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct in the manner set forth in clause (4).

4. A workman against whom an inquiry is proposed 2to be held shall be given a charge-sheet, clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rest. A concise summary of the evidenced on either side and the workman's plea shall be recorded.

All proceedings of the inquiry shall be conducted in English, Hindi or Marathi according to the choice of the workman concerned and the person defending him. The inquiry shall be completed within a period of three months:

Provided that the period of three months may for reasons to be recorded in writing be extended to such further period as may be deemed necessary by the inquiry officer.

5. A workman against whom any action is proposed to be taken under sub- clauses (b), (c) or (d) of clause (1) may be suspended pending the enquiry or for the period, if any, allowed to him for giving his explanation. The order of suspension may take effect immediately on its communication to the workman.

[5-A. Subject to the provisions of the Payment of Wages Act, 1936, a workman who is placed under suspension under sub-clause (5) shall during the period of such suspension, be paid a subsistence allowance at the following rates namely:-

i. For the first ninety days of the suspension periods, subsistence allowance to be paid per month shall be equal to one half of basic wages, dearness allowance and other compensatory allowance to which the workman would have been entitled if he were on leave with wages.

ii. If the enquiry gets prolonged and the workman continues to be under suspension for a period exceeding ninety days, the subsistence allowance to be paid per month for a further period of ninety days shall be equal to three-fourths of such basic wages, dearness allowance and other compensatory allowances.

iii. If the inquiry is not completed within a period of 180 days, the workman shall be paid wages, dearness allowance and other compensatory allowances in full as subsistence allowance to be paid per month until such time as the inquiry is finally concluded:

Provided that, where the findings of the Inquiry Officer show that such inquiry is prolonged beyond a period of 90 days, or as the case may be 180 days, for reasons directly attributable to the workman, the subsistence allowance to be paid per month shall for the period exceeding 90 days or, as the case may be 180 days shall be reduced to one-half of such basic wages, dearness allowance and other compensatory allowances.

iv. If as a result of the inquiry held or explanation tendered, if is decided not to take any action against the workman under clause (1) the workman shall be deemed to have been on duty and shall be entitled to full wages minus such subsistence allowance as he may have already drawn and to all other privileges for the full period of suspension.

5-B. The payment of subsistence allowance under sub-clause (5-A) shall be subject to the workman concerned not taking up any employment during the period of suspension.

6. In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, it any, of the workman and any other extenuating or aggravating circumstances that may exist.

7. If a workman refuses to accept a charge-sheet order to other communication served in accordance with these Standing Orders and provided that he has been asked to accept the charge-sheet in the presence of at least two witnesses, he shall for be told verbally the time and place at which the enquiry into his alleged of misconduct is to be held and if he refuses or fails to attend at that time, the enquiry shall be concluded exparte and the punishment awarded shall take account of . misconduct under Standing Order 22 thus committed.

24. A workman may be warned, censured or fined or any of the following acts and omissions:-

a. absence without leave without sufficient cause;

b. late attendance;

c. negligence in performing duties;

d. neglect of work;

e. absence without leave or without sufficient cause from the appointed place of work;

f. entering or leaving, or attempting to enter or leave the premises establishment except by a gate or entrance appointed;

g. committing nuisance on the premises of the establishment;

h. breach of any rule or instruction for maintenance or running of any department:

Provided that no workman shall be fined, except in accordance with the provisions of the Payment of Wages Act, 1936, where the provisions of the said Act are applicable to him.

25. The age for retirement or superannuation of the workmen may be sixty years or such other age as may be agreed upon between the employer and the workman by an agreement, settlement or award, which may be binding on the employer and the workmen under any law for the time being in force.

[25-A. Where an employer orders a medical examination of a workman or a person desiring to be recruited as his workman under any law, contract, custom or usage applicable to his industrial establishment or under any award, agreement or settlement binding on the employer and the workmen in his industrial establishment, such examination in the case of a female shall be made only by a lady doctor and expense of such examination shall be borne by the employer.]

26. (1) Any workman desirous of the redress of a grievance arising out of his employment or relating to unfair treatment or wrongful exaction on the part of a superior shall either himself or through a trade union of which he is a member submit a complaint to a manager or any officer appointed by the Manager in his behalf.

2. The Manager or any such officer shall personally investigate the complaint at suc times and places as he may fix. The workman and-

i. any other workman of his choice, or

ii. where the complaint is made through a trade union, a member of the union, shall have the right to be present at such investigation. Where the complainant alleges unfair treatment or wrongful exaction on the part of a superior, a copy of the order finally made by the Manager shall be supplied to the complainant if he asks for one. In other cases the decision of the investigating officer and the action, if any, taken thereon the Manager shall be intimated to the complainant:

Provided that complaints relating to assault or abuse by any person holding a supervisory position or refusal of an application for urgent leave shall be enquired into immediately by the Manager or such other officers as he may appoint.

27. The decision of the Manager upon any question arising out of, in connection with, or incidental to these Standing Orders shall be subject to an appeal to the (Managing Agent/ Proprietor, except where the Manager is himself the Proprietor.

28. Every workman who leaves service, or retires or is dismissed or discharged shall, without avoidable delay be given a service certificate if he asks for one.

29.(a) Notices to be exhibited or given under these Standing Orders shall be in English and also be in the principal regional language of the district in which the establishment is situated.

b. i. Any notice, order, charge-sheet, communication or intimation which is personal, *i.e.*, is meant for an individual workman and is given in writing under these Standing Orders shall be in the language understood by the workman concerned;

ii. Before such a notice, order, charge-sheet communication or intimation is handed over to the workman it shall be read out and explained to him if he so desires.

30. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement award applicable to the establishment.

[C. For Working Journalists

1. These orders shall apply to all working journalists employed in newspaper establishments.

2. In this Standing Orders unless the context requires otherwise-

a. "editor" means a person appointed as an editor and who directs and supervises the work of the editorial side of a newspaper establishment;

b. "manager" means the person for the time being managing a newspaper establishment;

c "newspaper establishment" means a newspaper establishment referred to in Section 14 of the Act and defined in clause (d) of Section 2 of ,the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955;

d. "Working Journalists" shall have the same meaning as under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955.

3. (1) Working Journalists shall be classified as-

a. permanent,

b. probationers,

c temporary,

d. apprentices, and

e. part-time.

(2)(a) A "permanent working journalist" means a working journalist who has been engaged on a permanent basis or whose appointment has been confirmed in writing by the Manager or any other officer authorised in that behalf and includes any person who has completed a probationary period of three months in aggregate in the same newspaper establishment, including breaks due to sickness, accidents, leave, lock-outs, strike or involuntary closure of the establishment.

b. A "probationer" means a working journalist who is provisionally employed to fill a permanent vacancy or a post and who has not completed three months service in the aggregate in the same newspaper establishment or such extended period not exceeding three months as the Manager in consultation with the editor may direct to give him a chance to show improvement:

Provided that where a permanent working journalist is employed as a probationer in a new post, is at any time during the probationary period, reverted to his old permanent post by an order in writing signed by the

Manager, he shall cease to be a probationer in the new post.

c. A "temporary working journalist" means working journalist who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period and who is engaged strictly on that understanding in writing.

d. An "apprentice" means a working journalist who is a learner and who is paid an allowance during the period of his training which shall not exceed six months.

e. A "part-time working journalist" means a working journalist who is employed to do work as a working journalist for less than the normal period of working hours, of a newspaper establishment.

4. Every working journalist at the time of his appointment, confirmation, promotion, or reclassification shall be given a written order specifying his appointment, confirmation, promotion or reclassification, as the case may be, and signed by the Manager.

5. 1. Notices in English, Hindi and the regional languages of the local area wherein the newspaper establishment is situated showing the periods and hours of work and the .place of work for every class and group of working journalists in the newspaper establishment and for each shift shall be displayed on the notice boards maintained for the purpose in the departments concerned, in the time-keeper's office and at or near the main entrance to the newspaper establishment.

2. Any working journalist required to work on an outdoor job or at different places of work shall be notified to that effect in advance.

6. Notices specifying-

a. the days observed by the newspaper establishment as holidays including the weekly day of rest, and

b. days on which wages are to be paid, shall be posted on the notice-board specified in Standing Order 5.

7(1) More than one shift may be worked in a department or any section of a department of a newspaper establishment at the discretion of the Manager.

2. If more than one shift is worked, the working journalist shall be liable to be transferred from one shift to another.

3. Whenever an additional shift is started or shifts are altered or discontinued, a seven days' notice shall be given but if as a result of the discontinuance of any shift any permanent working journalist is likely to be discharged, a proper notice as prescribed by or under any law for the time being in force and applicable to the newspaper establishment shall be given provided, however, that no such notice shall be less than one month. .

4. Before restarting a shift, a seven days' notice thereof shall be given in a newspaper having wide local circulation and any working journalist discharged as a result of the discontinuance of the shift shall, if he presents himself within seven days of the restarting of the shift, be given preference for employment.

5. The Manager may close down any department or section of department after l giving one month's notice to the working journalists' concerned provided, however, that the provisions of any other law for the time being in force and 7 applicable to the working journalists, laying down a different period for such :> notice shall prevail wherever applicable in individual cases of working journalists. Before reopening such a department or a section of a department, as the case may be, seven days' notice thereof shall be given in a newspaper having wide local circulation and any working journalist discharged as a result of the closure of such department or section of a department shall, if he presents himself within seven to days of the restarting of the department or section of the department, as the case may be, be given preference for employment.

6. The Manager may close down the whole newspaper establishment after giving or one month's notice to the permanent working journalists concerned, provided, however, that the provisions of any other law for the time being in force and by applicable to the working journalists laying down a different period of such notice shall prevail wherever applicable in individual cases of working journalists. A seven days' public notice of the restarting of the newspaper establishment shall the be given in a newspaper having wide local circulation and any working journalist the discharged as a result of the closure of the newspaper establishment shall, if he per presents himself within seven days of the restarting of the newspaper for establishment, be given preference for employment. .

7. Notices of-

i. starting, restarting, alteration and discontinuance of shift working;

ii. closure and reopening of a department or a section of a department;

iii. closure and reopening of the newspaper establishment;

shall be displayed on notice-boards maintained for the purpose in the department and the section concerned in the time-keeper's office and at or near the main entrance of the newspaper establishment.

8. In the event of the closure or discontinuance of a newspaper establishment or a department or a section of a department if the services of a permanent working journalist are dispensed with he shall, on restarting of the newspaper establishment or department or a section of department, as the case may be, be given an opportunity to service in a post substantially, similar in pay and status to the post he was holding at the time of the closure or discontinuance provided he reports for duty within the time specified in the relevant standing order governing the restarting in question.

9. 1. All working journalists shall be at work at their respective places of work at the time fixed and notified. Wages of working journalists attending late shall be liable to deductions, at the discretion of the Manager provided that such deductions shall be made in accordance with the principles laid down under the Payment of Wages Act, 1936.

2. Any working journalist, who is found absent from his proper place of duty during his working hours without permission of the Manager or any other authority appointed for this purpose or without sufficient reason, shall be liable to be treated as absent without leave for: the period of such absence and the said deductions shall be made in accordance with the principles laid down under the Payment of Wages Act, 1936.

10. 1. All working journalists shall be paid wages on a working day before the expiry of the seven days after the last day of the wage period (which shall not exceed one month) in respect of which the wages are payable.

2. Any wages due to a working journalist but not paid on the usual pay day on account of their being unclaimed shall be paid by the employer on one or more unclaimed wage pay day or days in the following week which shall be notified on the notice board as far as possible.

11. The Manager may, at any time, in event of fire, catastrophe, breakdown of machinery or stoppage of power supply, epidemic, civil commotion or any cause beyond his control, close down any department or departments or a section or sections of department or departments of the newspaper establishment wholly or partially or the whole or part of the newspaper establishment for any period or periods without notice. Wherever practicable, reasonable notice shall be given of the resumption of the normal work.

12.1. Subject to the provisions of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, or any other law for the time being in force and applicable to the working journalists, the services of a working journalist may be terminated by six months' notice in the case of an editor and three months' in the case of any other journalist.

2. A permanent working journalist desirous of leaving the service may do so by giving to the Manager six months' notice in writing in the case of an editor and three months' notice in the case of any other working journalist.

3. Where the employment of any working journalist is terminated the wages earned' by him shall be paid before the expiry of the second working day from the date on which his service is terminated and other dues, if any, shall be paid to him or if he is dead to his heirs as far as possible within one month and in any case not later than three months from the date on which his service is terminated.

4. Where a working journalist leaves the services, the wages earned by him shall be paid within seven days from the date on which he leaves the services and other dues, if any, shall be paid to him or if he is dead, to his heirs as far as possible within one month, and in any case not later than three months from the date on which he leaves the services.

5. All cases of working journalists other than those appointed on a permanent basis may leave their services without notice but the services of a working journalist shall not be terminated, as a punishment unless the procedure laid down under ill Standing Order 14 is followed.

6. An order relating to termination of services of a working journalist shall be in writing and shall be signed by the Manager or an official of the newspaper establishment authorised by him for this purpose. The reason for the termination of the services shall be given in the order, a copy of which shall be supplied to the working journalist concerned.

Ions

13. Any of the following acts or omissions on the part of a working journalist shall amount to misconduct:-

a. wilful insubordination or disobedience whether or not in combination with another, of any lawful or reasonable order of a superior;

b. going on a strike or abetting, inciting, instigating or acting in furtherance of a ay on strike in contravention of the provisions of any law or rule having the force of law;

c. wilful slowing down in the performance of work or abetment or instigation thereof;

d. theft, fraud, or dishonesty in connection with the employer's business or property;

e. taking or giving bribes or any illegal gratification;

f. habitual absence without leave or absence without leave for more than ten consecutive days or overstaying sanctioned leave without sufficient ground or proper or satisfactory explanation;

g. habitual late attendance;

h. habitual breach of any Standing Order or any law applicable to the newspaper establishment or any rules made under such law;

i. riotous or disorderly or indecent behaviour or commission of any act subversive of discipline on the premises of the newspaper establishment or while on duty;

j. habitual neglect of work or habitual or gross negligence;

k. habitual breach of any rule or instruction for the maintenance and running of any department with which he is concerned;

I. wilful damage to work in process or to any property of the establishment;

m. refusal to accept a charge-sheet, order or other communications served in accordance with these Standing Orders.

[n. sexual harassment which includes un-welcome sexual determined behaviour (whether directly or by implication), such as:-

i. physical contact and advances; or

ii. a demand or request for sexual favours; or

iii. sexually coloured remarks; or

iv. showing pornography; or

v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.];

14. (1) The following penalties may be imposed by the Manager or any authority to be nominated by him on a working journalist found guilty of any of the misconducts:-

a. warning,

b. censure,

c. withholding of increments,

d. withholding of

e. termination of employment by way of discharge, and

f. termination of employment by way of dismissal:

Provided that no such penalty shall be imposed on any working journalist other than the editor except after consultation with the editor.

2. No penalty as mentioned above shall be imposed unless a working journalist is informed in writing of the reasons for awarding a penalty and is given a reasonable opportunity to defend himself personally or through a co-worker of his choice or through an official of a trade union of working journalists of which he is a member, including the right to be heard in person and to examine the witnesses.

3. A working journalist may be suspended during the period of an enquiry against him provided that he shall be paid during such period a subsistence allowance not less than half the wages last drawn by him while on duty.

Explanation.- For the purposes of this Standing Order "wages" means wages as defined in the Industrial Disputes Act, 1947.

4. An order of suspension shall be in writing and may take effect immediately on delivery to the working journalists.

5. If a working journalist refuses to accept a charge-sheet, order or other communications served in accordance with these Standing Orders and provided that he has been asked to accept the charge-sheet in the presence of at least two witnesses, he shall be told verbally the time and place at which the enquiry into his alleged misconduct is to be held and if he refuses or fails to attend at that time, the enquiry shall be conducted *ex parte* and the punishment awarded shall take account of misconduct under Standing Order 13 thus committed.

6. If on enquiry the charges against the working journalist are not proved to be correct he shall be deemed to have been on duty during the period of suspension and shall be entitled to the wages which he could have received if he had not been suspended.

7. In awarding penalty under this Standing Order the authority inflicting the punishment shall take into account the gravity of the misconduct, the previous record of the working journalist and any other extenuating or aggravating circumstances, that may exist.

[1][14-A. The age of retirement or superannuation of the working journalist may be sixty year or such other as may be agreed upon between the employer and the working journalist by an agreement, settlement or award which may be binding on the employer and the working journalist under any law for the time being in force.]

15. Any working journalist desirous of redressing any grievance arising out of his employment or relating to unfair treatment or wrongful exaction on the part of a superior shall, either himself or through a trade union of the working journalists of which he is a member, submit a complaint to the Manager or any officer appointed in this behalf. An appeal against the order of the Manager shall lie to the employer except where the Manager is the employer.

[15-A. Where an employer orders a medical examination of a workman or person desiring to be recruited as his workman under any law, contract, custom, usage applicable to his than industrial establishment or under any award, agreement or settlement binding on the employer and the workmen in his industrial establishment such examination in the case of female shall be made only by a lady doctor, and the expenses of such examination shall be borne by the employer].

16. Every working journalist shall on the termination of his services, or on his leaving services, or retiring, be entitled to a service certificate.

17. The Manager of the newspaper establishment shall be personally held responsible for the proper and faithful observance of the Standing Orders.

18. The decision of the Manager on any question arising out of, in connection with, or incidental to these Standing Orders, including decision in connection with taking disciplinary action against a working journalist for misconduct shall be subject to an appeal to the employer, except where Manager is himself an employer.

19. Every working journalist shall be supplied free of cost with a copy of the certified Standing Orders applicable to him and relating to the newspaper establishment in which he is employed, as soon as after the date they come into operation; but in any case not later than three months from such date.

20. 1. Notices to be exhibited or given under these Standing Orders shall unless otherwise provided be in English and also in the principal regional language of the local area wherein the newspaper establishment is situated.

2. Any notice, order, charge-sheet or other communication or intimation which is addressed to the individual working journalist and is given in writing under these Standing Orders shall be in English or in the principal regional language of the local area wherein the newspaper establishment is situated.

21. Nothing contained in these Standing Orders shall operate in derogation of any law applicable and for the time being in force or to the prejudice of any right under an agreement, settlement or an award for the time being in force or contract of service, if any, or custom or usage of the newspaper establishment.

Points To Remember

1. Short title, extent and application
2. Interpretation
3. Submission of draft standing orders
4. Conditions for certification of standing orders
5. Certification of standing orders
6. Appeals
7. Date of operation of standing orders
8. Register of standing orders
9. Posting of standing orders
10. Duration and modification of standing orders
10-A. Payment of subsistence allowance
11. Certifying Officers and appellate authorities to have power of Civil Court
12. Oral evidence in contradiction of standing orders not admissible

LESSON 7:
COLLECTIVE BARGAINING AND SCOPE OF INDUSTRIAL DISPUTES ACT

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is meant by collective bargaining?
- What is the scope of Industrial Disputes Act?

So, studentsRome was not built in a day. So is the case with the industrial adjudication. It took centuries for the industrial adjudication to come alive. Then just as all roads lead to Rome, all efforts of industrial adjudication lead to industrial peace and harmony which is so essential for the progress of the Nation. The Nation is now going 'global' in this millennium and, therefore, the importance of industrial adjudication has gone all the more high in this millennium and that explains the need of examining the spectrum, growth and the whole gamut of industrial adjudication.

2. What is "Freedom of Contract" or "Laissez Faire"?

The '*Laissez faire*' means Freedom of Contract. The Freedom of Contact, in its turn, means every individual has a right to enter into a 'Contract' with any other individual or group of individuals and to 'have and hold' the property. It is a part of the English Common Law relating to Individual's right. It is a part of the English Common Law relating to Individual's right. It was believed that '*Laissez fairs*' or the 'Freedom of Contact' would automatically regulate the relationship of Employers and the Workers. Because the Employers were free to 'hire and fire' their labour to suit their need and so the Workers were free to offer their services for wages. However, this myth was blown to pieces during the time of industrial revolution.

3. 'Collective Bargaining by riots'

During the time of industrial revolution, there were several changes, such as, the emergence of giant Companies, Corporations, Monopolies and congestion of population in industrial centers. These changes gave rise to new problems. One was that workers were brought from their own agricultural fields to industrial organisation not belong to them. Second was the inter-separation of family members. The third was the industrial accidents, industrial diseases, and spread of epidemics due to concentration of working population in unhygienic condition and lack of medical care. Naturally, the workers reacted sharply to these social evils. In order to compel their employers to redress their grievances, the Workers started to resort to violence. They destroyed machinery, factories, mines and workshops. The Employers, managerial personnel and even the police were not spared. This was intended to achieve collective bargaining by riot. But surely, this blew the myth of freedom of contract or the 'Laissez fairs' to pieces.

4. The Rise of Collective Bargaining

When the industrial revolution was taking shape, unskilled workers were in predominance naturally because production was low and the technique was primitive then. The workers, therefore, had nothing to bargain with. But as the Technique, Technology of Production and Manufacturing Process advanced, a new class of skilled workers emerged. These workers naturally had with them something to bargain with, their Skill, Training and Experience. However, they were very weak individually to bargain with their Employers. They then realized that unitedly they would be in a stronger position to bargain with their employers. They also felt certain that if they came together, they would be able to avoid competition among themselves. This gave rise to **collective bargaining.**

5. 'Collective Bargaining' - What is it?

//The International Labour Office has defined 'Collective Bargaining' as negotiations between Employer and Employees about the terms and conditions of employment with a view to arrive at an agreement. This concept was first formulated in 1897// This is a classical theory because it is in consonance with the classical and traditional concept of collective bargaining. According to this theory/individual bargaining' is substituted by the "collective bargaining" through the medium of a trade union. In other words, a "trade union" is one kind of 'trading' organisation dealing in labour. This theory is based on the experience of earlier time.

6. Modern Theory of Collective Bargaining[5]

Indeed, according to Modern Theory also it is a 'Sale of Labour'. But it seeks to come out of the concept of 'bargaining' or 'marketing' of labour aspect in the collective bargaining. It is because; the trade union is neither a 'price fixing agency' nor a 'trading organisation'. The modern theory takes into consideration that the collective bargaining is not a commercial transaction between a Trader and Consumer or amongst Traders themselves because a trade union does not bargain with the Employer or Employers' Associations in the sense of 'marketing' or 'economic activity'. This modern theory takes the trade union more in the nature of a political and diplomatic type of institution. It holds the view that collective bargaining, really does not do "bargaining" but it does only the Negotiations. Although the activities of 'collective bargaining[1] are not political; nevertheless, there are two political characteristics in the collective. One is 'rule making' process and the Other is 'regulation of power relations' between capital and labour. Infact, the collective bargaining is nothing but the 'collective wisdom and collective will'. There is thus a radical departure from the classical and traditional concept of collective bargaining, which suffered from inherent confusion and contradiction flowing from the term 'bargaining'in the term 'collective bargaining".

7. Ingredients of 'Collective Bargaining'

The 'Collective Bargaining' has the following ingredients.

i. Negotiation

The Collective Bargaining is a process of negotiation conducted with a yiew to arrives at an amicable settlement. However, it is just possible that even after protracted negotiations, it may not be possible to reach to any settlement at all. But there must be an effort of negotiation; it may result in settlement, it may not; but the aim of carrying on negotiation must always be to reach to an amicable settlement. Therefore, negotiation is most essential and basic ingredient of the process of collective bargaining.

ii. Negotiations to improve Service Conditions or the Terms of Employment

The whole concept of 'Collective Bargaining' in the field of industrial law is to improve the service conditions of the working class people. Naturally, therefore, for this purpose, the negotiations just be for improving Wages, Leave, Security of employment, Hours of work, Health, Safety etc. The negotiations, -of course, can also be on any matter connected therewith or incidental thereto.

iii. Parties to the Negotiations

For the negotiation, on One Side, there will all ways be the Employer and on the Other Side, there will always be the *Employees.* For and on behalf of Employees, there may be Trade Union, or Trade Unions, these trade unions, may be recognised or unrecognized. Similarly, on the side of Employer, it may be his representative or the Officer or there may be the Association of the Employers and their office bearers can carry on negotiations.

8. The Other Modes of Settling Grievances of Workers

The improvement in Service Conditions or the 'Terms of Employment" may be sought by two modes. One is 'Collective bargaining' or and the other is 'Compulsory Adjudication' or 'Arbitration'. The Arbitration is nothing but an another form of 'Collective Bargaining' because unless workers agree to refer the dispute to a third party for its intervention, there can not be any arbitration. As such, the arbitration is not an independent mode of settling the grievances but a part of the Collective Bargaining.

The question, therefore, is that out of the two modes of settling, the grievances which one is better, the 'collective Bargaining' orthe 'Compulsory Adjudication. In the Western countries, collective bargaining is preferred to the compulsory adjudication. But in underdeveloped countries, it is said that the 'compulsory adjudication' is far better. So much so that, it is said, the compulsory adjudication' is as essential as the compulsory education or the compulsory taxation. Compulsory Adjudication or Arbitration means that under the compulsion of law, the Government requires the parties to go before a Tribunal for settlement or redressal of the dispute by adjudication. It is a benevolent compulsion and not a coercive or totalitarian measure. The Government thus retains the power to judge whether the process of 'Collective Bargaining' is sincerely used or not.

9. Advantages of 'Collective Bargaining'

1. It is quick and efficient. The Parties do not waste time - as in litigation.
2. Parties themselves resolve their disputes it is more democratic and long lasting.
3. It creates harmony in relations between capital and labour.
4. Bitterness, delay and expenses are avoided in sharp contrast to adjudication.

10. Disadvantages of 'Collective Bargaining'

1. Consumer is not represented in collective bargaining although he is affected by the rise in prices as a result of the wage rise.
2. Collective Bargaining flows from strength (of workers) and correlation of forces and not from any rational or moral basis.
3. If the transaction of collective bargaining fails, Strikes or lockouts follow.

11. Essential Conditions for Successful 'Collective Bargaining'

a. General

The utility and need of collective bargaining need not be over emphasised. But if the collective bargaining is a must then it must be considered as to what can it help in achieving it. The favourable political climate, freedom of association, stable unions, recognition of trade unions, willingness for the 'give-and-take' approach and avoidance of non-participation can certainly go a long way in achieving the Collective Bargaining successfully.

b. Favorable Political Climate

(i) If the Political Party in power, in any given Country, is hostile to trade union movement,

i. If the Government proceeds to abolish the trade unions,
ii. If the Government declares Emergency rule and prohibits all forms of public grievances and raising any demands otherwise than through of the Government,
iii. Even if the Government is not hostile to trade union activities but if government still does not actively supports the cause.

The 'Collective Bargaining is bound to suffocate and fail on account of this climate in the country. On the other hand if the Political Party in power actively encourages and creates an atmosphere for the negotiations between the Employers and Workers, collective bargaining is sure to blossom and prospers.

c. Freedom of Association

Collective Bargaining itself shows that it is not an individual effort but the collective effort of the workers. Necessarily, therefore, the workers must have freedom to Organize, Form, and Join or assist the Union of their choice. Such freedom must flow from the Constitution. But apart from the Constitutional freedom, the Legislation granting facilities and removing restrictions on trade unions should also be enacted.

d.Stable unions

A union can not be stable if it does not have sufficient majority. Therefore, what is necessary and important is that the workers must patronize their unions. It must be noted that even if there is freedom of forming a union and even if there is a political climate, the lethargy of the workers will ruin the whole purpose of the 'Collective Bargaining'. If the union has the support of majority of the workers, the Employer is also ready and willing to negotiate rather than negotiating with the union of minority or when the stability of the union is extremely doubtful. The employer in that, case is reluctant to negotiate with such a minority union. Indeed, it is the stable union which itself feels strong and powerful in the negotiation. If there are number of unions operating in the organisation or in any given industry, the strength of the union is reduced to a very great extent. In fact, the Employers are tempted to play one against the other. As such, the stability of the union is also very important in the process of 'Collective Bargaining.

e. Recognition of the Union

The Employer must accord recognition to the union having the majority. It also motivates and induces the workers to join the union and as aforesaid, the larger the number supporting the union, more it carries the weight in its negotiations. But it is a vicious circle. Majority Union induces and even forces the Employer to grant recognition and Recognition granted by the Employer induces the Workers to join that union. But once vicious circle is broken, it helps in negotiation and helps the 'Collective Bargaining' to its fullest extent. Once the recognised union enters into a settlement, that settlement is long lasting and there is no danger of strike or stoppage of work.

f. 'Give and Take' Approaches

The parties can not in any negotiation worth its name adopt a hard line and both must be ready to give up to gain something. If there is no broad approach and 'give-and-take' attitude, no negotiations can succeed. One must not approach with closed mind' or with any pre-conditions or with any bias approach. What is true for the general negotiations is true for the 'Collective Bargaining' too. No 'Collective Bargaining* can succeed if the parties are not prepared to give up certain things for a 'package deal'.

g. Non Participation

It is open secret that no negotiations can be carried out unless one is mentally and physically present in the discussion. If one simply remains present with closed mind or biased mind, no settlement can be achieved. Similarly mere honest and sincere desire to settle would bear no fruit unless one physically remains present in the negotiations. Therefore, avoidance, absence and non-participation are fatal to the 'Collective Bargaining[1].

12. Subject matter of 'Collective Bargaining'

The Legislation undoubtedly prefers and supports the 'Collective Bargaining". However, so far, no statute has listed out the issues, which can be negotiated by and between the parties to the Collative Bargaining. But it is too obvious that the parties will always prefer to negotiate on the issues of mutual interest. It will always be tug of war between the Employers, their Association or their Federations on One Side and the Employees, Trade Unions, recognised or otherwise and their Federations on the other side. It may be recorded here that on Employees' side, inter-alia, on the following issues, negotiations can be carried out" -

1. Service Conditions or settlement of Standing Orders.
2. Wages - Times-rate or Piece-rate, other payments, fixing wage scales and the scales of other payment-for existing and future employees.
3. Working Hours, Rest Hours, Lunch Time, Tea Time, Overtime, shift working, Night Shifts and payments in respect of overtime,
4. Holidays, Leave- annual, casual, study, sickness, maternity, paternity, extraordinary and Wages in lieu thereof.
5. Exemption from work-on account of sudden sickness, union representatives given special permission to attend to union work rather than working on their work-place etc.
6. Seniority, promotion, and the incidental issues.
7. Settling list of misconduct, framing rules of Disciplinary action, layoff's, retrenchment, re-employment, dismissal, termination and the related issues.
8. Benefits like fringe benefits, retirement benefits, maternity benefits, family benefits, house accommodation, etc. and the related issues.

Whereas on behalf of the Employers, the following issues can be discussed:

1. Fixing up the Standards of Production and ways and means to achieve the same.
2. Quality Control measures risk-avoiding measures, loss-avoiding measures, waste-avoiding measures.
3. Ways and means to increase production/productivity and achieve the target of maximum.
4. Formation of Works Committees and/or Joint Consultative body for discussion on day-to-day affairs and the I procedure for the same.
5. Adoption of misconduct in order to bring law and order on the Shop Floor as well as beyond it.
6. Prohibition of Strikes, go-slow and such other coercive modes adopted by the employees.
7. Duration of the agreements during which time, the agreements can hold the field.

13. Role of State and its Machinery in Collective Bargaining'

In the Western countries, 'collective bargaining is preferred to the compulsory adjudication. But in underdeveloped countries, it is said that the 'compulsory adjudication' is far more better. So much so that, it is said, the 'compulsory adjudication' is as essential as the compulsory education or the compulsory taxation. Compulsory Adjudication or Arbitration means under compulsion of law, the Government requires the parties to go before a Tribunal for settlement or redressal of the dispute by adjudication. It is a benevolent compulsion and not a coercive or totalitarian measure. The Government thus retains the

power to judge whether process of Collective Bargaining[1] is sincerely used or not.

All our Legislations derive their power of making laws from the Constitution of India, which we adopted on 26th January 1950. The Hon'ble Supreme Court of India in Workmen of Balmer Lawrie & Co Ltd v/s BL & Co. 1964 I LLJ 380 has rightly considered the importance of industrial adjudication at par with the fundamental rights guaranteed under the Constitution of India. Thus it is clear that the State [Union of India and the State Governments] is sure to advance (1) the collective bargaining, (2) adjudication and the (3) admixture of the two because all these are finely woven in the fabric of the Constitution of India itself. But by any chance, if the Government fails, the Courts are undoubtedly there to protect the rights enshrined in the Constitution of India.

14. Industrial Dispute Act of India

The first piece of legislation in England was the Ordinance of Laborers, promulgated by King Edward II in 1349. It was not for the welfare of workers but it was to ensure the regular supply of the labour. This condition continued until 1548 when Statute of 1548 was passed. By this Statues also, all that was provided was not to conspire, covenant or promise together to take oath that they would work only at a certain price or not to work at all or not to finish the work already started. In 1562, all earlier Statutes were repealed and a consolidated law was enacted called as the Statues of Elizabeth. In 1779, England enacted a Law whereby strikes, picketing and combination of Workers were prohibited. The Laws of 18th century did reduce the severity of earlier laws and did recognise the right of Workers to form union, however, it only reduced the criminal conspiracy to a Civil Conspiracy. The term Civil Conspiracy was defined as intentional infliction of damages by concerted action upon another without 'just cause' or excuse. In Toff Vale Rly Co.v. Amalgamated Society of Rly Services, (1901) A.C. 426, damage was caused to the railway property because of picketing during the strike period. The House of Lords held that the union funds should be made available for payment of compensation for damages caused to the railway property. This decision caused a stir in the labour world and it was realized that further protection was necessary for the Trade Unions. As a result of this, the labour leaders and their Organisation contested general elections of 1906 and returned 29 candidates to Parliament. They made a common cause with the powerful group of Liberals and were able to get the Trade Disputes Act of 1906. It was then replaced by the Trade Disputes Act of 1913. In India, the first Trade Disputes Act, on the model of English Trade Disputes Act of 1913, was enacted in 1930. It was replaced by the Trade Disputes Act, 1929. The Industrial Disputes Bill was then finally introduced in the Central Legislative Assembly on 8th October 1946 which was ultimately passed in March 1947 to become the Act with effect from 1st April 1947.

1. What is "Industrial Disputes"?
2. Origin
3. Preamble
4. Scope and extent of the Act

What is "Industrial Disputes"?

The "Industrial Disputes" are disputes relating to an industry. It appears so simple. But what is "industry" has always been a puzzle. There are judgements and judgements to explain the term industry and these judgements are of no inferior courts but of the highest court of the land, the supreme court of India. The last one was given in the case of Bangalore Water supply and Sewerage Board v/s A. Rajappa, AIR 1978 SC 548. Our legislatures also resolved their differences and amended the definition of the term industry given in Section 2(j) of the Act by the Industrial Disputes Amendment Act, 1982. However, no notification is still issued to bring it into force. But then the Hon'ble Supreme Court of India in the case of Coir Board v/s Indira Devi, 1998 I CLR 866 observed that the definition given in Section 2(J) of the Act needs re-examination and so the judgement given i$_n$ the case of Bangalore Water Supply should be reconsidered. Accordingly it was reconsidered but it was held (1991 I LLJ 1109) that earlier ruling was correct.

2. Origin

In the year 1920, the Trade Disputes Act was passed for the first time. This Act was repealed and replaced by the Trade Disputes Act, 1929. The Act of 1929 was amended in the year 1938. However it was not found useful because the Government policy at that time was of *laissez faire.* Then, later on, it became necessary for Government of India to promulgate Defence of India Rule to meet the exigency created by the world war II. Rule 81-A of the Defence of India Rules gave powers to the appropriate Government to intervene in industrial disputes and provide speedy remedy for industrial disputes by referring that compulsorily to conciliation or for adjudication. The Award passed upon such a reference was made legally binding on the parties. The strikes and lock outs were prohibited during the pendency of conciliation or adjudication proceedings. At last, the Industrial Disputes Bill was introduced in the Central legislative Assembly on 8,10.1946. This Bill embodies the essential principles of Rule 81-A of Defence of India Rules and also certain provisions of the Trade Dispute Act, 1929. The Bill was passed by the assembly in march 1947 and it became the law of the land with effect from 1-4-1947.

3. Preamble

The preamble sets out the scope and purpose of an Act. Every piece of legislation reflects the social philosophy prevailing at the time. If there is some ambiguity and if more than one construction is possible, the court accepts the one which is consistents with the objects of the Act as explained by the preamble. This explains the utility and importance of the preamble/The preamble of the Act recites that the Act was enacted to make provisions for the investigation and settlement of industrial disputes and for certain other purposes. The "investigation" and "settlement" includes resolving of disputes by conciliation as well as by adjudication. For investigation and settlement of disputes, the Act empowers the appropriate government to constitute courts of enquiry, Boards of conciliation and appoint conciliation officers to investigate, mediate in and promote settlements of industrial dispute. A remarkable feature of the Act is that the machinery created under the Act, for settlement, is activated almost automatically

and needs no outside initiative. The Act has undergone substantial modifications since its coming into force in 1947. The provisions of Sections 2-A, 11-A, 17-B, chapter V A, chapter V B etc. have been engrafted in the Act.

4. Scope and Extent of the Acts

The Act extends to the whole of India including Jammu and Kashmir but only to the extent to which the Act applies to Government of India.

Prior to Constitution of India, the Government of India Act was holding the field. Nevertheless. The Labour was always a subject on which Centre, Provinces and the Presidencies (under British rule) could make laws. Most of the states (Provinces and Presidencies) have enacted their own laws on the subjects of Labour either by enacting the Amending Acts to the I.D. Act or by independent legislation. Several States have not enacted their own independent legislation on this issues but they have adopted the Central Act (I.D. Act) by engrafting their own amendments to suit their respective peculiar local and political conditions. However, some of the States have enacted the legislation on the subject of labour for instance, Bombay Industrial Relations Act, 1946 was passed by the them Presidency of Bombay. The Government of Central Provinces and Berar has enacted the C.P.C. and Barer Industrial Disputes Settlement Act, 1947. C.P. & Barer, later on, merged with the state of Madhya Pradesh and in the case of Uj-jain Mill Mazdoor Sangh ufs State of M.P. (1980 II LLJ 287), it was held that M.P. Industrial Relations Act is not invalid merely because the amending Act was not referred for the assent of the President of India. In the case of Ahmedabad Mill Owners Association v/s I.G. Thakore, Air 1967 SC 1091, the court held that there is no conflict between the I.D Act and Bombay Industrial Relations Act as long as the I.D.Act did not provide for that is covered by the state legislation (BIR ACT).

Definitions

Synopsis

1. Appropriate Government -Section 2(a)
2. Industry -Section 2(j)
3. Industrial disputes -Section 2(k)
   - i. What is dispute
   - ii. Factum of dispute
   - iii. Parties to the dispute
   - iv. Subject matter
   - v. When does industrial dispute arise?
   - vi. Written demand not necessary
   - vii. Does it mean ‘Collective dispute’?
4. Individual disputes Section 2-A
   - i. Extension of definition of ‘ industrial disputes’
   - ii. Constitutional validity
   - iii. Section 2 (k) and Section 33-A
   - iv. Section 36-A and Section 2 (k)
   - v. Limitation
   - vi. Action Personalis moritur cum persona
5. Industrial Undertaking-Industrial Establishment-Section 2(ka)
   - i. Introductory
   - ii. Severable activit
   - iii. Pre-dominant nature of industry
6. Settlement -Section 2(p)
   - i. Introduction
   - ii. Settlement otherwise than in due course of conciliation.
   - iii. Legal effect
   - iv. Procedure.
   - v. Settlement under fraud -whether can be industrial dispute
   - vi. Interpretation
   - vii. Settlements -binding not binding ,
7. Employer -Section 2 (g)
   - i. Meaning
   - ii. Direct nexus is necessary
   - iii. Other Employers
   - iv. Change of ownership -successor -in -interest
8. Workman -Section 2 (s)
   - i. Introductory
   - ii. Who is workman
   - iii. Employed
   - iv. Industry
   - v. Hire or ;eward
   - vi. Nature of work i
   - vii. What is manual?
   - viii. Unskilled work
   - ix. Skilled work
   - x. Technical
   - xi. Operational work
   - xii. Clerical work
   - xiii. Supervisory work
   - xiv. Apprentices
   - xv. ‘Contract of service’ and ‘contract for service’
   - xvi. Excluded
   - xvii. Point of time
   - xviii. Burden of proof
   - xix. Categories of Workmen
9. Public Utilit Service -Section 2(n)

1. Appropriate Government Section 2(a)

The real significance and importance of this definition given in Section 2 (a) of the Act is that one can determine whether the reference under Section 10 of the Act was properly made or not

The definition [S.2 (a)] was lastly amended in 1986. It opens with “in relation to any ‘industrial dispute concerning any industry carried on by or under the authority of central Government”. The key words and the words on which controversy

persistently revolves are "industry carried on by or under the authority of Central Government". While construing these words in the case of Heavy Engineering Mazdoor Union v/s State of Bihar AIR 1970 SC.82, the Hon'ble Supreme Court of India held that in effect the company is separate from its share holders and the mere fact that the entire share capital was contributed by Central Government and the shares are held by the president and some officers of the Government, does not make it as Agent of the Central Government. The fact that the Ministers can appoint Directors and can give them directions is immaterial. The law laid down by the Hon'ble Supreme Court in this cases (of Heavy Engineering) was relied upon in several case including the cases of Hindustan Aeronautics (1975) 3 SCC 679, RMMS v/s Model Mills, 1984 Supp. SCC. 44, Fee Workers Union (1985) 2 SCC 294, Parvez Ahmed P.U.L.C. (1997) 75 FLR 85. However, it was for the first time came to be tested in the case of Air India Statutory Corporation v/s United Labour Union, 1997 I CLR 292, The Hon'ble Supreme Court of India observed that case of Heavy Engineering interpreted the words "appropriate Government" narrowly on the common law principles which no longer bear any relevance when it is tested on the anvil of Article 14 of the Constitution of India. The Supreme Court further observed that it is true that in Hindustan Machine Tools vis R.D. Shetty's and Food Corporation of India cases the ratio of Heavy Engineering case formed the foundation. But in the case of HMT, there was no independent consideration. Whereas, in the R.B. Shetty's case, the court did not dwelve in depth into this aspect and in FCI's case, the Bench 1 proceeded primarily on the premises that warehouses were situated within the jurisdiction of different State Governments, The court then laid down the following :

1. The constitution of the Corporation or instrumentality or agency or corporation aggregate or Corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.
2. If it is a statutory Corporation for it is an instrumentality or agency of the State or if it is company owned wholly or partial ly by a share capital, floated from public exchequer, it gives indiciathatitiscontrolled by orundertheauthority of the appropriate Government.
3. In commercial activities carried on by a corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19(2) it is an instrumentality or agency of the State.
4. The State is a service Corporation. It acts through its instrumentalities, agencies or persons - natural or juridical.
5. The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles.
6. The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law principles and limitations.
7. Though the instrumentality, agency or person who conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government
8. The existence of deep and pervasive state control depends upon the facts and circumstances in a given case is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.
9. Functions of an instrumentality, agency or person are of public importance following public interest element.
10. The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employeesor public by virtueof power vested in it by law, memorandum of association or bye-laws or articles of association.
11. The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, men and workmen, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workman.
12. Every action of the publicauthority, agencyor instrumentality or the person acting in public interest or any act that gives rise to public element should be; guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.
13. If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconditional conditions or limitations in their actions.
14. It must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations andalltheiractionsshouldsatisfythebasiclawand requirements of Article 14. The public law interpretations is the basic tools of interpretation in that behalf relegating common law principles to purely private law field.

From the above, it should the absolutely clear that the cases decided earlier to the case of Air India Statutory Corporation [so far as it relates to the issue of "industry carried on or under the authority of Central Government] do not hold good and they cannot be said to be the good law now. The law, now, therefore emerges is that the Central Government will be the appropriate government.

In the case of Sirajuddin & Co v/s Workmen, AIR 1966 SC 921, the Hon'ble Supreme Court laid down that no doubt the Act provides that the central government is the appropriate government for an industrial dispute concerning mine, but employees working in the office (and not in the mine) cannot be treated as workmen working in the mine. Because the definition of mine indicates that the office of mine situated on the surface of the mine is excluded. Therefore, the industrial dispute in respect of workmen at the Head Office at Calcutta,

for the mines in Orissa, the appropriate Government was the Government of West Bengal.

It should be fairly clear that controversy of "appropriate Government" arises in three different circumstances

1. When there is controversy as to whether activity falls under central government or the state government one.
2. Whenactivitiespartly fallwithinthe jurisdictionof central government and partly within the state govern-
3. When activities fall in two different states.

as far as first two cases are concerned, the Air India Statutory Corporation's case 1997 I CLR 292 is the law laid down on the subject. However if ownership etc. is not in dispute for which guidance can be drawn from the case of Air India Statutory Corporation's case then as has been laid down by the Supreme Court in (Workmen via Shri Ranga Vilas Motor (P) Ltd. AIR 1967 SC 1040 and Indian cables Co, Ltd v/s Workmen, 1962 I LLJ 409) the proper question to consider is "where did the dispute arise" in case of transfer, the dispute arises not at the Head office where the order of transfer was passed but at the place where the workman was working. The State Government would have jurisdiction only if the cause of action, wholly or partly, arose within the state (Indian Cable Co. Ltd. v/s in Workmen, 1962 I LLJ 409). The employees were employed outside the state of Delhi, never the less, they received their salary from Delhi. Their transfer, leave etc. were controlled from Delhi, although they were posted outside the State of Delhi. The appropriate government was held to be the Delhi Government (Lipton Ltd. v/s Employees, AIR 1959 SC 676). For Mahanagar Telephone Nigam and for a contractor of Railway. The Central Government was held to be the appropriate Government) in the case Bombay Telephone Canteen Employees Association vis MTNL 1989 Mah LLJ 6 and J.R. Jangle vis Sitabai 199. Mah. L.J 605]

Indeed, really speaking, if an industrial dispute is adjudicated either by a court constituted by Central Government or by the State Government the question as to which is the "appropriate Government," i.e. Central Government or State Government, is one of procedure. But often than not a Controversy is raised and matter is dragged up to the apex Court. It is difficult to understand the logic behind such a litigation on procedural cum technical plea. It only delays the proceedings. All that can be said that if law is laid down, it must be in that form and in that manner only. So if the appropriate government is the Central Government, the State government cannot make the Reference under Section 10 of the Act and if it does so, it does so only illegally and vice-versa.

LESSON 8:
THE DEFINITION OF INDUSTRY AND OTHER DEFINITIONS

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is meant by industry?
- What is meant by industrial dispute?

Let us first understand the definition of industry

(2) Industry Section 2(j)

1. The term "industry" is defined as: any
2. business.
3. trade
4. undertaking
5. manufacture or
6. Calling of Employers.

Not only these but also - included in the terra industry are any

1. calling
2. services
3. employment
4. handicraft
5. industrial occupation or
6. vocation of workers

This shows that the term "industry" has been defined in most wide terms and anything and everything appears to have been included in the sweep of the term. It is because the term "industry" cannot be strictly defined. It can only be described. Thus the definition in the Act is not meant to provide more than a guideline. This raises doubts as to what could be the meaning of the expression "calling of the Employers" used in the definition. Well, bearing in mind the collection of terms used in the definition, the only principle that can be applied in interpretation is to deploy the doctrine of *nociture a sociis.* The Hon'ble Supreme Court of India in the case of Hospital Mazdoor Sabha (AIR 1960 SC 610) had laid down that when two or more words are coupled together which are sceptible of analogous meaning then these words should be understood to have been used in their cogent sense taking their colour from each other. The more general being restricted to a sense analogous to the less general. The meaning of doubtful word may be ascertained by reference to the meaning of the words associated with it.

The word "industry" is also used in the definition of workman given is Section 2 (s) of the Act. Necessarily, therefore, the term used in the definition of workman [2 (s)J should also be understood in the same manner as has been explained in this Section [2 (s}]. It means the "workman" is to be regarded as one who is employed in an industry. Therefore, an "industry" is to be found when the employers are carrying on any business, trade, manufacture or calling of the Employers. If they are not there, there is no industry as such (Management of Safderganj Hospital, AIR 1970 SC 140). This judgement and several other judgements had the effect of narrowing down the sweep of the term industry. Further, howsoever wide sweep of the term "industry" may be but then certain activities like Agricultural, Domestic work, the religious, the charitable, the sovereign function etc. could not be brought to the fold of the term "industry." Nevertheless the Hon'ble Supreme Court in construing the term "industry" laid down that the limited concept of the term in earlier times must now yield place to enormously wider concept so as to take in various and varied part of industry to resolve the conflict between capital and labour (D.N. Banerjee v/s P.R. Mukharjee AIR 1953 SC 58) In that case, the Supreme Court included the public utility services like the sanitation or the conservancy Department of the municipality. In the case of Corporation of city of Nagpur v/s Its Employees, AIR 1960 SC 675 it was held the Department of the municipal corporation like the Tax, Public Conveyance, Fire brigade, Lighting Water Works, Engineering, Enforcement/Encroachment Sewage, Health, Assessment, Estate, Education, Printing Press, Building. General Administration are covered under the definition of "industry" under the Act.

The judgement of the apex court left nothing to be excluded from the term "industry" and therefore, the Supreme Court took the stock of all its earlier judgements in the case of Bangalore Water Supply and Sewerage Board v/s A. Rajappa, (1978) 2 SCC 213. It laid down that the definition no doubt seeks to define "industry" with reference to Employers' occupation but includes Employees for without the two, there can be no industry. An industry is only to be found when there are employers and employees, the former relying upon the services of the latter to fulfil their own occupation.

But every case of employment is not necessarily productive of an industry. Domestic employment, administrative services of public officials, services in aid of occupation of professional men also disclose relationship of employers and employees but they cannot be regarded as in the course of industry.

The apex court (in the case of Bangalore water supply) was of the view that cases of (1) Safdargang Hospital (AIR 1970 SC 1407) (2) Solicitors case (AIR 1962 SC 1080) (3) Delhi University (1963 SC 1873) (4) Dhanrajgirji Hospital (AIR 1975 SC 2032) were not correctly decided but the case of Hospital Mazdoor Sabha (AIR 1960 SC 610) was rehabilated, however, the court rejected the test of noscitur a sows (or association of words) while deciding whether a government run hospital is an industry or not. The court rejected the twin considerations of profit motive and capital investment as irrelevant for determining whether an activity is an industry or not. The court also rejected the limitation that a quid pro quo (one was paid for

one's rendering services) is necessary for bringing an activity within the term of S.2(j) (industry)

The court observed (in the case of Bangalore water supply) that if a kind hearted businessman may hire employees and in co-operation with them produces and supply goods or services to the needy without charging any price or on receiving very negligible return. He may be very charitable but as far as the workmen are concerned, they contribute labour in return for wages. For them, the charitable employer is like any other commercial minded Employer, the beneficiaries of the charity are the customers. Industrial Law, however, does not take note of such factors but regulate the industrial relations between employers and employers, employers and workmen and workmen and workmen. But if a philanthropic devotion is the basis (when a person heading the institution whole heartedly dedicated himself for the mission and attracts others to work not for wages but for showing in the cause and its fulfilment - a devout regularly sweeps the floor) then the undertaking is not the industry and that extricates the institution from Section 2(j) of the Act.

A profession (Doctors, Advocates, teachers etc) ordinarily is an occupation requiring intellectual skill. Thus a teacher uses pure intellectual skill while painter uses not only intellectual skill but manual skill as well. In any event they are not engaged in an occupation in which employers and employees co-operate in the production or sale of commodities. However if a Dispensary or a way, it is an "industry" under Section 2(j) of the Act.

Similarly, the Sovereign functions of the State cannot be included-in industry but if there are industrial units severable from the essential functions and possess entity such units (Departments of Sovereign States) are industries under Section 2(j) of Act.

So the question, once again, is what is industry or which are the attributes which make an activity as the "industry" falling under sector 2(j) of the Act? Indeed, difficult to state. But generally (as held in the case of Bangalore water supply) such activities involve the

1. co-operation of Employers and the Employees
2. object is the satisfaction of material needs
3. it must be organised or arranged in a manner in which trade or business is generally organised or arranged.
4. it must not be casual nor must it be for oneself nor for pleasure
5. absence of profit motive is irrelevant

All the learned Judges (in the case of Bangalore water supply) expressed the view that the matter should be clarified by the legislatures by a suitable amendment. Accordingly the definition (in S.2(j) of the Act) was amended by the Industrial Disputes Amendment Act, 1982, Act No 46 of 1982 but the same has not been brought into effect till date. In Suryabhan v/s Div. Soil Conservation Office, 2000 II CLR 750, the High Court remanded back the matter as the Industrial Court had relied upon the amended definition which has not yet been brought into force.

True it is that if the amended definition of the term industry is brought into effect, it will be in consonance with the judgement of the Hon'ble Supreme Court of India (given in the case of Bangalore water supply). However even after more than 10 years, the Amendment is not brought into effect. As such, a writ petition was filed in the Bombay High Court seeking direction to Government of India to fix up a date to bring the Amendment Act into force. The Bombay High Court then directed the government of India to fix up a date within six months to bring the Amendment into force (Shri Gajanan Maharaj Sansthan v/s Union of India. 1997 I CLR 875).

Well even after six months, no date was fixed and before the Amendment Act is brought into force, the Hon'ble Supreme Court of India in the case of Coir Board v/s Indira Devi, 1998 I CLR 866 analysed the judicial decisions including the one given in the case of Bangalore water supply case. It was observed that the definition of "Industry" needs re-examination and as such the matter be placed before the Hon'ble Chief Justice of India to consider whether larger Bench should be constituted to reconsider the decision given in Bangalore water supply case. Accordingly matter was re-examined and the Bench of Apex Court held that earlier ruling given in case of Bangalore Water Works was correctly laid down the meaning of the term "Industry" in Section 2 (j) [Coir Board v/s Indira Devi 1999 II LLJ 1109]. In this view of the Apex Court ruling, it is all the more necessary to issue Notification to bring into force the amended definition of "Industry" in Section 2 (j) of the Act.

The Courts have held that activity in the cases given below did not fall within the definition (S.2(j) of the Act)

1. Polytechnic [Central Agricultural Research Institute vis P.O L.C. 1998 LIC 1490 (Cal)I
2. A small upmarketing business [Umasankar Jaiswal v/s Royal Auto Centre, 1998 I CLR 740 (Bom)]
3. A government department discharging Sovereign func tion substantially serverabie [State of W.B. vis Gopal Jatia 1998 I CLR 1116 (Cal)I
4. Domestic servants(BhowreCollieryvis Itsworkmen 1962 I LLJ 378)
5. High court - its administrative side
    1. GovindbhaiKanabhr.i, vlsN.K. Desai 1988LIC505
    ii. High Court of Alia}, bad vIsAmod Kumar Sriuastava 19931 CLR 10081
6. Physical Research Laboratory[Physical Research Lab. vlsK.O. Sharma 1997 I CLR 1116 (SO]
7. Sovereign State [Ex-engineer vis K. Somesethi,1997 II CLR 387 (SC)I; Union of India o/s Jai Narayan, 1995 SCC (4) 672 and State of H.P. v/s Suresh Kumar, 1992
    2. SCC 455 relied upon]
8. Department of a State Himanshu Kumar Vidyarthi v/s State of Bihar [1997 (2) LLN 982 (SOI
9. Central Ground Water Board [Union of India vis Jai Narayan, 1997 (77) FLR 45 (SC)]
10. State Farm Corpn. of India vis II Addtional Court, 1991 I LLN 361 (Mad)]

The following are held to be "industry" Irrigation Department

1. Executive Engineerv/s Anant Yadav Maruti, 1998I CLR 403 (Bom.)
2. Desh Raj v/s State of Punjab, 1998 II LLJ 149 (SC)
3. Gurmai Singh v/s State of Punjab, 1991 I CLR 639
4. Executive Engineer Canal Living Areas v/s Sujit Raj, 1905 I LLJ 45
5. M.P. Irrigation Karmchari Sangh vis State ofM.P. 1972 I LLJ 344
6. State of Rajasthan v/s Industrial Tribunel, 1970 RLW 137
7. Dinesh Sharma v/s State of Bihar, 1983 FJR 207

Agricultural Produce Market Committees

1. Agri produce M.C. vis K.S. Nirvanappa, 1998 LIC 1312 (kar)
2. Krishi Utpaden Mandi Samiti v/s Ind. Tribunal, 1997 (76) FLR 240 (All)

Cane Farm

Hari Nagar Cane Farm v/s State of Bihar AIR 1964 SC 903
Forest Department

1. Divisional Forest Officer v/s P.O.I.T. 1997 II LLJ 1183 (P&H)
2. State of U.P. v/s P.O.I.T. 1997 LIC 784 (All)

Rural Engineering

Rural Engineering, U.P. v/s L.C.,. 1997 (2) LLN. 65 (All). SC ruling in Desk Raj, 1988 (2) LLJ 149 followed Municipality / Octroi Department

1. Rajendra Nagar Municipality v/s Pearju 1995 II LLN 674 (Bom.)
2. Octroi Dept. Mun. Board vis P.O.L.C.1997 (76) FLR 826 (All)

Road Construction Department / PWD

1. Sant Kumar vis Industrial Tribunal, 1997 LIC 777 (All)
2. Executive Engineer v/s Madhukar Purushotam, 1998 (79) FLR 850 (MP)

Dock Labour Board

Dock labour Board v/s Industrial Tribunal, 1995 I LLN 550 A.P.

Ordinance Department

Central Ordinance Dept vis P.O. CGIT, 1995 ICLR 129 (MP)
Electricity Board U.P.Vidyut Mazdoor Sangh v/s State Elec. Board 1998 II LLJ 419 (All)

Hospital

Simladevi v/s Presiding Officer, 1997 I LLR 93 P & H Refugee Projects Management, U.P. vis Workman, 1997 II CLR 42 (SC)
Technical Training Institute Technical Training Institute vis Hari Narayan Ghate, 1998 FLR 839 (MP)

Telecommunication

General Manager Tel. Com. v/s S. Srinivasan Rao, 1998 I CLR 184

Doordarshan / AIR

All India Radio v/s Santosh Kumar 1998 ICLR 864 (SO
Charitable Trust

1. Shri Gajanan Maharaj Sansthan v/s IT. 1997 ICLR 338 (Bom)
2. Shri Mohite Grih Udyog (Lijjat Papad) vis Ratnamala, 1995 I CLR 946 (Bom.)
3. President, Anath Mahila Ashram v/s J.G. Ajgaonkar, 1996 (2) Mah. L.J. 664

Trade Union

Dattatray Gopal vis RMMS, 1995 ICLR 1024 Club Ratilal B - Ravji v/s Tata Sports Club

1997 II CLR 902 (Bom)

1998 (3) LLN 157

3. "Industrial Dispute" : Section 2 (k)

i. What is dispute? Any dispute or differences between Employer and Employer, Employer and Workmen and Workmen and workmen connected with Employment or Non - employment or condition of Labour of any person is termed as " Industrial Dispute" under the Act. In fact, the term "Industrial Dispute" plays very important and vital or key role in the entire industrial jurisprudence^ It is therefore, very necessary that the term is understood in its fullest sense and concept. The term "Industrial Dispute" has remained unchanged from the time it was defined in the Act.

   The Term can be understood in its various facets and for this reason, it can be said that the term has its four facets, viz

   a. Factum of Dispute
   b. Parties to Dispute
   c Subject matter of dispute and
   d. Dispute must be relating to an Industry.

ii. Factum of dispute: It is undoubtedly needless to observe that unless there is a dispute or difference of any sort, no legal machinery need to take a start! Therefore, dispute/ difference is the first and pre - condition stipulated in the definition under the Act For dispute or differences to arise, it is not necessary that the parties should come to blows but at the same time a mere personal quarrel or a grumbling will not amount to dispute or differences within the four corner of the definition (C.J. Sambhunath Goyal v/s Bank of Baroda, 1978 I LLJ 484). It must be clearly understood that not all sorts of dispute or difference are included in the definition in the Act. 'The only differences or disputes which are within the fold of the definition given in Section 2(k) of the Act are only those disputes, or differences which bear upon the (1) relationship of Employers and Employers or Employers and Workmen or workmen and workmen and (2) condition of Labour. Thus the inter-se seniority dispute between two workmen is purely an individual dispute and it cannot be treated as industrial dispute if other employees are not concerned. Somasundram v/s Liyakatali, 1998 II LLJ 719 (Madras).

iii. Parties to dispute ."The Act provides that any dispute or differences (a) between Employers and Employers (b)

Between Employers and Workmen or (c) between workmen and workmen can be taken up for conciliation or adjudication, as the case may be, if necessary. However, in common parlence, the term "industrial disputes" is always taken to mean the dispute between Employers and Workmen and dispute between no other parties, namely between Employers and Employers or between workmen and workmen. There are, therefore, few case laws on disputes between workmen and workmen or between Employers and Employers.

iv. Subject matter : The expression "dispute or difference" means controversy connected with (a) the Employment or non-employment or (b) with the terms of employment or (c) the conditions of labour of any person. Further, it must also be a grievance felt by workmen which the Employer is in a position to remedy or set right (Madras Gymkhana Club Employees Union v/s Gymkhana Club, 1967 II LLJ 720). (Safdarjang Hospital v/s Kuldip Singh Sethi, 1970 II LLJ 266 (SO). The definition further shows that certain types of disputes can never fail within its ambit. For example, who is to be elected as the President of the Union, cannot be held to come under the definition of the expressions "Industrial Dispute" because, it is not at all connected with the employment or non — employment or with the terms of employment or with the condition of labour (South Arodt Central Cooperative Bank Employees Association v/s Management of the Bank, 1995 LIC 783 (Madras)}. Similarly the dispute with regard to demotion, cannot be raised even under Section 2A of the Act to constitute an industrial dispute [Arunagashu Chakrnborty v/s Aaj Kaal Publishers Ltd., 1994 I CLR 1084 (Calcutta)]. So also when there is a dispute with regard to seniority inter-se it cannot be treated as "Industrial Dispute" [Somasundaratn v Is Liyakat All, 1998 II LLJ 719 (Madras)], if a settlement has arrived at between the parties, there cannot arise any "Industrial Dispute" which can form a subject matter of a reference before the Tribunal. [T.P.S, Ltd. vlsI.T. West Bengal, 1975 I LLN 1165 (Calcutta)],

When the dispute of individual workmen are taken up by any union of which he or they are members and when the demand is made by union on their behalf, it becomes "Industrial Dispute". [D.N. Banerji v/s PM. Mukherjee, AIR, 1963 SC 58].

When employees made demand that employees working in higher promotion be confirmed, it was contended that it was not in "Industrial dispute[1]*. The supreme court held that although promotion is entirely at the sole discretion of the employer but the employees were not demanding promotion, what they were demanding was that those employees who have already been promoted they should be categorised as permanent or confirmed. As such, it was clearly an industrial dispute. [Workmen of Hindustan Lever u/s HL Ltd, 1984 1 LLN 460 (SC)]A

v. When does Industrial dispute arise : For existence of an industrial dispute, there should be a demand by workmen and refusal to grant it by the management. How the demand should be raised cannot be a legal notion of fixity and rigidity. The grievance of the workmen and the demand for its redressal must be communicated to the management. The means and mechanism of communication adopted are not matters of much significance so long as the demand is that of workmen and it reaches the management {Rarnkrishna Mills (Coimbatore) Ltd., v/s Government of Tamilnadu, 1984 II LLJ 259 (Madras)]

In National Engineering Industries Ltd. v/s State of Rajasthan, 2000 I CLR 389, there were Trade Unions, i.e. Labour Union, Workers Union and the Staff Union. The Labour Union has majority of the Workers on its roll- It was the recognised Union. However, all the three unions, raised a Charters of Demands, which were identical in almost all respect. Conciliation Proceedings under the Act were initiated during which time, settlement was reached with the Labour Union and the staff Union. Since no settlement was arrived at in respect of the Charter of Demands raised by the Workers Union, the Conciliation Officer submitted its Failure Report; however, the appropriate Government took no decision on it. The Workers Union thereupon moved the High Court, which directed the Government to make the reference. However, before the Order of the High Court, the appropriate Government took the decision and made a reference on the industrial dispute touching the Charter of Demands of the Workers Union. This Order of Reference made by the appropriate Government was challenged in the High Court before the Single Judge and in appeal before the Division Bench but without success. The apex Court held that in view of the settlement of the 'industrial dispute' touching the Charter of Demands, there was no 'industrial dispute' under the Act and therefore, the Appropriate Government had no jurisdiction to make the reference.

vi. Written Demand not necessary : A Demand need not be in writing to constitute an industrial dispute. The Act no where contemplates that the industrial dispute would come into existence in any particular specific or prescribed manner. For coming into existence of an industrial dispute, a written cause is not a "Sine qua non" unless of course in the case of public utility service, because Section 22 of the Act forbides going on strike without giving a (strike) Notice. [Shambkunath Goyal vis Bank of Baroda, 1978 I LLJ 484, Ramkrishna Mills (Coimbatore) Mills Ltd v/s Govt. of Tamilnadu, 1984 II LLJ 259]

vii. Does it mean "Collective Dispute"; The term "Industrial Dispute" conveys the meaning that dispute must be such as would "affect large groups of (1) workmen and the (2) employers, ranged on opposite side" [D.N. Benarji v/s P.R. Mukharjee, 1953 I LLJ 195, The obiter was cited with approval in News Papers Ltd. v/s I.T. 1957 II LLJ 6 (by SC}]. A collective dispute, however does not mean that ail workmen or a majority of them should sponsor and sport the dispute. In fact, there is nothing in the Act to require the dispute to be raised by all the workmen of the industry or by every one of them or even by a majority of them. It is enough if the controversy is between Employer on one side and the workmen on the other. So also, there is nothing in the Act to require that workmen raising the controversy

should form a majority of the employees or the controversy affects, or will affect the interest of workmen as a class. The law envisages that in the interest of peace, the industrial dispute should be examined and decided in the manner laid down in the Act {*Indian Oxygen Ltd. vis Us workmen* 1979 LIC 585 (SC)], it is not necessary that the dispute should have been espoused only by a recognised union. It can be espoused by unrecognised union also *[State of Bihar v/s Kripa Shankar Jaiswal,* AIR 1961, SC 304]. In the case of *DA.C.C. v/s workmen,* AIR 1960 SC 777. *Pradip'Lamp Works vis Workmen* 1970 I LLJ 491, *Tata Chemicals v/s Workmen* 1978 I LLJ 22(SC)], it was held that even a minority union can raise the dispute. However, when the agenda of the meeting in which the cause of individual workmen was not produced, there was no other record to show that the cause of the workmen was taken up save and except the oral evidence of the Secretary. It was held that the cause of individual workman was not espoused to treat it as an industrial dispute. It was held that, at least, the Resolution espousing the cause of workmen was necessary *[Bombay Union Journalists v/s The Hindu,* AIR 1963 SC 318]. However, in the case of *Workmen v/s Rohtak General Transport Company* 1962 I LLJ 634 & 1975 LIC 838] it was held that relevant documents showing espousal of dispute by union need not be examined too technically. The Tairvi" by the union, in conciliation is sufficient proof to show espousal of the cause *[WIMCO o/s its workmen,* AIR 1970 SC 1205].

It is not necessary that the same union should remain in charge of that dispute till adjudication because it is not necessary that the dispute must be espoused or conducted only by a registered trade union. Therefore, it is necessary to bear in mind the distinction between "espousal" and "representation". The emphasis is on espousal and not on representation. Thus it is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a union ceases to be a registered trade union that would not affect maintainability of the order of reference [Management of Gammon (India) Ltd. v/s State of Orissa 1974 II LLJ 34]. The new Union can take over and conduct the matter further [Ramlal Guramal Textile Mills v/s State of Punjab, 1958 II LLJ 245].

In Mukund Ltd. v/s M.Staff & Officers Association, 2000 I CLR 707, the question before the Court was whether employees falling in the category of "Workman" under the ID Act can espouse the cause of the non-workmen working in the same establishment. The Court held that they can because they have substantial interest in the subject matter of the dispute and that there is a community of interest. As such, the reference was validity made.

Subsequent Withdrawal of Support

The apex court in the case of Bombay Union of Journalists v/s The Hindu (this case is infrequently referred to as 'the Hindu' case), 1961 II LLJ 436 held that subsequent withdrawal of support by workmen or Union to a cause previously espoused by them will not have any effect. Conversely, subsequent support too will not convert what was individual dispute. The legal position is that when an individual workman is a part to an "Industrial dispute", he is not independently a party to the proceedings. The individual workmen is at no stage a party to industrial dispute, independently of the union. The request by the worker to withdraw the dispute also will have no relevance because the dispute being raised by the union (or group of workmen) for withdrawal will not make the dispute any less an industrial dispute [Workmen of Dalmiya Cement (Bharat) Ltd. v/s State of Madras, 1969 I LLJ 477 (Madras)].

The Whole point is whether the Employer is fighting a dispute with a large number of his workmen or not and until this test is passed, an "Individual dispute" cannot be transformed into an "industrial dispute" [Express News Papers (P) Ltd. v/s I.L.C. 1959 I LLJ 600 (Calcutta)]. This is precisely so because the expression "Industrial dispute" in the Act clearly excludes the "individual disputes". This position will be clear from the various Supreme Court judgements and the overall scheme of the Act. There was, as such, a considerable judicial conflict but the apex court in the case Central Province Transport Services v/s Raghunath Gopal Patwardhan, 1957 I LLJ 257, on consideration of preponderance of judicial opinion preferred the view that an "Individual dispute per-se cannot be an industrial dispute". This view was, later on, affirmed in the cases of News Papers Ltd. 1957 II LLJ 1.

"Any Person"

The Expression "any person" in the end of the definition given in 2 (k) of the Act is not subject to any qualification, restriction or limitation as to its scope. The word "person" has not been limited to workmen, nor is it co - extensive with any workman, potential or otherwise. Though the expression must receive a more general meaning, it cannot mean any body and every body in this wide world. If the expression is given its ordinary meaning then the definition will become inconsistent with the objects and other provisions of the Act and also other parts of the definition itself. The requirement of the definition that the dispute must relate to employment, non-employment and terms of employment or conditions of labour of "any person" necessarily, therefore, imports a limitation in the sense that a "person" in respect of whom the employer employee relation never existed or can never exist cannot be the subject matter of an industrial dispute between the employer and the workmen. In Workmen of Dimakuchi Tea Estate v/s Dimakuch Tee Estate, 1958 I LLJ 500 a dispute arose out of the dismissal of the medical officer who was not a workmen as defined in Section 2(s) of the Act. Prom the content of the definition of "Industrial dispute" and its setting in the Act, the Supreme Court applied limitation on the construction of the expression "any person", in the sense that a person in respect of whom the employer - employee relation never existed or can never possibly exist, cannot be the subject matter of a dispute between employers and workmen- It was, therefore, held that "any person" in the definition clause means a person in whose employment or conditions of labour, the "Workmen" as a class, have a direct and substantial interest with whom they have community interest under the scheme of the Act.

Thus, as aforesaid, in Dimakuchi Case (1958 I LLJ 500, the apex court held that liberal construction of the expression "any person" was impermissible despite the wide amplitude of these words and evolved the test of "community of interest" of

workmen of the establishment with the concerned workmen. Later, in Workmen v/s Dharam Pal Prem Chand, 1965 I LLJ 668, the Supreme Court said that notwithstanding the width of the words used in section 2(k), a dispute raised by a single workmen cannot become an industrial dispute unless it is supported either by his union or by substantial number of the workmen- This principle was reiterated in Workmen, of Indian Express News Papers (P) Ltd. v/s Management of Indian Express News Papers (P) Ltd. 1970 II LLJ 132 (SC). However in WIMCO v/s WIMCO workers Union, 1970 II LLJ 256, the apex court said that after the Dimakuchi case, there is no doubt that a dispute relating to "any person" becomes a dispute where the person in respect of whom it is raised is one in whose employment - non-employment, terms of employment or condition of labour, the parties to dispute have a direct or substantial interest.

In Air France v/s Miss Kotwal 1970 II LW 6S Division Bench of the Calcutta High Court took the view that the dispute of an "Individual employee" became an "Industrial dispute" on being espoused by a union representing employees engaged in the industry of Air Transport even though no other employee of the company was a member of the union. In taking this view the court interpreted the word "Industry" in the definition of "workmen" in Section 2(s) of the Act to mean the entire "air transport industry" in contradiction to the particular establishment of the employer company. This construction is far -fetched and is not warranted by the language of the statute as it loses sight of the word "employed" used in that definition. Further, this view instead of being supported by the decision of the Dharampal Premchand (1965 I LLJ 668) and the Indian Express News Papers, (1970 II LLJ 132) runs counter the ratio of these decision and is diametrically opposed to the decisions in the Hindu case (1961 II LLJ 436) which was not over-ruled in Dharampai Premchand case (1965 I LLJ 668) but was only distinguished on facts. And if this theory is accepted then the doctrine of Substantial number required to sponsor the dispute will no longer hold good. The idea is novel but its correctness is not free from doubt.

4. Individual dispute - Section 2A

i. Extension of definition of "Industrial Dispute" (A long line of decisions had established that an "individual dispute" cannot perse be an "industrial dispute" This position of law created hardship for individual workmen who were discharged dismissed retrenched or whose services were otherwise terminated and they could not find support by a union or any appreciable number of workmen to espouse their cause. In order to remove this difficulty the legislature has inserted Section 2A by amendment Act of 1965. The result of the insertion of Section 2A is that an individual workman himself can raise an "industrial dispute" regarding his discharge, dismissal, retrenchment or termination of his services even though there is no espousal by his fellow workmen or any comprised of them) (Management of Gauhati Transport Association v/s L.C. 1976 LIC 1568). Of course, it does not mean that such a dispute can be raised by such workman alone and m/t by the workmen of the establishment collectively. ^The workmen can always collectively raise an industrial dispute 'with regard to discharge dismissal etc. and the distinction should be clear in mind that in case an individual workman raises an industrial dispute, it is the dispute between the employer and that individual workman but if it is raised on his behalf by his fellow workmen then it is the dispute between the employer and not with the individual workman but with the workmen as a class. In the former case, the concerned workman himself is the party to the dispute and can himself even withdraw it and not the workmen collectively while in the latter case workmen collectively are the parties and not the concerned individual workmen for which reason, concerned individual workman cannot validly withdraw the case against the wishes of his fellow workmen espousing his cause.

Section 2A only introduces a fiction to the effect that an individual dispute connected with 'discharge'/dismissal', 'retrenchment' or 'termination' is "Deemed" to be "industrial dispute' by this artificial measure; notwithstanding the fact that no other workmen espouses such a dispute Maharashtra General Kamgar Union v/s State of Maharashtra 1995 (2) M.L.L.J. 248]

From the language of Section 2A, it, is clear that only disputes relating to 'discharge', 'discharge', 'retrenchment' or 'otherwise termination' will fall within the purview of Section 2A while the other types of disputes are not comprehended in it. The Orissa High Court in Joseph Niranjan Kumar Pradhan uA P.O., 1976 LIC 1396 took the view that the claim for gratuity will fall under section 2A because the claim for gratuity arises on terminations of services/ Similarly when a dispute was sought to be raised on the date of birth, the court held that what is alleged may not be a discharge, dismissal but definitely a termination falling under the caption "otherwise" termination Bank of Baroda vis T.J. Misra, 1988 I CLR 578 (Bombay)

ii. Constitutional Validity : The Constitutional validity came to be challenged time and again, before various High Courts sometimes, before the single judge, some times before the Division Bench and even before full bench, but High Courts had upheld the validity of Section 2A. Finally in Delhi Cloth & General Mills Ltd. v/s Shambunath Mukherjee, 1977 LIC 1695, the Hon'ble Supreme Court discountenced the attack on S.2A.

iii. Section 2(k) and Section 33A : Section 33A is a self-contained provision which is a corollary to Section 33. Section 33 prohibits any change in condition of service once an industrial dispute [Section 2(k)j is raised and it is pending for adjudication. If a change is made by an employer, an aggrieved employee can make a complaint to the court before whom the dispute is pending for adjudication. Section 33A comes into operation only if there is violation of Section 33 and if a dispute is pending for adjudication. However, that does not mean that a complaint under Section 33A can be independently referred to for adjudication. A reference of complaint under Section 33A was held to be not competent. [Modern Textile Mills v/s State of Punjab, 1975 I LLJ 52]

iv. Section 36A and 2(k) : Section 36 A of the Act era-powers Government to refer any difficulty or doubt about

interpretation of an award to labour court or Industrial Tribunal but such a reference does not mean a reference of an industrial dispute under Section 2(k) of the Act and hence provision of Sections 33 or 33A are not attracted [Shantilal M. Shaft vis IT. 1963 II LLJ 33]. So the employees are not restrained or prohibited from resorting to strike only and solely on the ground that an industrial dispute 2 A is pending for adjudication [Chemicals & Fibers of India v/s D.G. Bhoir, AIR 1975 SC 1660]

v. Limitation : A perusal of Section 2A would show that once the employee is aggrieved by his dismissal and the employer disputes his dismissal, the dismissal would be "Industrial dispute" and once the existence of a "industrial dispute" is brought to the notice of the "Conciliation Officer", he is duty bound under Section 12 to proceed and submit his 'failure Report' to the appropriate Government. The Government thereupon consideration of 'Failure Report' and its satisfaction may refer the 'industrial dispute' for adjudication to the labour court or industrial Tribunal. There is no time limit prescribed either under Section 2A or under Section 12 of the Act [Abdul Khalid Sk. Bhuru vis Dy Commissioner of labour, 1997 I Mah. L.J. 449].

vi. Actio Personalis Moritur cum Persona : Despite a workman is dead, the "industrial dispute" under Section 2A continues and the legal heirs can continue after his demise. The court was of the view that the legal maxim "Action Personalise Moritur Cum Persona is an unjust maxim, it is obscure in its origin, inaccurate in its expression and uncertain in its application. Dhan-laxmi vis RBI 19911 CLR 328.

5. Industrial Undertaking - Industrial Establishment: Section 2(ka)

Introductory

The word "industry" is defined in the Act in Section 2(j).The term 'industry as defined in Section 2(j) interalia, includes an 'Undertaking'.Obviously therefore undertaking is a narrow concept than industry, so far as the Act is concerned.Or "Industry" is the whole of which "undertaking" is only a part of it.But what was implied in the term "Industry" in Section 2(j) of the Act very oft3en went unnoticed.However, the apex court while considering the case of Bangalore Water Supply and Sewerage Board v/s A Rajappa (1978 I llJ 349) obviously gave a narrower meaning to the term "Undertaking" used on the definition given in 200.

The expression "Undertaking" is also used in Sections 25 FF, 25 FFA, 25FFF, 25 0 arid 25R. While Section 25F uses the term "industry", Section 25G uses the term "industrial-establishment'

Therefore, in order to make the concept clear, and in consonance with what was laid down by the apex court in Bangalore Water Supply, (1978 I LLJ 349), it was considered necessary to define the terms "industrial establishments" and "industrial undertaking". By this definition 2(ka) what was hitherto implicit has been made explicit. The definition thus brings into its fold and ambit any establishment or undertaking in which any 'industry [as defined in Section 2(j)] is carried on.

The Legislatures wanted to amend definition of "industry" Section 2(j) in consonance with the law laid down by the apex court in Bangalore Water Supply (1978 1 LLJ 349). It was, therefore, also consequential necessity to insert the present definition 2(ka). As such by amendment Act 46 of 1982, not only the term "industry" as defined in Section 2(j) was amended but also it added the present definition. As is necessary to give effect to the legislative amendment, the Government of India issued a Notification in the Government Gazette dated 21-8-1982 and gave effect to the present definition but did not give effect to the definition of "industry" in Section 2(j). As a result the present definition has become the law, the amendment to 2(j) has not assumed the status of law and it remains in limbo.

As aforesaid, Section 2(ka) was inserted after the apex court ruling in Bangalore Water Supply, 1978 I LLJ 349 so as to bring the law in consonance with the said ruling. The two provisos are, therefore, inserted to give legal sanction to the test evolved by the supreme court in the ruling of Bangalore Water Supply (1978 I LLJ 349)

Severable Activity

The proviso in clause (a) lays down that where an establishment or an undertaking is engaged in several activities, some of which qualify to be industry within the meaning of Section 2(j) and some of which do not and also further that it is possible to demarcate or to severe industrial activity from the non - industrial activity then only those activities which fall under the "industrial activities" will come within the purview of the Act leaving out those activities which fall under the "non -Industrial" activities.

The question of "severability" comes where the Government department or Municipal Depart are concerned. For example, forest department. The whole of the department cannot be held to be industry but a Lac Manufacturing Factory run by the Department is severable and thus .can be industry [Vijay Kumar v/s State of Bihar (FB) 1983 LIC 1884]. Such instances can be multiplied. But it may be useful to note here that in case of university, the apex court in Bangalore Water Supply Case (1978 I LLJ 349) had taken the view that the case of University of Delhi v/s Ram-natk, 1963 II- LLJ 335 (SC) was wrongly decided because some departments like Transport Menial etc. may be severable department and can very well be treated as "industry" as defined in Section 2(j) of the Act.

Predominant Nature of Industry

The proviso in clause (b) lays down that of the predominant nature of a department falls within the provision of Section 2(j) then notwithstanding the fact some activities do not come with the purview, the whole of the department, will be treated "industry". Accordingly Irrigation Department in the case of Deshraj v/s State of Punjab 11998 II LLJ 149 (SC)] was held to be industry. Again instances can be multiplied.

True it is that by notification issued by Government of India on 21-8-1982, the Amendment Act 1982 (Act No. 46 of 1982), only this definition 2(ka) is given effect to and the definition of 'industry' given in Section 2lj) is not given effect nevertheless, by insertion of this definition of 2(k), with these two proviso,

doubts are cleared out in cases of "undertaking" where mixed activities (of Industrial and non-industrial) are carried on.

Settlement: Section 2(p)

Introduction

The preamble of the Act professes settlement of "industrial disputes" and as such what is to be settled is the 'industrial dispute'. Necessarily therefore, if one of the parties does not come within the four corner of the Act, it cannot be said to be a settlement under the Act [Bipin Bihari Sinha v/s State of Punjab, 1983 LIC 74]. The definition originally enacted was thus : "Settlement means settlement arrived at in the course of conciliation proceedings."

This definition did not take notice of any private settlement. As such, the present definition came to be substituted by the Amending Act of 1956. The present definition is thus more broad based and includes in its fold even the private settlements.

The definition now envisages two categories of settlements.

1. "Settlements" arrived at in the course of conciliation and
2. Settlements" arrived at privately or otherwise than in the course of conciliation.

The "settlement" arrived at in the course of conciliation stand on a higher plane than the settlements arrived at otherwise than in course of conciliation. As is the scheme of the Act, when an "industrial dispute" is raised or comes in existence or it is apprehended, the conciliation machinery, as provided under the Act is activated. The "Conciliation officer" appointed under the Act, calls both the parties and endeavors to bring about a fair and amicable settlement of an industrial dispute between the parties. The settlement so arrived at is called as the "settlement in the course of conciliation" and falls under the definition given in the Act. In Bata Shoe Co. (P) Ltd. vis D.N. Ganguly, 1961 I LLJ 303, the Supreme Court Pointed out that a "settlement in the course of conciliation" does not mean settlement which is reached between the parties during the period when conciliation proceedings are pending but is the one which is assisted and aided by the conciliation officer by his advice and concurrence on his being satisfied that the settlement is fair and reasonable for it is the duty of the conciliation officer to promote a right settlement and to do everything he can do to induce parties to come to a fair and amicable settlement of the dispute. It is only such a settlement that can be binding under Section 18. The legislature when it made a settlement binding, not only on the parties thereto but also to the present and future employers and workers, intended that such settlement is arrived at with the assistance, of the conciliation officer and is considered by him to be reasonable and therefore has his concurrence.

Settlement otherwise than in Due Course of Conciliation

The other category envisaged in the definition is the settlement arrived at otherwise than in the course of conciliation. In this case, the parties directly and on their own strength clinch the settlement undoubtedly without the help and assistance of the conciliation officer appointed under the Act.

The settlement of labour disputes by direct negotiation or settlement through collective bargaining is always to be preferred for it is the best guarantee of industrial peace which is the aim of all legislation for the settlement of all labour disputes [New Standard Engineering Co. v/s N.L. Abkyankar 1978 I LLJ 487 (SO)].

Such settlements include a written agreements arrived at in the prescribed manner and a copy of which has been sent to the appropriate Government and the conciliation officer. (Burtnah Sell Workers Union v/s State of Kerala, 1960 I LLJ 323). An Agreement by acquisance and without being in writing signed by parties will not be a settlement under the Act [Cooper Engineering Ltd. vis DM. Anoy, 1971 LIC 603 (Bombay)]. Similarly mere nothings on agreement without complying with the requirements of the relevant rules cannot be called as settlement under the Act. Rule 58 of the Central Rule prescribes the procedure. It is the same for all types of settlements (Namely settlement in its course of and otherwise than in the course of settlement [Cement Worker Karmchari Sangh v/s I.T. 1971 LIC 147 (Rajasthan)].

Legal Effect

The legal effect of both these settlements is not identical. The Settlement arrived at in the course of conciliation binds, one and all. Section 18(3) makes the settlements arrived as in the course of conciliation binding not only on all the parties to the dispute but also upon the heirs, successors and assigns of the employer in respect of the establishment and also in certain cases upon all other parties summoned to appear in the proceedings, as parties to the dispute before the authority. It also makes such a settlement binding on all, the present and future workmen employed in the establishment. Section 12(3) postulates that it should be a settlement between the parties to the dispute, which would include not merely one Section but all the workmen who are before the conciliation officer in connection with the conciliation proceedings on an identical issue.

The settlement in the course of conciliation proceedings binds all, the object obviously is to uphold the sanctity of 'settlement' reached with the active assistance of the conciliation officer and to discourage an individual employees or a minority union from Scuttling the settlement. [Baruni Refinary Pragatisil Parishad v/s Indian Oil Corporation, 1990 II CLR 217 (SC)J. Merely some of the employees do not agree to the terms of settlement under Section 2(p) in the course of conciliation, he/they cannot be permitted to contend that it is not binding on him/them [E.I.D. Parry (India) Ltd v/s L.C. 1992 LIC 278 CAP)].

When a settlement is reached with the Union which commands majority, it should be prima facie considered to be in the best interest of the employees in absence of attribution of any oblique motive behind it. Mere allegation does not suffice. As rightly said, it is easy to allege but difficult to prove. The oblique motive should be based on some concrete materials and not on vague allegations. [Gandhinagar Nagarpalika v/s R.C, Irani 1992 LIC 236 (Gujarat)]

The settlements arrived at otherwise than in the course of conciliation binds only the parties to the settlement and none else. In any case it does not stand on higher plane than the

settlements arrived at in the conciliation and that makes the two distinct and different from each other.

An Officer whose appointment was not made by a notification as required by Section 4(1) will not be a conciliation officer in the eyes of law [Jhagrakhand Collieries (p) Ltd. v/s CGIT, 1975 LIC 137 (SO)].

As settlements with the intervention or mediation of any person other than the conciliation officer even though during the pendancy of conciliation proceedings cannot be treated as settlement in the course of conciliation. Even if a Minister or Chief Minister in the conciliation proceedings intervened in the settlement of a dispute, it will not be a settlement in the course of conciliation, if it is shown that the conciliator had abandoned his function of superintendence and control [Calcutta Electric Supply Corpn. Ltd. u/s V.C. Sen 1977 LIC 1969, affirmed in appeal 1978 LIC 1395]

Procedure

The manner of arriving at a settlement in the course of conciliation is laid down in Sections 12(2), 12(3) and rule 58 of the Central Rules framed under the Act.

Section 12(2) and 12(3) require the conciliation officer (or the board as the case may be) to send a report of the settlement together with Settlement Memo signed by the parties to the dispute. Rule 58 prescribes the settlement memo to be signed by the parties. Sub-rule(l) prescribes the mode and manner of signing the settlement and sub-rule (3) only repeats the requirement. Section 13(2), in addition to Rule 58, requires the report of the conciliation Board is to be published in accordance with Section 17 of the Act. In Cement Works Karmchari Sangh vis I.T. 1971, LIC 143 the Rajasthan High Court observed that Rule 58 of the Central Rules only prescribes the memorandum of settlement. The memorandum of settlement under sub-rule (1) is same for the settlement in the course of conciliation proceedings and otherwise than in the course of conciliation proceedings Sub-rule (2) of the Central Rules prescribes that:

a. Settlement shall be signed by the employer himself or by his authorised agent or when the employer is an incorporated company (or a corporate body) by agent or Manager or Principal officer.
b. In case of workmen by any officer of a trade union or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

The explanation to the rule which says that "an officer" should sign, it means the (a) President (b) Vice President (c) the Secretary (including the General Secretary) (d) a Joint secretary or (e) Any other officer of the Union authorised in this behalf by the president of the union.

Where the constitution of the Union is silent on authority to sign a settlement, the office bearer/s should have necessary authorisation from the executive committee of the union or of the workmen. [Hindustan Housing Factory Ltd. vis HHF Employees Union 1969 LIC 1450 in appeal 1971 II LLJ 222 approved by Supreme Court in Brook Bond 1981 II LLJ 184.

Settlement Under Fraud whether can be "Industrial Dispute"?

A cinema theatre owner arrived at a private settlement. However, the union terminated the settlement and served upon a fresh charter of demands. The union's case was that the settlement was obtained by fraud and was not voluntary. Can this constitute an "industrial dispute". The High Court held that the Industrial Tribunal can investigate such a complaint and it does constitute an industrial dispute. [Adamji M. Badri u/s Labour Officer 1981 I LLJ 367] Similarly, change in designation [Purtabpur Sugar Co. Ltd. v/s its workmen 1954 I LLJ 78] was held to be industrial dispute but change in certified standing orders was not held to be an industrial dispute {Patna Electric Supply Co. v/s their workmen, 1954 I LLJ 374]. So also the reorganisation of department {Bombay Port and Dock Employees Union u/s Meher, 1965 II LLJ 687].

Interpretation

A settlement cannot be weighed in any golden scales [Tata Engineering & Locomotive Co. Ltd. v/s their workmen 1981 II LLJ 429 (SC)]. The fairness of the settlement has to be considered with reference to the situation as it stood on the date it was arrived at and it is not to be seen in bits and pieces by holding some part good and some other parts bad, unless it is demonstrated that objectionable portion is such that it completely out-weighs all other advantages gained. The courts will be slow to hold a settlement as unjust or unfair. The settlement has to be accepted as a whole or rejected as a whole. [New Standard Engineering Co. Ltd. v/s Their Workman 1977 LIC 162 (SC)].

If two views are possible, the one favourable to employees should be accepted. [General Secretary Cochin Port Wharff Staff Association v/s Chairman Cochin Port Trust, 1982 I LLJ 173 (Kerala)].

Settlement - Binding - not Binding

If a copy of the settlement is not forwarded to authorities prescribed by rule 58 (4) of the Central Rules that will not have any effect on the validity of the settlement [SB/ Staff Union v/s State Bank of India 1992(65) FLR 234 (Madras)]. In Punjab Kesri Printing Press v/s Rattan Singh 1991 II CLR 123 the court held that the prescribed form under Section 2(p) is not a mandatory and it is only directory. However, if it is not signed on behalf of the management, it cannot be considered as Settlement under Section 2(p) of the Act. [Co-operative Stores Ltd. u/s Ved Prakash Bhambhri, 1989 II CLR 315 (Delhi)]

The settlement is binding on future employees [Prakash Albert Peter v/s Hindustan Transport Product Ltd., 1989 I CLR 733 (Bengal).

A writ of mandamus cannot be issued to enforce a settlement under Section 2(p) of the Act [Gordon Woodroffe Employees Union v/s State of Travancore, 1988 I LLN 196 (Madras)]

Employer - Section 2(g)

Meaning

The definition does not really define the term. It only describes as to who constitutes an Employer in the case of an industry carried on by or under the Government, including the civic authority. The corporate authority or the private industry has

remained unexplained and in their cases, the court will have to decide on the facts and circumstances of each case. On combined reading of Section 2 (g), 2 (j) and 2 (s), it is clear that if State Government carries on any business or undertaking, it is the Employer under the Act. It means that the deformation is intended only to operate in relation to an activity properly described as an industry [Madras Gymkhana Club Employees Union v/s Gymkhana Club, 1967 II LLJ 720 (SC)].

Direct Nexus is Necessary

In order to make the Government liable as Employer, a direct nexus is necessary between the Employer and the authority of government. In Shreed-haran v/s L.C, 1966 II LLJ 632, One person who was given a license for Toddy tapping was directed by the Labour Court to pay retrenchment compensation to his employee when his license was cancelled by the Government and consequently he had terminated of his employees. The said person Challenged the said order of the Labour Court on the ground that he was only a licensee and not the "Employer", the Government, really was the Employer. The court held that there must be direct nexus as provided under Section 2 (g) (i) and the Government cannot be held to be the Employer in this case.

Other Employers

The definition, as aforesaid, is intended to operate in relation to an activity, properly described as an "industry". However, it is silent in respect of public corporations or Semi-Government bodies. Necessarily, therefore the court will have to decide as to who is the 'Employer' on the facts and circumstances of each case. Similarly, the definition is silent on the point of 'Employer' in cases of private Employer. Nevertheless, it must be clear that the definition does not specifically excludes a private Employer from its fold and as such the private employer is intended to be covered under the Act.

The meaning given in the definition to the term 'Employer' is only illustrative and not exhaustive [Dahingeapara Tea Estate v/s Their workmen 1956 I LLJ 187 (LAT)]. Nevertheless, the definition is so skillfully drafted that the Employers, whether Government or private are included. It is so clear from the fact that the Act has devised an elaborate machinery to resolve industrial dispute not only for the industries run by the Government and local authorities but also for the industries run by private persons [Western India Automobile Association vis I.T, 1949 I LLJ 245 (FC)].

Change of ownership ~ Successor-in-interest; The industrial Law, unlike the Civil law, treats the rights and obligations of workmen continuing even when there is a transfer of business from one management to another even after the date of transfer, PROVIDED ALWAYS that

1. there is continuity of service and
2. identity of business [Kays Construction Co. (P) Ltd. v/s its Workmen, 1958 II LLJ 660 (SC)j

The transfer of a business, *ipso facto* does not terminate the services and a purchaser, purchasing the business as going concern with all its assets and liabilities, is bound to continue the old employees on same emoluments, continuity of service and the same terms and conditions of the employment.

As long as there is identity of business, mere change in name will not change the legal effects. But if the very identity changes, in the sense that the business does not retain its identity, the new management, though dealing in the same lines cannot be considered to be a successor of the old business [(1) Bhanuvilas Theatre, 1956 II LLJ 176 (2) Dahingeapara Tea Estate 1956 I LLJ 187 and (3) Arunachalam Pillai 1957 II LLJ 682]

In Anakapalla Cooperative Agricultural & Industrial Society, 1962 II LLJ 621, the apex court laid down the broad guide lines for treating the purchaser Employer as the successor - in - interest.

When purchaser did not purchase as going concern or its goodwill, the Employer is not the successor in interest [Antony D'Souza vis Sri Motichand Silk Mill 1954 I LLJ 793, Bombay Garage Ltd. v/sl.T.}

Running business was not taken over although purchaser was dealing in the same business [Bhanuvilas Theatre vis their workmen 1956 II LLJ 176.

Cooperative Society purchased the business but did not purchase the goodwill or the Liabilities but Society continued the same business in the same place and took number of employees of old company. The Society was held to be a successor - in interest [Kays Construction Co. (P) Ltd. vis its wo*rkmen* 1958 II LLJ 660 (SOJ

LESSON 9:
WORKMAN AND CONTRACT OF/FOR SERVICE

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- Who is a workman?
- What is the difference between contract of service and contract for service?

Workman - Section 2(s)

Introductory

While the Act deploys the term "Workman", the Factories Act uses the term "Worker", the MRTU & PULP Act uses the term "employee". But no one has explained the etymology. Perhaps for the reason that it would not carry the legal study any further. So here also, suffice it would be to notice the different usages of the term in different Statutes. Further, the definition of workman', along with the definition of "industry" [Section 2(k)] and "industrial dispute" [Section 2(k)] forms the basic tripod on which the super structure of the Act rests.

The definition originally enacted was thus :

"Workman means any person employed (including an apprentice) in any industry to do any skilled manual or clerical work for hire or reward and includes, for the purpose of any proceedings under this Act, in relation to an industrial dispute, a workman discharged during that dispute but does not include any person employed in the Naval, Military or Air service of the crown.

The clause was substituted by the present definition by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act. 1956. The changes brought about by the amending Act may be summarised thus:

Under the original definition, the Workman meant "any person employed to do any skilled or unskilled manual work or Clerical work. The present definition has added the following

i. Supervisory work and

ii. Technical work

The present definition has added the words "Whether the terms of employment be express or implied" which makes the definition comprehensive.

Earlier, only if employee was discharged was included in the term workman. But the present definition widens the scope andincludes "any such person who has been dismissed,discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute.

In the earlier definition those excluded were limited to air, naval and military personnel. The new definition includes more number of categories of employees to be excluded from the definition. Apart from the army, police and others, the Supervisory and managerial personnel are excluded from the definition.

Who is Workman

Considering the plethora of judgment of Supreme Courts and various High Courts the Bombay High Court has briefly enumerated the tests in this regard. Before taking up systematic analysis, it will be useful to bear in mind the tests so far evolved.

Tests laid down in Supreme Court judgments

1. Designation is not material. But what is material is the nature of work.
2. Can he bind the Employer to some kind of decisions on behalf of Employer/company?
3. To find out the dominant purpose of Employment (and not additional duties) the employees may be performing.
4. Has the Employee power to recommend or sanction leave.
5. Has he power to take disciplinary action against workman or to terminate their services
6. Has the employee power to direct or oversee the work of his subordinates (Tests laid down by the High Courts)
   a. Whethar the Employee can examine quality of work and whether it is performed satisfactorily.
   b. Whether he has power to assign duties.
   c. Can he indent materials and distribute them amongst workmen.
   d. Are there persons working under him.
   e. Has he power to supervise work of men and not mere machines.
   f. Whether Employee marks attendance of the workmen.
   g. Whether he writes confidential reports of his subor dinates. [Union Carbide u/s D. Samual, 1998 II CLR 736]

(ii-a) Basic Ingredients

To be a 'Workman' under the Act, an employee must be

a. employed

b. in any industry

c. for a hire or reward and

d. to do the nature of work specified in the definition.

These are the four ingredients of the definition. However it is also necessary to keep in mind that the term 'workman' cannot be understood de-hors the terms "industry" (Section 2(j)} and the industrial dispute (Section 2(k))

Employed

In *Dhr*angdhara Chemical works Ltd. u/s State of Saurashtra, 1957 I LLJ 477, the supreme court ruled that the essential

condition of a person being a workman is that he should be employed or in other words, there should be a relationship of Employer and Employee. The definition does not state that a person, in order to be a "Workman' should have been employed, in an 'industry, irrespective of his status, temporary, permanent or probation [Hutchiah v/s Karnataka State Road Transport Corp. 1983 I LLJ 37]

From the words used, it is clear that those employees who have been discharged, dismissed or retrenched are also included. But such inclusion in the definition refers to any proceedings under this Act in relation to an "industrial dispute." It means the inclusive part will come in operation only if proceedings under this Act are in relation to an industrial dispute are pending and for no other purpose,

Industry

The definition is so skillfully drafted that unless the person is employed in an activity which is an "industry" he will not be a "workman" as contemplated under the Act. Therefore, in order to fall within the provisions of the definition, it must be inter - alia proved that he was employed in any industry. This reveals the significance of the fact that the terms "workman", "industry" and "industrial dispute" are the key words and the tripod upon which the edifice of the Act stand.

It is not essential that the employment in the industry should have the direct nexus, suffice it would be if it has an incidental relationship. The gardener who was placed in the services of the director and the director had put him to the work at his residence, yet the Gardner is said to be the workman in the industry/establishment of the Textile Mills (J.K. Cotton Spg. & Wvg Mills Co. Ltd. v/s LAT, 1963 436 (SO). Similarly The sweepers put to work at the officers' Quarters and the domestic servants provided at the officers' Quarters whose wages were paid by mills and at par with other workers were held to be the workmen [(1) Punjab Sugar Mills Co. Ltd. v/s State of UP. 1960 I LLJ 756 (2) Ahmedabad Mnfg. & Calico Printing Co. Ltd v/s District Judge 1960 I LLJ 770 (Bombay)]. The doctrine of ancillary relationship has been thus extended to cover employees who work, away from the main centre of industry.

Hire or Reward

In order to bring a person within the scope of definition, he must be shown to have been working for "hire' or reward. The legislature has very wisely used the words "hire or reward" rather than remuneration or wages. These words hire or reward enlarge the Scope of the definition. The word 'Hire' imports in its scope the obligation to pay. The word "reward" is used even when there is no obligation to pay. Thus whether there is an obligation to pay or there is no obligation at all to pay and yet if one is paid then such One is fit in the definition of workman. Thus payment of hire or reward is an important requirement or ingredient of the definition of "workman" under the Act

Nature of Work

A person to be treated as "workman", he must be employed to do

a. manual
b. unskilled
c. skilled
d. technical
e. operational
f. clerical or
g. supervisory - work.

As a matter of fact none of these terms are either defined or explained in the Act and the courts are left to interpret these terms, of course, judiciously and to suit the present system of working.

Interestingly if every person working in the industry is to be treated as "workman" then why this specification? The specification thus obviously indicates that a person to become a workman, he must be doing any one type of work listed in definition otherwise he will Sot be falling within the purview of this definition. For instance, the duties of compiling of reconciliation and preparation of budgetary statements cannot be regarded as skilled, unskilled, manual, clerical or any of the nature of Work - Specified in the definition. The work in the given case required creative imagination and application of mind. As such, person deployed to do such work would not fall in the definition of workman in the Act [Kirloskar Bros Ltd. v/s L.C. 1976 LIC 918]. Only if an employee comes under any of the specified categories, the court will further examine if any of the other factors will have application and bring him within the cover of 'workman'.

The original definition of workman carried the term "manual" as suffix to the words' "skilled or unskilled". As such, it was taken to mean that "skilled work" referred to the manual "skilled work" only. And the work, although skilled one if it did not involve the manual exercise, it was not "skilled work" for the purposes of (earlier) definition of workman. However there is improvement in the present definition. It is now not necessary that in order to fall in the definition of workman the skilled work should be that of a manual nature. In the present definition, the place of word "manual" is shifted and it is now placed after the words unskilled and skilled. Further the three terms, the manual, unskilled and skilled stand by themselves, each separated by coma. The broad and wide interpretation given to the present definition of workman by the apex court, in Bangalore water -supply (1978 LIC 467], the occupations like teacher, Doctors, Compounders, Artists, hitherto not falling in definition, will also fall in the four folds of the definition in the Act.

What is Manual ?

The word 'manual' means anything done with hand. However in the definition, this word (manual) is given a wider meaning to include the nature of work in which hand is not used. The work involving physical exertion - in Con-tra-distinction to manual or intellectual exertion - is also included in the word manual when understood in the context of present definition of workman. Thus when a person is required to use his legs or whom a parson is simply required to keep standing only then also such person or persons will be treated as doing the manual work. In B.I.C Ltd. v/s Ram Bahadur, 1957 I LLJ 422, the court held that a member of watch and ward staff was doing the manual work and hence came within the mischief of the definition clause. However, a Pujari of a temple, a priest, was

not held to be a workman as he was not doing any manual work I Keshev Bhat vis Ram Aubdan Trust, 1989 IICLR 286]. Necessarily, therefore it means that a distinction has to be made between the principal work of an employee and the ancillary duties in doing the principal work. The entire collection of duties assigned to the employee must he taken into consideration and if the workman is doing the principal work of a manual nature (and not the ancillary duties) then and then only it can be said that the employee is doing the manual work and then he would fall within the mischief of the definition clause.

Unskilled Work

The work done by Peons, Hamals, Sweepers and the like ones are the glaring examples of unskilled work. In Bata India Ltd v/s B.H Nathani, 1978 LIC 386, the Gujarat high court held that a Salesman (hi the Bata shoe shop) was not going out of the shop to canvass the sales, nor did he supervise the work of anyone and his duty to impress the customers that the shoes of the company were durable was not his principal work, as such, he was doing unskilled work, hence was a workman. While on the issue of "Salesman" it may be of interest to notice that the work of Sales Engineering Representative and District Sale Representatives were held not to be falling in any of the specified categories of work and hence not 'workman' (1) Shalimar Paints Ltd v/s III I.T., 1974 LIC 213, (2) J & J Dechane Distributers v/s State of Kerala 1974 II LLJ 9 (3) B.S. Kurup v/s National Bicycle Corpn. 1995 II CLR 316 (Bombay) (4) Shaw Wallace & Co. v/s N.R Trivedi 1998 LIC 3309 (Guj). However in the case of Indian Farmers Fertiliser Co-op Ltd. v/s P.U.L.C., 1998 (4) LLN 442, on facts, the court held that the salesman was really a clerk and hence a workman but so far as the sales personnel in medical and pharmaceutical companies are concerned, the Legislatures have enacted the Sales Promotion Employees (conditions of service) Act, 1975 and have brought the sales persons to be workman under the Act. Nevertheless, as far as Medical Representatives are concerned, the Supreme Court has taken the view in the case of O.M. Bhargawa vis Satyawati, 1995 I LLJ 415 that the issue requires consideration of the Larger Bench and there it stands.

Skilled Work

When work can be done with some technique or when some skill is used or before doing it, a training is necessary, then such a work is called as 'Skilled Work'. In Miss Sundarambal vis Gout, of Goa, Daman & Diu, 1983 II LLJ 49, the Bombay High Court held that a Teacher will fall in the category of employees doing the skilled work and hence "workman[1] under the Act. In Bhavnagar Nagarpalika uls P.O.L.C., 1995 I CLR 1308, the Gujarat High Court, however, took the view that a teacher is not a workman. The compounders, chemists, Masons, Carpenters are the categories which will fall in this category of skilled workman. In fact, after Bangalore Water Supply (1978 LIC 467) case many other categories, hitherto not included will get the inclusion.

Technical

In order to fall under this term it is not necessary to have any technical education. What is important is that the employee should possess such faculties which would enable him to produce something as a creation of his own. The etymology of the term shows that it all depends upon the special mental training or scientific or technical knowledge of person. Nevertheless, even if a person is doing technical work, yet he would fall out side the definition of workman, if he is -

i. employed mainly in managerialor administrative capacity or
ii. being employed in supervisory capacity and drawswages exceeding Rs.1,600/-per month or
iii. exercises (either by nature of duties attached to the office or by reason of the powers so vested), functions mainly of managerial nature.

The technical knowledge will not convert the Supervisory work into technical work (Burmah Shell Oil Storage & Distributing Co. of India Ltd. u/s Burmah Shell Management Staff Association, 1970 II LLJ 590 (SC)].

The categories' of employees like, Draftsman, Engineers, Foreman, Glass technologist etc. would fall in the term 'technical' The pilots although draw a very fat salary but since they do not do any managerial or supervisory work squarely fall within the term "technical" [Mathur Aviation v/s Lt. Governor 1977 II LLJ, 255.]

Operational Work

From the meaning assigned to the expression, in various dictionaries, it is clear that any type of work in an industrial establishment performed by the workers is the operational work. But then every type of work, skilled, unskilled, technical, clerical, will fall within the wide sweep of the expression. Undoubtedly, it cannot be the legislative intent and hence the insertion of this expression in the definition of "workman' by Amending Act of 1982, only introduces superfluity and ambiguity:

Clerical Work

In common parlance, a clerk is one who is deployed for doing the routine work as a writer, Copyist, Account keeper or correspondence in office. His work is very much stereotype and without power to control but under the supervision of an officer. An employee if is variously designated as Accounts Officer or Officer on Special Duty or Store Purchase Officer can still be only a clerk if he is mainly doing the clerical work (D.P. Maheshwari v/s Delhi Administration 1983 LIC 1629). In ascertaining the true status of an employee regard roust be had to substantive post and a temporary arrangement can not alter the character of sub-stantative work.

Supervisory Work

The word 'Supervision' means to over see or to look after. Therefore, Supervision which is relevant in this connection is the supervision by an employee in a higher position over the employees in lower position. In S.V.O.C. v/s Commissioner of Labour, 1959 II LLJ 771 it was observed by the court that if an individual has officers subordinate to him whose work, he is required to over look, if he has to take decisions and also responsibility and further that the matters entrusted to bis charge are efficiently conducted, one would ordinarily be justified in saying Act that he is in a position of management. Indeed, the word 'Supervisor is not used in relation to the supervision of an automatic plant. The person who attends on such a machine may do either technical or manual work. He

cannot be called as Supervisor because he looks after the machine. Section 2 (s) really means that the person exercising supervisory work is required to control men and not machine [Tilaghur Paper Mills Co. Ltd. v/s I.T., 1982 LIC 307].

It is only the persons employed in supervisory capacity drawing wages exceeding Rs.1,600/- per month or performing mainly of managerial nature who have been excluded from the definition.

But before a person is ousted from the definition, it must be shown that he is employed in fact and in substance mainly in a managerial or administrative capacity. In Syndicate Bank Ltd. v/s Its Workmen, 1966 II LLJ 194, the Hon'ble Supreme Court of India found that C - rank officers in the Bank were not employed mainly in managerial or administrative capacity and hence they fall within the definition of workman.

In Rajeshwar Mahato v /s VIIILC, 1998 II CLR 18 (Calcutta) and in President, Ananth Mahila Ashram v/s J.G. Ajagaonkar 1996 II CLR 320 (Bombay) Court held that although designation was superintendent but it was nothing but a glorified dark and hence the employee was held to be a workman. But in the case of D. Ramesh Rao v/s Commissioner of Revenue Division 1995 LIC 546 (Bombay), the section officer was held to be in supervisory category and excluded from the definition of workman, a Mistry who was exercising supervision over 20/25 workmen was held not be a workman in John Joseph Khokar vis B.S. Bhadange, 1997 II CLR 921.

Apprentices

A person is appointed as an apprentice to learn a trade. It is not obligatory upon the appointing authority that on completion of the apprenticeship, the apprentices will be given employment in the same organization. Both the parties are free to chose their future course of action. However, the Act Specifically includes apprentice in the definition of workman given in Section 2 (s). But if a person is appointed as apprentice under the provisions of the Apprenticeship Act 1961 then he is not a workman under Section 2(s) of the Act because the special Law (the Apprenticeship Act) will prevail over the General Law [Karuna Shankar Tripathi v/s State of U.P. 1992 II CLR 484, Mis Tenery and Footwear Corporation of India Ltd- v/s L.C. 1994 II LLJ 1186]. Barring this, an apprentice, as aforesaid is included in the definition of Section 2 (s) of the Act. Nevertheless it must clearly be born in mind that in order to be a workman, it is not sufficient that he person claiming the status of a workman is an apprentice. He is further to show that he is deployed in the industry to do any type of work enumerated in the definition for hire or reward [Management of Tungabhadra Sugar works (P.) Ltd. v/s P.O. L.C. 1983 LIC 1185]. In H.R. Vinobla v/s M.D. Hindustan Photo Films, 1998 (78) FLR 857 and Rajasthan State RTC v/s Jagdish Vyas, 19.95 II CLR 961, the trainee apprentice was held to be workman whereas in the cases of U.P. Sugar Co. Ltd. v/s Ramnath Prasad, 1996 II CLR 862 and (2) Kamal Kumar v/s JPS Malik, 1998 (79) FLR 965 (Delhi) it was held that apprentice it not a workman. As seen aforesaid, the essential condition of a person to be a "workman" under the definition in the Act is that he should be employed to do work in that industry. Necessarily, therefore, there should be a relationship of Employer and Employee between the two. This relationship is constituted by a Contract, express or implied. But the contract may be of two types Contract of service and contract for service. It is the contract of service which comes in the fold of the definition of workman under the Act and the contract of service does not come under the definition. It is in this context that it is necessary to draw the distinction between the contract of service and contract for service.

'Contract of Service' and 'Contract for Service'

In a 'contract of service' the person is Labelled as an employee. Whereas in the case of 'Contract for service' the person is self employed, as a contractor, for doing the work of the rival contracting party. In a contract of service, a man is employed as part of business and his work is an integral part of the business whereas, under a contract of service-, his work although done for the business, is not integrated into it but it is only assessory to it. In a contract of service, a person undertakes to serve another and to obey all his reasonable orders within the scope of the duty undertaken. The identifying mark of the employee is that he should be under the control and supervision of the employer Chim-taman Rao vis State of M.P, 1958 II LLJ 252 (SC)i Although with the advent of modern era, the test of control is not as determinative factor as it used to be, yet it still holds good. In Kerala State Coir Corpn. Ltd. v/s I.T. 1995 I CLR 529 a society was supplying security staff and the society was paying wages to them. The Court held that society was merely a supplying agency. The mode of payment - direct or through agency was not the test. The fact that Employer was allotting work, controlling the work and also supervising the work, the Contract of Service was clear and hence the security staff was held to be workmen. Generally the following tests are applied to ascertain as to one is an employee or an independent contractor.

Who has a Right to Direct

what shall be done, when it will be done, and how it will be done. In the case of contract of service, such rights are vested with the employer but in case of contract for service no such right arise. The contractor takes the decision himself in his best interest.

Independent Nature of his Business

There is no dual identity between the Employer and Employee but such possibility is not ruled out in the case of independent contractor. An employee of Maruti Udyog is no-independent person. But contractor to supply say upholstery can be another business man having his independent business with his own independent identity. The contractor (to supply upholstery) is not the employee of Maruti Udyog.

A Contract Exists between the Parties for Supply of Certain Piece or Kind of Work at a Fixed Rate

Hotel Taj may give on contract the supply of a particular verity of food stuff or a Tailor may engage a contractor to stitch a fixed number of collars at a fixed rate or on a fixed rate the contractor will supply collars to the Tailor required number of collars depending upon demand and supply of the tailoring work.

Right of Supervision

The employer has the right of supervision but the contracting party cannot have a right of supervision. If the work or supply is not to the required stipulation, the contracting party has a right to reject the supply or work.

It is Obligation to Supply Tools and other Materials

A Tailor will supply to his employee, the sewing machine, thread etc. But if the work is given on contract, the tailor has not to supply the sewing machine etc. The contractor has to make his own arrangements. It is obligatory to execute work daily and punctually : An employee has to be on work at all the tune, the contractor executes the work at his sweet will. An employee cannot do so.

A Time is Fixed for the Employee

He comes at a specified time and leaves at a specified time. Contractor has no such time frame.

Method of Payment

In case of employee, he is paid on daily wages, weekly basis or monthly basis. But the contractor is paid on piece rate or on job-wise or on completion of work, partly, wholly or on regular intervels. Whether work is part of business : An employee never has any independent business than his employers But in case of Contractor, he may have his own independent business.

Undoubtedly there is no one single magic test to ascertain whether there exist a contract of service or contract for service. The most profitably that can be done is to examine all the factors. Not all of these factors will apply or have the same weight in all cases. The court can perform only the balancing operation weighing up the factors and decide the case accordingly. [Silver Jubilee Tailoring House v/s Chief Inspector of Shops & Establishments 1973 II LLJ 495 (SC)]. See also Union Carbide v/s D. Samuel 1998 II CLR 736 (Bombay)

Excluded

The definition specifically excludes four types of employees :

Any person who is subject to the Air Force Act, 1950, or Army Act, 1950 or Navy Act, 1957.

1. Any person employed in police service or as an officer or other employees of a prison.
2. Any person employed in managerial or administrative capacity or
3. Any person employed in supervisory category drawing wages exceeding Rs.1,600/- P.M.

The first two categories are self explanatory but the other two categories is a gold mine of all legal battles and have already been discussed above.

The "Exclusion" clause in the definition is in two parts; one is specific, the other one is implied. The categories specifically excluded are enumerated above. But a mere exclusion falling in anyone of the category will not *ipse-dixit* confer on an employee the status of a 'workman'. By an implication, an employee is also excluded, if he does not perform any of the types of work, such as manual skilled unskilled clerical, technical etc. Negatively, therefore, one must be excluded under any one of the above four categories and positively, one must come under the work formula (the types of work like manual, skilled etc.) then only one is qualified to be a workman under the Act.

1. H.R. Adyantha v/s Sandoz India Ltd. 1994 II CLR 552 (SC).
2. B.S. Kurup v/s National Bicycle Corp. 1995 II CLR 316.

Point of Time

Whether a person is a workman under the Act or not has always to be determined on the basis of date of cause of action or so to say, the date of dispute. Thus when a person tendered his resignation on the date on which he was in supervisory category, he cannot be treated as workman just because, prior to his being in supervisory category, he was falling in the category of 'workman'. The cause of action arose on the date of resignation. On that date, the employee had ceased to be a workman and hence he could not have raised an industrial dispute relating to his resignation. (The Premier Automobiles Ltd. v/s The PAL Employees Union, 1988 II CLR 257].

Section 2 (s)

In Aloyslus Nunes vis Thomas Cook India Ltd., 2000 II CLR 649, it was held that several tests are required to be applied to find out if an employee is 'workman' under Section 2 (s) of the Act. One of the tests is to find out whether the person employed is in a managerial or administrative capacity and if he was entrusted with duty/responsibility of distribution of work. Another test is whether in the discharge of his duties, did he perform any supervisory work. Yet another test would be to find out if he occupied a position to command/decide or he was authorised to act in certain matter? within the limits of the authority given to him without the sanction of manager or other supervisors. Another indication would be, is he in command of a territory or department over which he exercises his managerial function. The designation in the official record of the person can also indicate his position.

Burden of Proof

The burden of proof proving the nature of duties performed by the employee was managerial and/or supervisory lay squarely upon the management. President, Anath Manila Ashram v/s J.G. Ajgaonkar 1996 II CLR 320 (Bombay),

Categories of Workmen

a. Part Time Employees;

In the following cases, held to be Vorkman'.

1. G.K. Mani v/s V.K. Desai, 1988 LIC 505
2. Dr. P.N. Gulali v Is L.C., 1978 IILLJ 46
3. Y.S. Yadau vis State ofRajasthan, 1990 II CLR 714(followed in State of Assam v/s K.C. Datta, AIR 1967 SC 884)
4. Kanhaiyalal v/s State ofRajasthan, 19931 CLR 929.
5. Simladevi vis P.O. 1997 I CLR 693. However in the case ofA,K. SelverajvlsP.O.L.C., 1998 (4) LLN 351

b. Daily Wages : Held to be workmen

1. R. Snnivasraov/sL.C. 19911 CLR 137 Chairman cum MD Orissa S.R.TCo. Ltd- v/s Rameshchandra Gawade. 1995 I CLR 62.

c. Probationers

In Mohanlal vis Management Bharat Electronics Ltd., 1981 II LLJ 70, Supreme Court held that if termination is illegal, employees were entitled to the legal dues. In this case, employees were probationers. It leads to an inference that probationers too are workmen, if they have put in 240 days continues service. See also Management, Kamataka SRT Corpn. v/s Sheikh Ab-Kadir, 1984 I LLJ 110.

Termination of Probationers

In Chandra Prakash Shahi v/s State of U.P. 2000 II CLR 347, the Appellant was appointed as Constable on Probation. However, he was continued in the service as Probationer even after the Probationary period was over. During this period, a quarrel took place between two Constables in which the Appellant was not involved. But when some other constables joined in the fray, the appellant too joined in it. During preliminary Enquiry, the appellant constable was found guilty of indiscipline and misbehaviour. His service came to be terminated simplicitor. Apex Court considered the entire case law on the point that whether Probationer's service can be terminated simplicitor. The Apex Court based its ruling on 'motive' and 'foundation' and held that if the Employer terminates the services of his employee because the employee was not found suitable, it is permissible in law. It may be possible that the employer may hold an inquiry to ascertain the suitability of his employee. But if the Enquiry is held after the allegation of misconduct in which the Employee is found guilty then such termination cannot be for the reason of his being a Probationer or, so to say termination cannot be the termination simplicitor. Thus if the Termination Order is founded on allegations of misconduct, it is a punitive termination and it cannot be a termination on the ground that the employee was a Probationers. Applying these principles to the facts of the case, it may be noticed that the termination was founded on the report of the preliminary Enquiry that appellant's involvement was established, it was not the Enquiry to find out the suitability of the appellant in the service. Further a procedure was prescribed by the Regulation for that purpose and when a procedure is laid down then the termination has to be brought about in that mariner only. That was not having been done, the termination was illegal and it was set aside by the apex Court. In V.P. Ahuja v/s. State of Punjab, 2000 I CLR 929 also the termination of probationer was set aside on the ground that it was punitive and stigmatic. Id) Casual Employees :

Held workmen [S.Ratnakar v/s Ka.rno.taka S.R.T.C. 1996 (74) FLR 1903]

e. Piece Rate Workers : Held to be workers

Shining Tailors v/s I.T. 1983 II LLJ 413

f. Canteen Workers

Workmen if there is ex-contractual relationship. Ananda & Ors v/s Karnataka E.B. 1996 LIC 2819. Not held to be workmen because employer was under no obligation to provide canteen facilities to his employees [Indian Overseas Bank v/s IOB Staff Canteen W.U, 1997 LIC 208]

In Indian Overseas Bank v/s I.O.B. Staff Canteen Workers Union, 2000 II CLR 268, the Bank initially was running a Canteen for its Staff. However, later on, it was run by the Co-operative Society of the employees. The Canteen was then Closed down. As a result of which 33 employees were thrown out of employment. A Reference under the Act was made for adjudication of the industrial disputes to the Industrial Tribunal. In the mean time, the Canteen was given to the Contractor for running it on contract basis. As such, an application for approval under Section 33-A came to be made in which the Industrial Tribunal held that the Closure of Canteen was illegal under Section 25-O of the Act. In Writ Petition, the Single Judge reversed it. In Writ Appeal, the appellate court restored the Order of the Tribunal. In appeal to the apex Court, the apex Court sustained the claim of the workmen. However, it rejected the appellant's submission to grant monetary compensation instead of reinstatement. It may, however, be noted that in the another case of State Bank of India v/s SBI Canteen Employees' Union, 2000 II CLR 241, the apex Court held that the employees of the canteens at various branches run by the Local Implementation Committee as per the Welfare Scheme framed by state Bank of India would not become employees of the Bank as the Bank is not having any statutory obligation or obligation arising under the Award to run such canteens.

Laboratory Attendant Held Workman

M.K. Padmavati vis Institute of Hotel Management Catering Technology & applied Nutrition, 1990 (74) FLE 2719.

Physiotherapist Held Workman

Chotiram Hospital & Research Centre vis Capt, Devendra Kumar Shukla, 1998 (3) LLN 453 (MP).

Medical Officer

Not a workmen - Working in Primary Health Centre State of Maharashtra v/s Shaligram Chargen, 1998 I CLR 185 - Honorary consultant attending other patients of his own. - Held to be not a workman M.V. Wadia Charitable Hospital vis Umakant Ramchand, 1997 I CLR 240. See also John Joseph v/s B.S. Bhadange, 1997 II CLR 921.

j. Dental Surgeon

Held that when he was seeking regular appointment before he was working on ad-hoc basis, he cannot claim such appointment Issue of workman was not considered. Ahmedabad Municipal Corpn v/s Virendra Kumar Patel, 1997 II LLJ 765 CSC)

k. Personnel Assistant

Held not a workman Vilas Dumale v/s Simplex India Ltd. 1998 I CLR 205 (Bombay)

I. Trade Union Secretary

Held *s.* workman *Dattatraya Gopal vis R.M.M.S.* 1998 I CLR 1024

m. Society Secretary

Held not a workman *KM. Ulhenan vlsLC,* 1996 II CLR 1140 (Kerala).

n. House Keeper in Club Held-Workman

CCIv/s Balaji Shyam, 1998 I CLR 570.

o. Cook fold-Workman

Union of India v/s I.T., 1998 (2) LLN 926

p. Workers in Irrigation Project

Held not workman

1. Executive Engineer v/s Anant Yadav, 1998 I CLR 403 (Bombay)
2. Management of Heavy Engineering Corpn. Ltd. v/s P.O. L.C. 1997 ICLR 26 (SO) (q) Superintendent, Quality Control: Held not a workman G.M. Filial v/s A.P. Lakhnikar, 1998 I CLR 281 (Bombay)

r. Workers on Rubber Plantation

Plantation was for earning profit and workers contributed to production. Concept of trade was satisfied held workman.

Abhraham Thomas v/s P.O.L.C., 1976 (74) PLR 2670 (Kerala)

9. Public Utility Service : Section 2(n)

It requires no explanation that services which the public utilizes the most, must be given priority and must be treated with care and attention. Such services of public utility are tried to be identified lest there arises any dispute on that itself. Section 2(n) identifies the services of public utility. If it is public utility services, the following special treatment is given :

Section 12(1) makes it obligatory on conciliation officer to hold conciliation proceedings in the prescribed manner when notice under Section 22 is given. Section 10(1) proviso makes it mandatory upon the appropriate Government to make a reference of the in industrial dispute if it relates to public utility service.

Special provisions for strike and lock outs are laid down in Section 22.

The Act does not define the term, it only explains the term. The industries which affect the life, safety or well being of the public or the public life is likely to be dislocated by such services/ industries, the same are treated as public utility services. Thus Railway, AIR, Public Bus, major ports, Post, Telegraph, Telephone, Water, Electricity and the Sanitation are treated as public utility services.

The industries which in first instance are not treated as public utility services, nonetheless, if the appropriate government deems it fit, can declare the industries as public utility service and enlist in First Schedule of the Act. However, before issuing the Notification declaring any industry as' public utility services, the following requirements must be satisfied.

1. It must be "industry" within the meaning of Section 2(j)-
2. The appropriate Government must satisfy itself that it is in public interest to declare any scheduled industry as the public utility services.
3. The Notification must be published in the official gazette.
4. The period to treat the industry as public utility services must be specified. But period should not exceed six months in the first instance.

The period can be extended after six months. But each time appropriate Government must apply its mind and must satisfy itself that it is in larger public interest 'and issue notification which must be published in the official Gazette.

LESSON 10:
WAGES AND ALLOWANCES

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is meant by wages?
- What are the different kinds of allowances?

Wages - Section 2(rr)

Introductory

Traditionally, the word "wages" means an amount paid periodically - hourly, daily weekly, monthly etc. to a worker by the Employer for the work done by him (for the Employer). But not accepting this traditional meaning, the legislature has given an artificial meaning to the word "wages". It is now so skillfully defined that the word "wages" connotes and denotes. As a result, the term includes much more than what is traditionally included in the word wages. The omnibus definition takes into its fold not only the actual wages {or remuneration) but also the "allowances".

As for the "allowance", it may be of interest to know that after the Second World War living became very costly (dear). In order to compensate this dearness (costliness), the workers were began to be paid "Dearness Allowance", nicknamed as "DA". This DA was paid along with wages (or remuneration) in the fond hope that one day the cost of living will fall down and so the DA will disappear. But contrary to the popular belief, the cost of living never came down and so DA, never disappeared but came to stay permanently. Earlier DA was paid to compensate higher cost, of living. The cost of living then included only the food and shelter which can be said to be the necessities of life. Nevertheless the concept of "Necessities of Life" has also radically changed. Now not only the food and shelter are included but also included are several other items needed in living the life. Therefore, in the D.A. many more allowances have come to be included. So in a pay-packet of a workman are included (1) the wages or remuneration (2) D.A and (3) other allowances. The legislature has given recognition to this aspect of changing concept of wages in the present definition and accordingly we have the definition.

It will be seen that the definition gives meaning to wages in two parts:

1. What actually are the "wages" and
2. Includes in it are certain allowances as wages. Indeed, payments like Bonus, P.P., Gratuity are excluded and that really renders the definition in parts.
3. All remuneration (capable of being expressed in terms of money) payable to workman for the work done (for the employer). This really is the denotation of the term wages or what it denotes.
4. Certain allowances and amenities are included. In fact, that is the extended connotation of the word wages and
5. Excludes three payments - Bonus, P.P. or the like and Gratuity from the term "wages."

What is Remuneration

Remuneration is to recompense by paying an equivalent for a service or a "return" for the services rendered. Remuneration can be said to be a formal expression of the word "wages" as traditionally understood. Needless to emphasise that the remuneration must be capable of being expressed in terms of money. Otherwise how would one recover it? Therefore, only those returns or recompense for the services rendered can fall in the definition of wages which can be evaluated in terms of money. If not the same cannot fall within the ambit and scope of wages-

There is another feature of the definition which must receive a special attention. It is that the remuneration paid to the workmen must be in respect of the employment or the work done by the workmen. In Bennett Coleman & Co. (P) Ltd. v/s Punya Priya Das Gupta, 1969 II LLJ 554 the Hon'ble Supreme Court of India held that the car allowance and the benefit of free Telephone were not the remuneration because the same were not restricted to the employment. Further the same were not fixed after taking into consideration the expenses which the workmen would have ordinarily incurred in connection with his employment or the work done in such employment. The Supreme Court then observed that though the car allowance and benefits of free telephones were not the "remuneration" yet they fell in. the category of "allowances" and as such "wages" under the Act. This ruling of the apex court also brings out the glaring distinction between "allowances" and "wages" (or remuneration) and (2) the reason as to why the Legislature has chosen to include "allowances" in "wages" while defining the term. It is because of such an inclusion that the workman could recover or raise an industrial dispute in respect of car allowances and the benefit of free telephones. As otherwise, the same could not have been recovered as "wages" or no industrial dispute could have been raised.

Terms of Employment Must be Fulfilled

The definition imposes a stringent restriction upon the workmen that before he recovers the wages, he must fulfill the terms of his employment. The philosophy or the industrial jurisprudence is that no workman can get the idle wages or wages without doing any work. Undoubtedly, even if it is no where laid down in the service contract that an employee will have to work, it will be treated as an "implied" condition of the service contract. It is precisely for this reason that the definition recites: " Whether the terms of employment be express or implied." The legislative wisdom thus lays down that non-fulfillment of terms of contract of employment would

disentitle the workman to claim "wages". Thus if a workman absents from work or having come to work does not perform the duties assigned to him, he will be disentitled to wages under the Act, That *is* why a workman can be refused wages if he has gone on strike. In *Algemene Bank Nederland vis CGIT,* 1978 LIC 47, the Calcutta High Court held that though going on a Jegal strike may be legitimate right of the workman, in the process of collective bargaining yet they cannot be simultaneously on strike and fulfilling the terms of their employment. Such a claim would be de-hors the Act itself.

Expressing it in arithmetical equation, it can be thus:

Wages under the Act = Remuneration + (DA + Allowances; - (Bonus, PF, Gratuity)

Conditions

1. Should be capable of being expressed in terms of money.
2. Remuneration must be for the work done in the employment.
3. Terms of contract of employment may be express or im plied and
4. Terms of contract of employment must be fulfilled.

Kinds of Wages

Transport Allowance is an allowance paid in respect of a workman's employment [Atul Products Ltd. & 'Workman in AIIC, 1972 II LLJ 30 (SC)] Tiffin/ Lunch Allowances Supreme Court held that when wage structure is fair and DA is linked with the index of living then company cannot be called upon to pay lunch allowance to all workmen. Remington Rand of India Ltd. v/s Workman, 1969 (19) FLR 46. Clothing and Uniform Allowance

Clothing allowance was paid for several years but then the employer discontinued it. On industrial dispute being raised, the industrial tribunal restored it. The Supreme Court affirmed the Award of the Tribunal [Chandramalal Estate v/s its workmen, 1960 II LLJ 2431. In Remington Hand of India Ltd. v/s their workmen, 1968 II LLJ 542, the industrial Tribunal, on facts of the case directed that of the dresses worn by the mechanics get dirty in the employment, the management should provide such number of sets of uniforms as it may deem fit. The Supreme Court affirmed this Award. In DCM Chemical Works v/s Its workman I LLJ 388 the Supreme Court upheld the award by which the employees were to be supplied uniforms but set aside the direction of the Tribunal of providing protective equipment. But such equipments were required to be supplied under the Factory Act locally applicable. Service Charges/Tips

On facts held employee can recover it. Further held service charges come under compensatory allowance and hence included in wagesunder standing orders applicable tothe workman. Rajendra Shiv Knrkera a is Hotel Natrnj, J98S II CLR 456.

Supervisory or Special Allowance

Employees are entitled to recover it. State Bank ofBtkaner & Jaipur v/s Shri Hari Har Nath IS71II LLJ 331.

In Central Bank of India Ltd v/s Sirir Kumar 1977 II LLJ 477 and State Bank of Hyderabad '»'s VA. Bhide 1968 II LLJ 713, the Supreme Court emphasised that workman must prove that he did discharge the duties of higher category. Acting Allowance

Recognised principle is that the acting incumbent will get as acting allowance, the difference between his salary and the minimum salary of the higher post in which he is acting, subject to a maximum of 25% of the incumbents basic salary. In Burn & Co. v/s their workmen, 1959 I LIJ 450, the Hon'ble Supreme Court of India set aside the award of the Tribunal to the extent it was inconsistent with the recognised principle.

Ex-gresia Payment

Ex-gretia payment does not come in the purview of Section 2(rr) of the Act Vayoti Plantation Ltd. vlsSabu Mather, 1994 I LLJ 1126.

Overtime Allowance

The power plant operators of the mill claimed extra remuneration (overtime wages) for not taking rest interval of ½an hour. Tribunal came to the findings of fact that there were three shifts working in the mill. The mill's case was that the wages were fixed having regard to the fact that, in view of the nature of the work the workers will be working 8 hours at a stretch without the half an hours interval admissible to other workers (for whom total working hours were 8 ½with half an hour interval). The Supreme Court held that these workman were not entitled to extra remuneration (overtime) for having to forgo the half an hour rest interval.

In Karamckand Thapar & Bros Ltd. vis their workmen, 1964 I LLJ 429, the Supreme Court laid down the following principle for fixing the over time allowance.

1. Overtime allowance should have relation to total wages (Basic wages and DA)
2. The financial condition of the company need to be taken into consideration and
3. It should be in consonance with the practice prevailing in other establishments in the surrounding area. (Therefore, in Workman ofJessop & Co. Ltd. v/s Jessop & Co.Ltd.,1964 I LLJ 451) the Court fixed overtime at the rate 1 ½ times whereas in the case under discussion it was fixed only 1 ¼ times)

The employee claimed, with other claims, the overtime wages during the period he was under suspension which was cancelled and the suspension was treated as on duty. The Bombay High Court allowed the overtime claim holding that if the employee would have been on duty, he could have earned these wages. The overtime must be held to be necessary component of wages and not contingent upon actual working (on the facts of this case) [Loise Xavier Mendonca v/s Trustees of BPT, 1991 I LLJ 485]. The reasoning of the court is based upon notional and fictional presumptior. of duty. It is with utmost respect submitted that the same does not appear to be correct. Earned ieave on Resignation

Reid - employee is entitled to it. D.N. Bondopadhyah vis P.O. XILC, 1997 II CLR 300.

City Compensatory Allowance

On beta held included in wages HUT Ltd. all HUT HO Employees Association, 1997 LIC 263 (SC) Wage, for intervening period - Termination * ReiiuutenKnt

Held entitled to recover Himlat Ueena all Statt of Kajai-than 19981 LLN 698 Overtime - House Rent Allowance

In calculating overtime, HBA has to be included under Section 69(1) of the factories Act.

1. Chief GM. Telco Factory alt HR Thaker, 1998 I CLR 1260.
2. Gen. Sec. BEST Worker* Union v/s BEST, 1997 I CLR 898. Charitable Institution

While fixing wage scale for a charitable Institution, financial burden has to be taken into consideration.

C.U. Shah Arogya Bharti all Saurtuhtra Mcadoor Sangh, 1998 n LLJ 445 (Gujarat) Strike Period

Strike being unjustified wages cannot be recovered.

Ponyam Cements & Minerals Ind. Ltd als Deccan Emp. Aon. 1998 n CLR 923. Wage, during Ball Period

Not entitled to - Vuhumtar Singh alt I/CO Bank 1997 UC 819 (MP) Court Executing Decree

Court executing Decree can compute and determine the wages Mtwalal vli Kajaaan SRTC. 1997 (76) FLR 381 Education Allowance

On facts held that granting education allowance will be by way of revision of the wage structure which was not the subject matter. Hindustan Aeronautics Ltd. alt The Workman 197S II LLJ 336 (SC) Vacation Allowance

The Tribunal granted the vacation allowance. The Supreme Court held that Tribunal Committed a serious error in not considering the other allowances, the other amenities allowed, the total wage packet and the financial capacity.

Polychem Ltd. all R.D. Tulpule, 1972 U LLJ 29 (SC)

Wages - Minimum Fair a Living

Minimum Wage

The minimum wage is at the bottom of the Ladder of the wage concept. The Employer must pay the minimum wage if he is to continue in the industry. In Killick Nixon Ltd. vis KAC Employees Union, 1957 II LLJ 53, the Supreme Court of India adopted the formula for minimum wage which included not only the bare physical necessities but also the conventional necessities or so to say not only the bare subsistence of life but also for the preservation of the efficiency of the worker. For this, it should provide for some measure of education, medical requirements and amenities. In Express News Papers (P) Ltd. vis Union of India, 1961 I LLJ 339, while considering the statutory wage structure, the apex court observed that the minimum wage will have to be fixed irrespective of the capacity of the industry to pay. In Kamani Metals & Alloys Ltd. v/s their Workmen 1976 II LLJ 65 Supreme Court observed that in any event the minimum wage must be paid irrespective of the profits, the financial condition or the availability of the workmen on lower wages.

Statutory Minimum Wage

The central legislative Assembly enacted the Minimum Wage* Act, 1948. It is an Act for fixing minimum rates of wages for certain employments. The minimum wage once Axed are to be revised at certain intervals so that it is in tune with the time. Different minimum wages for different localities and for different trades are decided under the Act.

This shows that since the statutory Minimum Wages Act does take into account the (act of prevailing cost of living, makes the Minimum Wages partly realistic and partly neutralistic because it takes into account the rise in prices of essential commodities at a given time in a given locality. Although the minimum wages Act was enacted with the lofty ideals of preventing exploitation of Labour, nevertheless. It is restricted to the employment in which labour is organised. But then this leads to the discussion of non-statutory minimum wages.

Non-statutory Minimum Wages

In Mmedabad Mill Owners Association v/s Textile Labour Association 1966 I LLJ 1, the apex court ruled that when the statute has not fixed the minimum wage, it can be fixed by the Industrial Tribunal. Whereas in Shiv-raj Fine Arts Utho Works v/s State I.C., 1978 LIC 828. the apex court ruled that the Tribunal may fix the minimum wage after taking into account various factors and that may turn out to be higher than the statutory minimum wages.

While in statutory minimum wages, a machinery is set up under the Act to fix and periodically revise the minimum wage in given locality in given trade or industry, in case of non-statutory minimum wage it is fixed in two ways.

1. By method of collective bargaining or
2. By industrial adjudication.

As a methodology, the wages of the lowest category of workers in a given unit or an industry are fixed and upon this, is fixed the scales of wages of other category of workers in higher up ranks.

Capacity to Pay or Financial Burden of the Industry

In all cases capacity to pay or financial burden of industry must be given due weightage. However, in fixing minimum wage, capacity of individual employer is quite irrelevant so long as the industry, as a whole, can pay. If an employer has no capacity to pay even the minimum wage, he has to go out; he has no right to employ any one.

In French Motor Car Co Ltd. u/s their Workmen, 1962 II LLJ 744, the apex court laid down the industry cum region rule. The minimum wages can be fixed firstly on the basis of capacity of the industry (rather than a particular individual Employer) to pay the minimum wage. When revising or fixing for the first time, a minimum wages it is necessary to keep in mind the prevailing minimum rate of wages in the other industries in the neighbourhood or in the region. In Workmen of Paper Mills Ltd. v/s Orient Paper Mills (1969 II LLJ 38) the tribunal took the view that there were no comparable concerns in the industry in the same region and hence the rule of industry cum region had no application to the facts before it. Accordingly it fixed the minimum wages not on the rule laid down by the apex court in French Motor Case (1962 II LLJ 744). On appeal the supreme

Court held that in such cases, the minimum wages can be fixed by taking average minimum wage prevailing in other industries. The apex court also laid down that the total wage packet consisting, basic wage, DA and the production Bonus can be taken into consideration.

Fair Wage

Fan- wage is something above minimum wage. It is adequate to cover the normal needs of the average employee regarded as a human being in a civilised society [All India Reserve Bank Employees Association v/s Reserve Bank of India Ltd. 1965 II LLJ 175 (SC)]. Fair wage lies between the minimum wage and living wage. [Express Newspapers (P) Ltd. v/s Union of India, 1961 I LLJ 339 (SC)] or so to say a step lower than the living wage (Reserve Bank Employees Case 1965 II LLJ 175 (190) (SO)]. In fair wage, what is provided is the wage sufficient for a standard family and includes in it the provision for food, shelter, clothing, medical care and education for Children, appropriate to his status in life (Reserve Bank Employees Case, 1965 II LLJ 175 (190) (SO)] [Kamani Metal & Alloys Ltd. v/s Their Workmen, 1967 II LLJ 55 (SO] [Shivraj Fine Arts Litho Works case, 1978 LIC 828, (SC)]

Living Wage

The living wage should enable the Earner to provide himself and his family, not barely the essentials like food, clothing, and shelter but also a measure of frugal comfort. It includes education, protection, against ill-health, requirement of essential social needs and a measure of insurance against the misfortunes, including old-age and evil days [Kamani Metals, 1967 II LLJ 55 (58) (SC)]. In Hindustan Antibiotics Ltd. v/s Their Workmen, 1967 I LLJ 114 (120) (SC)] it is observed that prosperity in the country would help to improve the conditions of labour. "The standard of Life, of the Labour" can be progressively raised from the stage of minimum wage passing through the need found wages, fair wage and living wage. "Last but not the Least, it must be noted here that the constitution of India (in Directive Principles) refers to the Living wage and casts a duty on the State to strive and secure it, undoubtedly not in a stroke but indeed in a gradual process.

Deafness Allowance

In Kamani Metal & Alloy Ltd. v/s their workemen, 1968 II LLJ 55, the apex court explained the term "Dearness Allowance" saying that it is the additional payment made by an Employer to his employees to compensate them to a certain extent for the rise in the cost of living. In Hindustan Antibiotics v/s Their Workmen, 1967 I LLJ U4 (127) the apex court observed that while in other countries, the wage itself is raised, in India dearness allowance is paid to neutralise the rise an prices. While in Management of Shri Chalthan Vibhay Khan Udyog Sahkari Mandli Ltd. v/s G. S. Barot, 1979 II LLJ 383, the apex court said that the Dearness Allowance is to provide protection to persons whose salaries are at the subsistence level or at a little above, in order to enable them to face the increase in dear-ness of essential commodities.

The Dearness Allowance cannot be constant and fixed. It varies from time to time, centre to centre and from industry to industry within the same centre. It is therefore, necessary to adopt such a method in ascertaining the quantum of dearness allowance that the legitimate demand of the employees is met without doing injustice to the employer. Dearness Allowance has to be fixed taking into account total emoluments (total wage packet).

The apex court in Bengal Chemicals & Pharmaceutical Works Ltd. vis Its Workmen, 1969 I LLJ 751 (758) laid down the guidelines for fixing Dearness Allowance as follows.

1. Full neutralisation is not normally given except to the very lowest class of employees
2. Purpose of Dearness Allowance being to neutralise a portion of increase in the cost of living, it should be ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and decrease on a fall in the cost of living.
3. The basis of fixation of wages and DA should be industry cum region
4. Employees getting the same wages should get the same DA irrespective of whether they are working as clerks or members of subordinates staff or factory workmen, The additional financial burden which a revision of the wage structure or DA would impose upon an Employer, and his ability to bear such burden are very material and relevant factors to be taken into account.

11. Average Pay Section 2 (aaa)

There is no one single system of paying wages. Some employers pay wages to their workers daily. Some employers pay weekly, some Employees prefer to pay wages to their employees on monthly basis. Legislatures find no fault in the mannerism of payment of wages. However, it certainly desires that "real" wages are taken into consideration in case the workers are required to be paid their legal dues. With this intention, the legislature has defined the term "Average Pay". The definition is very flexible in the sense that if monthly wages are to be ascertained, the wages of three months have to be taken into consideration and not just of one month. So that during this period, if any fluctuation in wages takes place, the same is taken care of and the 'real' wages of one month can be ascertained. The significance of the definition can be understood only when a workman is required to be paid retrenchment compensation or the lay off compensation or such other legal dues.

Part A-

Notice of Change

1. Introductory-Section 9-A
2. Notice of change in conditions of service
3. Effect of Section 33
4. Notice of change-when necessary
5. Section 9-B.

1. Introductory: Section 9-A

Notice of change is a first step towards preventing and pre-empting any dispute, not to speak of an industrial dispute. The apex court in Tata Iron and Steel Co. v/s Workmen, 1972 II LLJ 259 has said that the real object and purpose of enacting Section 9-A seems to be to afford an opportunity to the workmen to consider the effect of the proposed change and if necessary to present their point of view on the proposal. Such consultation

further serves to stimulate a feeling of common joint interest in the managements and the workmen in the industrial progress and increased productivity. This approach on the part of the industrial Employer would reflect his harmonious and sympathetic cooperation in improving the status and dignity of the industrial employees in accordance with egalitarian and progressive trend of our industrial jurisprudence.

The Section prevents unilateral change so that later on, it is not transformed into an industrial dispute. If workmen are forewarned by notice of change and if they too are agreed upon, nothing can be better than this. But if they do no agree upon, the conciliation officer will make efforts to bring about a settlement. If that also fails, something is seriously wrong in the proposed change. The matter is then transmitted to industrial court for adjudication. The Award of court is final, conclusive and binding. That is how, an industrial dispute is prevented and resolved. How an industrial dispute is prevented? Of course by preventing a unilateral change. The provision of this Section is mandatory. The Section contemplates three stages :

1. Proposal to effect a change
2. Time when the Employer gives a Notice of change and
3. When he effects the change.

2. Notice of Change in Conditions of Service

The Employer is prohibited from (1) giving effect to any change in (2) Service conditions in respect of (3) matters specified in Schedule IV (4) without giving any Notice of change (5) to workmen likely to be affected by the change. The Notice of change in service condition has to be in the prescribed manner and it should be of duration of 21 days. Necessarily, therefore, a change should have been brought about service conditions and about the matters specified in schedule IV of the Act then only Section 9A is attracted and not otherwise. Schedule IV of the Act refers to matters, such as

1. Wages and mode of payment of wages
2. PF, pension or other contributions by Employers
3. compensatory and other allowances
4. Hours of work and rest intervals
5. Leave and Holidays
6. Shift working
7. Grade classification
8. Withdrawal of customary concession, privilege or change in usages
9. New rules of Discipline or change in existing ones.
10. Rationalization, standardisation or improvement of plant or technique which is likely to lead to retrenchment; and Increase or decrease of in labour force (other than casual labour/workmen).

If service conditions are changed on account of operation of law, the Notice of change is not required under this Section [All India ITDC Employees Union v/s Hotel Ashok, Bangalore, 1982 LIC No. 107]. Similarly, if change does not fall in Schedule IV & the Act then also no Notice of change is necessary. In Shankar Prasad Gopal Prasad Pathak vis Lokmat News Papers (P) Ltd., 1997 I CLR 212, the Bombay High Court held that Section 9A is mandatory and non-compliance will render the change non-est.

3. Effect of Section 33

The Employer's right to effect a change is undoubtedly undisputed. It is only in Section 9A subjected to a prior notice or in other words only unilateral change is not permitted. Thus with the consents of employees, a change can be effected and on their not agreeing to it, by proving the necessity and propriety before the industrial court, an Employer can effect the desired change. Whereas, under Section 33, an Employer is required not to effect the change during the pendency of any proceedings. No doubt Section 33 allows to carry out the change with the permission of the adjudicating authority, nevertheless, whether conditions of service can be altered or not will have to be ultimately decided by the Industrial Tribunal under Section 10 of the Act. But, these provisions are only procedural and do not create a new right or extra right in favour of an Employer.

In the following cases, it was held that no. change in condition of service was effected and hence Section 9A was not attracted.

Each workman was required to execute an undertaking that he will not go on strike etc. No change in service conditions. Glaxo Lab. Emp. Union v/s Glaxo India Ltd., 1996 II CLR 270

Installation of photo composing machine without leading to retrenchment did not require any Notice of change. The retrenchment was not found to be for the reason of installation of these photo composing machine. Hence the improvement in technique simplicitor did not attract the provision of Section 9A (1) Narkeshri Pmkashan Ltd. v/s N.P. Kamgar Sangh, 1993 II CLR 110. (2) Gulf AIR vis S.M. Vaze, 1994 II CLR 292. (3) L. Robert D'Souza vis Ex. Engineer, S.Rly., 1982 I LLJ 330 (SO). 21. The bank withdrew, without Notice of change, the duty relief. It was held that the concession extended to union office Bearers, by the Bank was not a service condition and a matter not covered under Section 9A.

1. Workmen of Indian Bank vis Indian Bank, 1994 II CLR 935.
2. Secretary, T.N. Electricity Board, (Accounts Subor dinates Union vis TNEB, 1998 (3) LLN 838.
3. General Manager (operations), State Bank of India v/s SBI Staff Union, 1998 I CLR 897 (SO).

Shift timings of telephone operators were changed. The question arose whether Notice of change was necessary. Held what was changed was shift timings and hence item 4 of schedule IV was not attracted. As such no notice of change was necessary. (1) Transport and Dock Workers Union v/s Chowgule Steamship Ltd. 1998 II CLR 45 (2) Workmen of Sur Iron & Steel v/s Sur Iron Steel Co. (P) Ltd., 19711 LLJ 570 (SC). The apex court took different view in Tata Iron & Steel Co. vis the Workmen 1972 II LLJ 259.

4. Notice of Change - When Necessary

In the following cases Notice of change held to be necessary.

Vol untary Retirement Scheme (V R S) results in reduction of posts and hence attracts item 10 or 11 of schedule IV of the Act, depending upon facts of each case. Therefore, Section 9 A is attracted. Notice of change must be given at or before the

time when the VRS is displayed. Notice of 21 days must elapse before the management can accept the offer of the workmen.

KEC International Ltd. v/s Kamani Employees Union. 1998 II CLR 1028 Withdrawal of medical benefits are part of service conditions. Calcutta Electric Supply Corpn. Ltd. v/s CESW Union, 1995

I. LLJ 874 (SC). Compensatory allowance is an implied condition of service.

   Management of Indian Oil Corpn. Ltd v/s its workmen, 1975

II. LLJ 319 (SC).

5. Section 9B

The appropriate Government is invested with powers to exempt workmen or certain class of industrial establishments from the application of Section 9 A of the Act. However, the powers of appropriate Government are not unfettered or unguided. The appropriate Government can do so only if it forms an opinion that otherwise (1) serious repercussions may ensue or (2) that it is in public interest to do so and (3) notifies in the Government Gazette. In Workmen of Sur Iron & Steel Co. P Ltd v/s Sur Iron & Steel Co. P. Ltd., 1971 I LLJ 570, the apex court held the change in weekly offs did not require any notice of change because the appropriate Government accorded exemption under Section 9 B of the Act.

LESSON 11:
STRIKES AND LOCK OUTS

Learning Outcomes

Dear students,
After todays class you should be able to answer the following questions

- What is a strike?
- What is a lockout?

Synopsis

What is Strike

a. Introductory
b. Ingredients of definition
c. Industry
d. Cessation of work
e. Refusal must be concerted
f. Cessation must be indefiance
g. Relationship of employment
2. Constitutionality
3. Forms of Strike
   i. Introductory Go-slow
   ii. Legal and illegal strike
   iii. Justified and unjustified strike
   iv. When strike is justified
   v. illegal strike, if justified
4. Wages for strike period
5. Section 10 (3)
6. Constitutional validity of Section 10 (3)
7. Section 10 (A) (4A)
8. Section 22
9. Illegal strike
10. Strike Notice
11. Manner of strike
12. Prohibition of strikes in public utility service
13. No Notice - Sub-section (3)
14. Section 23
15. Lock-Out
    i. Introductory
    ii. Closing a place of Employment or suspension of work
    iii. Refusal to employ or to continue to employ any number of persons employed by him.
16. Lock-out when legal
17. Police Assistance
18. Penalties for strikes and lock-out
19. Cognizance of offence

1. What is Strike?

Introductory

Strike is concerted refusal to work on the part of workmen who are in a particular vocational area. Sec-tion 2(q) of the Act defines it as under:

"Cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment."

Ingredients of Definition

a. Industry (any industry)
b. Cessation of work
c. Concerted refusal of work (etc)
d. Cessation of work must be in defiance of the authority of the employer.
e. Relationship of Employment (persons who have been so employed).

a. Industry : It is postulated in the definition that cessation of work must be in any industry. Needless to say that industry means industry as defined in section 2 (j) of the Act. Necessarily, therefore, if it is not an industry the question of "strike will not arise," even if other ingredients of strikes are present or satisfied.

b. Cessation of work : The another ingredient is that there must be stoppage of work or cessation of work or refusal to continue to work or refusal to accept work. Undoubtedly, 'refusal' or 'cessation' by itself is not sufficient to fall within the mischief of
the definition of strike and something more is necessary. Never- theless, it is the stoppage of work which ultimately is the basic fabric of strike. Only the mannerism and methodology gives the full bloom expression to the term strike. The use of expression
"refusal to continue to work" unimistakebly indicates that even after starting the work, it can be stopped. Mere presence of certain workmen is the striking crowd in absence of any satisfactory proof of their having ceased to work or refused to work would not
amount to strike. [O.K. Ghosh vis E. X. Joseph, 1962 II LLJ 615 (SC)]

c. Refusal must be concerted : The definition clearly indicates that the cessation of work must be a concerted action or that the refusal of work must be under a common understanding by persons employed by the Employer. Surely, therefore, a combined or a joint-action of workers is most essential and vital ingredient in the definition. In order

to establish such concert, there need be no formal meetings, discussion or even inter change or mutual consent or assent to a common purpose or a course of conduct. It may be deduced from similar acts and course of conduct.

d. Cessation must be in defiance : In Standard Vaccum Oil Company vis M.G. Gunaseelam, 1954 I LLJ 656, the Labour Appellate Tribunal observed that it is implicit in the definition of strike that'cessationof work'mustbein defiance of the employer's authority. The question of defiance of the Employer's authority will arise only when an employer has a legal right to ask his employees to work. If an employer has no right, in law, to ask his employees to work and yet he asks his employees to work but employees refuse to work then such a refusal by employees, even if a concerted action, would not amount to a strike. [North Brook Jute Co. Ltd vis Their workmen, 1960 I LLJ 580 (584) (SC)] Where two workmen were absent and there was no evidence to show that their absence was due to concert between the two or in defiance of employer's authority, it was held that the absence did not constitute strike [Ram Scrap vis Rex, AIR 1949 All. 218]

e. Relationship of Employment : The use of expression "persons employed" in the definition is a sure indication that there must be a contract of Employment. For reading the contract of Employment, there must be a relationship of "Master and Servant." Thus relationship of 'master and servant" leads to reading the contract of Employment. The contract of Employment, in turn, leads to reading a condition - may be express or implied that the workman will work. Unless, there is a condition to work, there cannot be a cessation of work. And unless, there is a cessation of work, there cannot be a strike. Thus relationship of employment plays a very pivotal role in construing a strike under the Act.

2. Constitutionality

The workers in a democratic state, have a right to strike to withhold their labour in order to express their grievance or to make certain demands. Thus a strike is a necessary safety valve in industrial relations. Nevertheless, it is not a fundamental' right (1) Radkey Shyam Sharma v/s Post Master General, AIR 1965 SC 311 (2) AIB Employees Association v/s IT, AIR 1962 SC 171, (3) Kameshwar Prasad v/s State of Bihar AIR, 1962 SC 1166.

3. Forms of Strikes

Introductory

The popular belief is that in "strike" workers keep away from the work-place. No doubt that is so. But there have also been some other forms of resentments, dissentment and refusal of work. Some of them are : Stay-in, Sit-down, Tool down, Pen-down, Go-slow and so on. Give any name to the agitation of workers but if it falls within the mischief of Section 2(q) of the Act, it will be strike. In all such forms of strikes, employees peacefully enter the place, without indicating their intention. But after entering the work-place, they do not do their work. Such a conduct is "stay-in-strike" or sit-down strike. If blue collared workmen do not do their work, it may be "tool-down strike". If white collared workmen do not do their work, it may be "pen-down strike." If workmen choose to work but slow down the pace-speed of their work., it may be a "Go-slow." And so on. All such forms of agitation, strikes are, in fact, more dangerous than traditional form of strike, keeping away from the work. Because in these forms of strikes, workers enter the work place and do not do their work. In other words, they remain idle, it is said, idle mind is Devil's workshop. Such strikes often than not result in some mischief, indiscipline and even in violence. Therefore, it is more prudent and safe to disallow workers to remain at their work-place, when not doing their work. In Bombay Dyeing and Manufacturing Co. Ltd. v/s Mumbai Mazdoor Sabha, 1987 I LLJ 50 (a case under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act) it was held that the Employer has a right to tell the workmen not to enter the work premises if they have made it clear that they had no intention to carry on their work and it is wholly immaterial that the workmen have not indulged in violence or indiscipline.

Go-slow

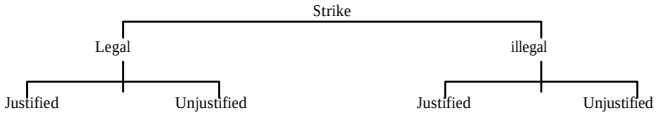
Go-slow means a concerted and deliberate slowing down of work to coerce the Employer to concede a demand. It is misconduct in most of the Standing Orders and also an unfair labour practice under Schedule IV of the Act. It is difficult to prove as it involves an elaborate and comprehensive enquiry in the process of production. The apex court in Bharat Sugar Mill v/s Jai Singh, 1961 II LLJ 644 truely and appropriately high-lighted the plight of the Employer but did not suggest any way out : Again in Sasa Musa Sugar Works (P) Ltd. v/s Shobrati Khan, 1959 II LLJ 388, the apex court had occasion to consider the 'Go-slow'. It observed that the Go-slow is a serious misconduct which is a insidious in its nature and cannot be countenanced. In Workmen of Motipur Sugar Factory v/s Motipur Sugar Factory, AIR 1965 SC 1803. The management discharged employees guilty of Go-slow. The Supreme Court upheld the discharge on the ground of Go-slow. Howsoever, the Go-slow, may be bad but that cannot give licence to employer to take any action against the workmen without proving the Go-slow [S.U. Motors (P) Ltd. v/s Workmen, 1990 I CLR 748]. In Apar (P) Ltd. v/s S.R. Samant, 1980 II LLJ 344, S.U. Motors 19901CLR 748, Bank of India v/s. T.S. Kelawalla, 1990 I CLR 748, the apex court considered the question : whether employer can deduct wages for Go-slow. It was held that (1) the Employer may be entitled to deduct wages for the work not done. Section 2 (rr) of wages read with Section 2 (q) of strike fully justify the deduction. (2) such a right to deduct wages is an implied right, (3) independent of the provisions of Service Regulation, Award settlement etc. and (4) even if one single workman is found guilty of Go-slow, his wages can be deducted. However, (5) the quantum of wages to be deducted will depend upon the facts and circumstances of each case. Interestingly, in the earlier case of Larger Bench (Churakulan Tea Estate v/s Its Workmen, 1969 II LLJ 407 the Supreme Court had taken the view the Employer cannot deduct wages as workers were entitled to it. In this case, strike was legal and justified and as such, otherwise also, the Employer could not have deducted wages.

Legal and Illegal Strike

Any Strike falling under the mischief of Section 10(3), 10(A), 4A, 22, 23 and 24 of the Act will be illegal. Necessarily, therefore, if it does not fall in any one of these provisions, it will be deemed or presumed to be a legal strike. However, it may clearly be understood that a strike may be illegal because it is prohibited. But it can also be held to be illegal if procedure prescribed under the Act for going on strike, is not followed. When a strike is commenced and continued, without following the prescribed procedure, or when there is defect in following the prescribed procedure, there will be 'procedural - illegality". Whatever may be the nature of illegality, once it falls into the ditch of illegality, it will be an illegal strike. But if it does not fall into the ditch of illegality or if it comes out of illegality, it will be a legal strike.

Justified & Unjustified Strike

While it may be very important to remember that a strike is the legitimate weapon of labour, it is equally important to bear in mind that indiscriminate and hasty use of this weapon is hinderance to industrial growth. This brings to the fore the concept of 'unjustified strike'. If workers go on strike to press their Demand for ex-gratia bonus, the strike, even if legal, will be unjustified (Chandramalai Estate v/s Its Workmen, AIR 1960 SC 902). But if workers 'Demand is of so very urgent and serious nature that it cannot wait until the remedial machinery come to the help then the workers are justified in going on strike. Thus a 'strike', unless it contravenes any statutory provision, will be legal, but even a legal strike can become unjustified under certain - circumstances, as explained above.



As earlier stated, the Act only points out in which cases, the strike is illegal. If it is not illegal then the necessary corollary is that it is legal. Thus there is nothing like justified strike and/or unjustified strike under the Act, Rules or the Schedule under the Act. As a matter of fact the concept of justified and unjustified strike is completely novel and unknown, however, recently it is pressed into use to resolve the question of quantum of .wages for the strike period. In awarding punishment courts have always looked to the aggravating and/or extenuating circumstance. Therefore, when a question is posed to the court; can workers be punished for going on strike? The courts have considered the aggravating or extenuating circumstances, namely, is the strike justified or unjustified? The answer modulated the punishment. That is how the issue of justified and unjustified strike becomes relevant in modern times where workers have a freedom of going on strike unlike ancient time when strike was criminal offence.

When Strike is Justified?

If strike is legal, or more exactly to say, when strike is not-illegal, in the following cases courts have held the strike justified.

1. If the Demand of workers is of urgent and serious nature (Chandratnalai Estate v/s Its Workers, AIR 1960 SO 902).
2. When the reasons of going on strike are neither perverse nor unreasonable (Crompton Greaves Ltd. v/s Workmen, 1978IILLJ 80)
3. When there is no evidence that workmen had resorted to force, violence or sabotage (Crompton Greaves Ltd.. v/s Workmen, 1978II LLJ 80)
4. When workmen are denied rights or benefits they are legitimately entitled to under a statute or under a contract of service (Amlendu Gupta v/s L/C., 1982 II LLJ 332)

Illegal Strike, If Justified

In 1960, the apex court, in the case of General Navigation and Railways Ltd. v/s Their Workmen, 1960 I LLJ 13 while considering the order of industrial Tribunal in which the industrial Tribunal had observed that although the strike was illegal, it was "perfectly justified". The apex court took strong exception and queried how an illegal strike could at the same time be characterised as perfectly justified as these two conclusions were irreconcilable in law. Later on, in the case of Crompton Greaves Ltd. v/s Workmen, 1978 II LLJ 80, the apex court held that even if a strike, is illegal, it cannot be castigated as justified unless the reasons for it are wholly perverse of unreasonable, an aspect which has to be decided on the fact and circumstances of each case. In Gujarat Steel Tubes v/s Gujarat Steel Tube Mazdoor Sabha, 1980 I LLJ 137, the apex considered the view earlier taken in the case of General Navigation (1960 I LLJ 13) and disagreed with the earlier view observing that the conclusions in that case (General Navigation - 1960 I LLJ 13) were unwarranted. The apex court while disagreeing with its earlier - judgement given in General Navigation (1960 I LLJ 13, it relied upon the judgement given in the case of - Crompton Greaves (1978 II LLJ 80) and held (in Gujarat Tube case, 1980 ILLJ 137) that illegality of strike does not per-se result in un-justifiability.

If the apex court view that illegality does not per-se spell un-justifiability has to prevail then statutory provisions in Section 22, 23 of the Act go redundant and infructious. Therefore, a close scrutiny of the apex Court is very much necessary and awaited.

4. Wages for Strike Period

A two member Bench of the Supreme Court of India in Bank of India v/s T.S. Kelawalla, 1990 ICLR 748 held that workers are not entitled to wages if they have not done work and gone on strike. But the earlier Bench of three judges of the Supreme Court in the case of India General Navigation and Railways Ltd. v/s Their Workmen, 1960 I LLJ 13 had taken the contrary view.

5. Section 10 (3)

The avowed object and purpose of the Act is to achieve peaceful solution of all industrial disputes and for that purpose, the Act has created a conciliatory and adjudicatory machineries. But this machineries cannot work peacefully and in a tension free atmosphere if strike or lock-out are looming large from the back. Obviously, therefore, in order to give full freedom to conciliatory and adjudicatory machinery in their work, it is necessary that strikes and lock-outs are prohibited during the time this machinery is on work. Accordingly, the legislatures have invested powers in the appropriate Government to

prohibit the strikes and lock-outs pending the conciliation and adjudication. It *is* purely discretionary and the appropriate Government is not bound to issue prohibitory orders. However, before the appropriate Government decides to issue any prohibitory order under this provision, three ingredients must be present:

1. An industrial dispute must have been referred to a Board, Court, Tribunal or a National Tribunal.
2. Strike or Lock-out must be in connection with such dispute; and
3. The strike or lock-out must be in existence on the date of the reference.

On the issue that the strike or lock-out must be in connection with such dispute, it was held in the case of Keventers Karmchari Sangh vis Lt. Governor, 1971 II LLJ 375 that even if one of the several Demands in the Strike Notice is referred to the adjudicatory machinery, the appropriate Government gets power to prohibit strike or lock-out. It was argued on behalf of the union that one of their Demand was not referred to for adjudication and as such Government had power or authority under Section 10(3) to prohibit the strike. Further, without giving Notice, Government could not have prohibited the strike. The High Court pointed out that if argument that strike can be prohibited only if all the Demands in the strike notice are referred to, is accepted then absurd result may flow. For example, if union resorts to strike for the Demand which is not referred then the very purpose of Section 10(3) will be defeated. As regards notice before issuing prohibitory order, the High Court held that in that eventually also the very purpose of Section 10(3) will be lost because that is not the justifiable Order. In another case of Edward Eventers v/s Delhi Administration, 1978 II LLJ 209, the another Division Bench of the Same High Court took an exactly contrary view. In appeal (in Delhi Administration vis Workmen of Edward Keventers, 1978 LIC 706) the supreme court took the illustration of a situation where out of 20 Demands in a Charter of Demands, the appropriate Government referred only one Demand for adjudication and posed the question to itself: "how can this result in the anomalous situation of the workman deprived of their basic right to go on strike in support of those 19 Demands? The court, then ruled that reference of a dispute and prohibition of a strike on other Demands is impermissible. Thus if one or more Demands are not referred to, the Employees are free to go on strike on the issue of Demands which are not referred to. So in the like manner the employer is free to lock-out. The ruling of the apex court is final authority, nevertheless, it requires fullest consideration, at least, on Section 10(3) and the view that even if one of the several Demand is, referred to, the Government is empowered to prohibit strike in respect of all the demands deserves to be accepted.

6. Constitutional Validity of Section 10(3)

In Niemla Textile Finishing Mills Ltd. v/s Punjab Tribunal, 1957 I LLJ 460, the constitutional validity of Section 10(3) of the Act came up for consideration before the apex court. The court held that the discretion of the Government in prohibiting strike-lock-out is not unchannelled or arbitrary. It cannot be assumed that the appropriate Government will abuse its power. But whenever, it abuses its powers, such exercise of powers can be struck down.

7. Section 10A (4A)

Section 10A was inserted by Amending Act of 1956. It was enacted with the object of enabling the Employers and Employees to refer their dispute to Arbitration themselves voluntarily by a Written Agreement. As a matter of fact, Arbitration is one of the machinery (other than the conciliation and adjudication) established under the Act to find out an amicable resolution of the industrial dispute. Thus, in substance, it bears the same importance and as such, under Section 10A (4A) of the Act, the appropriate government is empowered to prohibit the strikes and lock-outs while the Arbitration - proceedings are pending. The provisions of Section 10A (4A) corresponds to Section 10(3) of the Act.

8. Section 22

As aforesaid, strike is not a 'fundamental right'. But that does not mean that the right of strike or the right of lock-out is taken away. On the contrary, the Act impliedly recognises these rights (of lock-out and strike). All that is done under the Act .'s to regulate the rights and for that purpose the Act imposes certain restrictions. Sections 10(3) and 10A (4A) prohibit the continuance of strikes and lock-outs and Sections 22 and 23 prohibit the commencement of strikes and lock-outs in the circumstances stated therein. The contravention of Section 10(3), 10A (4A), 22 and 23 has been made illegal under Section 24 of the Act. In Kerala State Electricity Board Workers Federation vis KSEB, 1983 II LLJ 30, the Kerala High Court ruled that only the workmen (as defined under Section 2(s) of the Act) who have the right of raising the "industrial dispute" (as defined under Section 2(k) of the Act) have the right to go on strike. Necessarily, therefore, Sections 2(k) and 2(s) will also have to be read with Sections 10(3), 10A (4A), 22 and 23 of the Act.

9. Illegal Strike

The effect of combined reading of Section 22 and 23 is that a strike is illegal under Section 24 and attracts penalty under Section 26.

The strike is illegal

1. if it is in breach of Contract of Employment.
2. if it is in Public Utility Services.
3. if Notice under Section 22(1) is not given.
4. if commenced during Award or settlement period.
5. if commenced During or within 7 days of completion of Conciliation Proceedings.
6. if commenced During or within Two months of completion of Adjudication Proceedings.

10. Strike Notice

Sub-section (1) requires a 14 days Strike Notice in public utility services. It says that:

i. no person employed in public utility service shall go on a strike in breach of contract:

ii. without giving strike notice.

iii. within 6 weeks of such notice.

iv. within 14 days of giving such notice.

v. before the expiry of the date of strike specified in notice; or

vi. during the pendency of any conciliation proceedings and 7 days after conclusion of such proceedings.

11. Manner of Notice

Sub-section (4) (5) and (6) of Section 22 deal with procedural aspect of Service of Notice referred to in Sub-section (1) and (2) of Section 22 of the Act.

Sub-section (4) provides, that Strike Notice shall be given in such manner as may be prescribed. Rule 76 lays down the procedure, Notice has to be given where union exists but if not then Five duly Elected Representatives of workman have to give Notice. If notice is given by representatives then they should give the date of meeting of workmen in which they were elected. Copies of Notice must be sent to the conciliation of the Area and the officers specified in the Form.

12. Prohibition of Strikes in Public Utility Service

As for the strikes, the Act draws a clear distinction between strikes in Public Utility Services and the strikes in ordinary industrial occupations. The legislative intention is undoubtedly clear that a few cannot hold the innocent public at ransom by resorting to a strike, all of a sudden and out of the blue. The Act has, imposed a mandatory condition of giving Notice in public interest. Not that it is made mandatory for workman intending to go on strike to give Notice but also it puts the Appropriate Government on high alert and makes it mandatory for it to initiate the conciliation proceedings and if no settlement is reached, to make a reference of the industrial dispute for the adjudication. The strike Notice is mandatory in public utility services. However, if no Notice is given then it will attract (1) penal consequences, (2) Disciplinary action for going on illegal strike and (3) deduction of wages for not performing the contractual duty of not doing the work.

13. No Notice - Sub-section (3)

If a strike has already commenced at the time of declaring lock-out then lock-out Notice is not required as required under Sub-section (3). Conversely if lock-out has already been declared, Strike Notice is redundant and not required under this Sub-section. However, the appropriate Government is required to be intimated so that it can have a knowledge of what is going on in the locality under its jurisdiction.

14. Section 23

Section 22 applies only to public utility services, Section 23 applies to both, public utility services and other than public utility services. Section 23 imposes general restriction on strikes and lock-outs as under :

1. No strike or lock-out during and till expiry of 7 days of the conclusion of conciliation.
2. No strike or lock-out during and 2 months after the conclusion of adjudication proceedings.
3. No strike or lock-out during and 2 months after the conclusion of Arbitration; and
4. No strike or Lock-out during the period of operation of a Settlement, Award.

In Gujarat Steel Tubes Ltd. v/s Gujarat Steel Tubes Mazdoor Sabha, 1980 I LLJ 137, the apex court observed that it looks strange that the pendency of a reference on a tiny or an insignificant industrial dispute should block strikes on totally unconnected yet substantial and righteous Demands. The Constitutional implication and practical complications of such a veto of a valuable right to strike often lead not industrial peace but to see-thing unrest and lawless strike. What holds good for strike will hold good for lock-outs equally.

15. Lock-out

Introductory

Strike is cessation of work by employees, the Lock-out is cessation of work by the Employer. Just as Employees have a right not to sale their Labour, the same way the Employer has a right not to buy it, as a measure of setting the industrial dispute. In the struggle between the capital and labour the weapon of strike is used by the Employees, the weapon of Lock-out is used by the Employers. The Lock-out is antithesis of strike. The strike and lock-out are regarded as powerful levers to bring about agreements between the Employer and Employees.

Section *2(1)* defines the term Lock-out. However, the present definition is only a mutilated one. The term was originally and correctly defined in the Trade Dispute Act, 1929. From the definition given in the Trade Dispute Act, the present Act has taken the present definition but has omitted the words “when such closing, suspension or refusal occurs in consequences of a dispute and is intended for the purpose of compelling those persons or of aid in another Employer in compelling persons employed by him to accept terms or condition of, or affecting employment”.

With the omission of these words, the present definition fails to convey the very concept of Lock-out. In Sri Ramchandra Spinning Mills v/s State of Madras, 1957 I LLJ 90, the Madras High Court read the deleted portion in the definition to interpret the term lock-out. According to the Court, a flood may have swept away the factory, a fire may have gutted the premises; a convulsion of nature may have sucked the whole place under ground; still if the place of employment is closed or the work is suspended or the Employer refuses to continue to employ his previous workers, there would be a lock out and the Employer would find himself exposed to the penalties laid down in the Act. Obviously, it shows that the present definition does not convey the concept of the term lock out. The apex court too, therefore, read the effect of the deleted words into the definition (Kaizbetta Estate v/s. Rajamanickam, 1960 II LLJ 275).

The definition of lock-out, does not give any clue as to when and on what grounds lock-out can be declared. But Section 23 lays down as to when it cannot be declared. Section 22(2) lays down the same thing in cases of public utility services.

Closing a Place of Employment or Suspension of Work

When the Employer closes temporarily his place of Employment in order to force his employees to accept a compromise favourable to him on an industrial dispute raised by his employees, it is a ‘Lock-out’. The Lock-out can thus be de-

scribed as temporary - withholding of work by employer, undoubtedly to gain certain concessions from his unwilling - employees. It is usually a counter blast by Employer to a strike by employees and so the antithesis to strike. (Kairbetta Estate, 1960 II LLJ 275 (SO).

Refusal to employ or continue to Employ any number of persons employed by him : The phrase "Refusal by an Employer to continue to employ" - corresponds to the phrase "Cessation of work" or "Refusal to continue to work or employment" occurring in the definition of strike *(Mohammed Sham-shuddin v/s Sasamusa Sugar Works Ltd.*, 1956 II 575). Similarly, the words "refusal by an employer to continue to employ any number of persons employed by him" has to be read with the rest of the definition and also with the word "Lock-out". *(Feroz Din v/s State of W.B.*, 1960 I LLJ 244 (SO). Also it is not a lock-out if the Employer pays to the workmen the wages, does not take work from them *(Mohammed Shamsuddin 1956*, I LLJ 575). Similarly, if there exists no relationship of Employer-Employee, there cannot be a lock-out *(Shakti Electro Mechanical Industries (P) Ltd. vis F.N. Lola*, 1974 II LLJ 1). Where the Employer pleads that he had not resorted to a Lock-out but had terminated the Services of Workman, the Adjudicator then cannot hold that there was a lockout, if he holds on facts that the termination was legal and binding. But if the Adjudicator holds that the termination was illegal then it is open to him to hold that the - termination being illegal, there existed a lock-out in as much as there was a failure on the part of the Employer *to continue to employ the workman (Shakti Electro Mechanical Industries, 1974 II LLJ 1).*

16. Lock-out, When Legal

The Act treats strikes and lock-out on the same basis; it treats one as the counter part of the other. (Mohammed Sumsuddin, 1956 I LLJ 575), the circumstances under which the legislature has banned strike, it has also at the Same time banned the lock-out. Thus what holds good-bad; legal-illegal, justified unjustified for strikes, holds the same for the lock-out. As such, the provisions of the Act which prohibit the strike also prohibits the lock-out.

The object and reasons for which the Lock-out are banned or prohibited are the same for which strikes are banned or prohibited. It is because the Employer and the Employees are not discriminated in their respective rights in the field of industrial relationship between the two. As such, lock-out if not in conflict with Section 22 and 23 may be said to be legal or not legal. Sections 24(1) (iii), 10(3) and 10A (4A) similarly controls the lock-out. A lock-out in consequence of illegal strike is not deemed to be illegal. But if lock-out is illegal, Section 26(2), 27 and 28 will come in operation to deal with the situation. The Act does not lay down any guidelines to settle the claims arising out of illegal lock-out. The courts, therefore, have adopted the technique of apportioning the blame between the Employer and employees. This once again brings to the fore the concept of justifiability of lock-out.

If strike is unjustified followed by a justified lock-out, the workmen will get no wages at all conversely if strike is legal and lock-out is unjustified, the workmen will get the full wages for the period of strike-lock-out. However, where strike is illegal followed by an illegal lock-out, the question of apportionment will arise (India Marine Services (P) Ltd. vis Their Workmen, AIR 1963 SC 528). Relying upon this, the apex court granted half wages. In this case, in which the Industrial Tribunal had held chat strike was unjustified, so the lock-out was justified on the following day but its continuance was not justified. In Statesman Ltd. v/s Their Workmen, AIR 1976 SC 758, the apex court refused to interfere in the Award of Industrial Tribunal in which the Tribunal had awarded 50% wages for the lock-out period. The Tribunal has held both the parties equally responsible. The apex court observed that in between lies a grey of twilight Law. Strictly speaking the whole field is left to the — judicious discretion of the Tribunal, Where the strike is illegal and sequel of lock-out legal, we have to view the whole course of— development and not stop with examining the initial legitimacy. If one side or the other behaves unreasonably or over-all interest of good industrial relations warrant the Tribunal making such direction regarding strike period wages will meet with justice, fair play and pragmatic wisdom; there is no error in doing so. This power of Tribunal is flexible. In Engineering Mazdoor Sabha vis S. Taki Bilgrami, 1971 I LLJ 71, the Bombay High Court held that it is permissible for the Employer to prove misdemeanor and misconduct of employees sufficient to absolve him from the lock-out liability to pay wages for the period of illegal lock-out. Thus according to Bombay High Court, merely because a lock-out is illegal will not ipse-dixit result in payment of wages to the workmen but the Employer can take the opportunity to prove disentitlement of workmen in a case of reference made to industrial tribunal for adjudication on a demand for wages for the period of lock-out.

17. Police Assistance

If the Employer declares a lock-out the employees are likely to react violently. Then what the Employer can do? Can he get the police assistance? In Coimbatore Pariyar District Transport Mun-netra Sangam v/s Sivakumar ~ Transport, 1986 II LLN 550, K.C.P. Ltd. v/s Inspector of Police, 1991 II LLN 555 and B.R. Singh v/s Union of India, 1990 I LLN 1, it was held that the interest of a few workers cannot be permitted to harm the national interest. If the management wanted to remove machinery for export or for expansion purpose, he cannot be prevented from doing so. It cannot be permitted to say that the workman's right to strike will be put to harm, if it harms the larger national interest. In fact, it becomes duty of the Court to interfere and prevent the workmen from obstructing the smooth out-flow of final product and the police may be directed to assist the Employer in distress. However, if that be not so and removal of goods or plant or machinery involves only the financial interests of management and does not affect anybody else the court may not interfere and may not help the management by directing the police to render its assistance.

18. Penalties for strike and Lock-out

Section 26 prescribes - penalty for, both, strike as well as lock-out. However, before any - punishment is imposed under this Act or rather under this Section, it must be proved beyond all reasonable doubt that:

1. A workman has in fact commenced or continued or has otherwise acted in furtherance of a strike OR in case of a

lock-out an Employer has commenced or continued or has acted in furtherance of- a lock-out; and

2. the strike or lock-out is illegal. The illegality must be proved strictly with reference to the provisions of the Act and the mens-rea on the part of a workman or an employer is wholly irrelevant and immaterial.

These two ingredients must co-exist and only if these two ingredients are present then Workman shall be punishable with imprisonment for a term upto one month or with fine which may extend upto Fifty Rupees or with both.

a. Employer shall be punishable with imprisonment for a term which may extend to Rupees one month or with fine which may extend to Rupees one thousand or both.

19. Cognizance of Offence

The cognizance of the offence of committing illegality falling under the mischief of Section 26 of the Act can be taken only on a complaint made by or under the Authority of the appropriate Government under Section 34. It thus clearly indicates that party itself or the adjudicatory authority by itself cannot take cognizance and punish the guilty. Further, Section 34 also provides that no court inferior to that of the Magistrate of First Class or the Metropolitan Magistrate can take cognizance of the offence under the Act.

Section 27 then provides that any person who instigates or incites others to go on strike or declare lock-out will also be punishable with imprisonment for a term which may extend to 6 months or a fine of Rupees one thousand or with both.

Whereas Section 25 lays down that no person shall knowingly expand or apply money in direct furtherance or support of any strike or lock-out which is illegal. The use of the word “knowingly” demonstrates that mens-rea is an essential ingredient before any person is convicted under Section 25. The offender under this Section is punishable under Section 28 of the Act. Section 28 lays down that the offender shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to one thousand rupees or with both. Indeed the four ingredients must be proved (1) illegality within the meaning of this Act (2) there must exist mens-rea (3) these must be actual spending of money or supply money and (4) the use of money must be in direct furtherance or support of the illegal strike or illegal lock-out. In State of Bombay vis Canl Field Holland, it was held that if strike or lock-out is not illegal, provisions of Section 25 are not attracted.

LESSON 12:
LAY-OFF

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is meant by layoff?
- What is a layoff compensation?

Lay-off

Synopsis

1. Meaning
2. Common Law
3. Law in India
4. Lay-off - Definition - Section 2 (kkk)
   i. Refusal to give work
   ii. Shortage of raw material
   iii. Accumulation of raw material
   iv. Breakdown of machinery
   v. Any other connected reason.
5. Explanation
   i. Contract of employment
   ii. Who can be laid off
6. Section 25D; Duty of the Employer to keep muster roll
7. Lay-off Compensation
8. Chapter V-A
9. Section 25-A — Significance of
10. No liability of lay-off compensation
11. Standing Orders
12. Lay-off - Whether a right
13. Who is Badli-Casual ?
14. Adjudication
15. Lay-off can be for a minimum period of half-a-day
16. Lay-off compensation - not a condition precedent
17. Quantum of Lay-off compensation
18. Lay-off compensation is wages
19. Section 25E : Disentitlement
20. Refusal to accept alternate employment
21. What is alternate employment?
22. Not presenting for the work
23. Lay-off due to strike or Go-slow
24. Another part of establishment
25. Functional integrality
26. Chapter V-B : Section 25M
27. Application for permission : Sub-section (2)

1. Meaning

When the employer decides to discontinue his business forever it is called as Closure. But when he decides to discontinue his business, not forever but for a short while, in order to tide over his difficulties, it cannot be called as closure. Nevertheless, during this period also the employer discontinues to employ his labour force. Such a discharge of labour-force, (for a temporary period when the employer has suspended his business activities) is called as lay-off.

2. Common Law

Under the Common Law, an employer was free to terminate the services of his employee if he decided to discontinue his business, although temporarily. Once the services were terminated, the employer was under no legal obligation to re-employ the same labour force, in case he decided to resume his business. There was no obligation upon the employer to pay any kind of compensation to employees whose services he had terminated on the ground of discontinuing the business activities.

3. Law in India

The Act as originally enacted did not have the provisions which it has today. Nevertheless, it does not mean that industrial law in India was unfamiliar with the concept. The disputes were no doubt raised but very often workers were not found to be entitled to the lay-off compensation. Secondly there was no uniformity in awarding the lay-off compensation. The Legislature, therefore finally amended the Act, which no doubt unfolds the prevailing legal concept on lay-off.

4. Lay-off Definition Section 2 (kkk)

The definition of lay-off as given in Section 2 (kkk) makes it abundantly clear that the unemployment must have resulted on account of a cause which is independent of any action or inaction on the part of the workman. [Central India Spinning Weaving and Manufacturing Co. Ltd. v/s I.C., 1959 I LLJ 468]

Refusal to Give Work

The Employer's refusal to give work must be for:

- shortage of coal
- shortage of power (Electricity)
- shortage of raw material
- accumulation of stocks
- break down of machinery
- natural calamity - *Force-Major* and any other connected reason.

Shortage of Raw Material

In Workmen of Dewan Tea Estate v/s DTE, AIR 1964 SC 1458 it was argued that the company was not able to raise funds and hence it was a clear case of stoppage of supplies (on account of paucity of funds). The apex court held that stoppage of supplies must be related to raw material or such thing

connected to it. It is impossible to hold that supplies mean the supply of money or funds. As such, the lay-off did not fall within the mischief of Section 2 (kkk). In Gauhati Press (P) Ltd vis. P.O.L.C. 1983 LIC 824 the reason for giving lay-off was that the previous M.D. had died, the present M.D. was too old and that the Assistant M.D. had a fractured leg and was confined to bed. The Press, therefore, could not be run. The workman filed application under Section 33 C(2) to recover wages. There was also a reference under Section 10(1) of the Act. It was held that the lay-off did not come under Section 2 (kkk) of the Act. In Firestone Tyre & Rubber Co. of India Ltd. v/s Their Workmen, 1976 I LLJ 493 the company declared lay-off in its Delhi office as there were no supplies owing to strike in Bombay's factory. The lay-off was held to be falling within the provisions of Section 2 (kkk) of the Act.

Accumulation of Raw Material

Because of the business recession, stocks were accumulated, losses were mounting. The company decided to give lay-off. It was held to be legal and valid lay-off. Sri Satya Prakash v/s. P.O.I.T. 19951 LLJ 437

Breakdown of Machinery

In Central Paper Mills Ltd v/s. C.P.M. Employees Union, 1994 I CLR 152 it was held that the breakdown of machinery means total break down rendering the plant idle. In the instant case, one machine was working with reduced capacity. Hence, permission for lay-off was refused.

Any Other Connected Reason

The ground "any other connected reason" was substituted for the expression "any other reason." In Central India Spinning, Weaving and Manufacturing Co. Ltd. v/s. I.C. 1959 I LLJ 468 the Bombay High Court held that these words (any other connected reason) should be given a very restricted meaning. But that should carry into effect the provisions of the Act. Whereas, the apex court in Kairbetta Estate v/s Rajamanickam, 1960 II LLJ 275 applied the principle of ejus-dem generis and observed that the reason must be allied or analogues or similar to reasons spelt out in the definition [2(kkk)]. It means the apex court did not prefer the restricted meaning but gave a wider meaning to the expressions any other connected reason' for construing the definition given in Section 2 (kkk). In fact, the use of the word 'connected' makes the meaning explicitly clear which was indeed implicit earlier.

5. Explanation

The explanation contemplates three different eventualities and lays down a deeming fiction. It contemplates -

a. When the workman presents himself for the work and the work is not given
b. The employer on workman presenting himself in the first half of the day directs him to come in the second half of the day and he is given work in the second half of the shift.
c. When the workman, accordingly comes in the second half and yet he is not given the work.

The explanation provides that if workman comes for work and if he is not provided work within two hours, he will be deemed to be laid off for the whole day. In the second eventuality, if the workman is called in the second half of the shift by the employer and the workman accordingly presents himself and if he is given work, he is deemed to be laid off for first half of the shift or for half day. But in case, the employer is not able to provide work in the second half of the shift then the workman will be entitled to full basic wages and the Dearness Allowance for that part of the day.

The definition, in its entirety shows that (i) lay-off can come about at anytime and (ii) the inability of employer to give work will be treated as lay-off only if refusal to give work falls in the list of reasons given in the definition 2 (kkk).

Contract of Employment

In lay-off, the contract of employment goes under suspended animation or the relationship is kept in cold storage. The workman continue to be on the muster roll but the employer suspends the contract for the time being.

The relationship (of master and servant) is resumed as soon as the work is resumed by the employer. Thus, the lay-off is a temporary suspension of work and it is resumed as soon as the circumstances permit the employer to do so. It means that the Employer cannot keep away the workman for an indefinite period in the garb of lay-off or cannot breach the contract of employment. But period can have treated as temporary and what period can be treated as long or indefinite will depend upon the facts of each case and the Act is completely silent on this issue.

Who can be Laid Off

If the concerned workman presents himself for work at the prescribed time and place and not given work then that workman can be laid off. Needless to state that one should be a "workman" within the meaning of the term workman under the Act. Farther, as provided in the Explanation to Section 2 (kkk), the workman whose name is born on the muster roll of the Employer and presents himself in the prescribed manner for the work, can be laid off.

6. Section 25 D : Duty of the Employer to Keep Muster Roll

Section 25D is a necessary corollary to Section 2 (kkk) (and Section 25 C) of the Act. It requires the employer (i) to maintain a muster roll and (ii) to make facilities available to workmen to make entry when laid off. It is necessary to clearly notice that Section 25D lays down that the entry in the muster roll has to be made by the workmen and not by the employer. This is the record that enables the employer to compute the amount of lay-off compensation. The failure of the employer to maintain the muster roll for this chapter (in which requires maintaining of muster roll) under Section 25 D attracts penalty under Section 31 (2) of the Act and debars the employer from taking advantage of the provisions of Section 25 E (ii) of the Act.

7. Lay-off Compensation

Section 25 C is the main Section which prescribes payment of compensation to workmen on being laid off. However, Section 25 E carves out exceptions and absolves the employer from the obligation of payment of lay-off compensation, if clauses (i) to (iii) of Section 25 E are attracted. Thus workmen, under Section

25 C are **entitled** to and under section E **disentitled** to receive the lay-off compensation.

8. Chapter V-A

The President of India under the circumstances set out in the discussion of Chapter V of the Act, promulgated the ordinance which was replaced by the Industrial Disputes (Amendment) Act, 1953. It revolutionised the whole concept of industrial law. The Amendment of 1953 standardized the lay-off compensation (as well as retrenchment compensation) for the first time in India. For this purpose, the Amendment (of 1953) engrafted one whole Chapter VA in the main Act. Chapter VA' contains Sections 25 A to Section 25 J. Section 25 A provides that Sections 25 C to 25 E shall not apply to an industrial establishment in which less than fifty workmen on an average per working day have been employed in the preceding calendar month. Section 25 B defines the 'Continuous service'. Section 25 C prescribes lay-off compensation, Section E carves an exception to Section 25 C when lay-off compensation will not be payable and Section 25 D prescribes maintenance of muster roll.

No lay-off compensation is prescribed under the Act, if less than 50 workmen are employed.

9. Section 25 A - Significance of

The Significance and the importance of Section 25 A is that it does not make it obligatory upon the employers to pay lay-off compensation, if the employer deploys less than fifty workmen. In Castophene Mfg Co. v/s Janki, 1972 II LLJ 417, the Bombay High Court held that the industrial establishments mentioned in Section 25A are completely exempted from liability to pay lay-off compensation to workmen. While counting 50 workmen, it is necessary to notice that the strength of fifty workmen should be on an 'average'. The fifty workmen should be employed, on average, in the preceding calendar month.

10. No Liability of Lay-off Compensation

In the following cases, the lay-off compensation are not required to paid :

a. If the employee is not a "workman* as defined in Section 2 (s) of the Act.

b. If the employee is a 'workman' under section 2 (s) of the Act then, he should be a Badli employee or a casual employee, (Section 25 C) who has not completed one year of continuous service in the establishment (Explanation to Section 25 C).

c. If less than 50 workmen on average are employed (Section 25 A) (K.N. Joglekar v/s. Barasi Light Railway, 1955 ILLJ 371). If provisions of Section 25 E are attracted.

d. If provisions of Section 25 E are attracted.

e. If the industrial establishment is of a seasonal character or where work is performed intermittently [Section 25 A (1) (b)] The Explanation to Section 25 A provides that whethertheindustrialestablishmentisof seasonal character or is one where work is performed intermittently,the decisionof the"appropriate government" shall be final. [Sec : (1) Kohinoor Saw Mills Co. v/s State of Madras, 1957 II LLJ 210 (2) Tile Mfg. Assn. v/s Travancore Cochin State, 1957 I LLJ 637 (3) Vasant Sahakari Sakhar Karkhana Ltd. v/s R.E. Shinde, 1988 (57) FLR 636]. In Saurashtra Majoor Mahajan Sangh v/s Union of India, 1994 ILR 518, the Hon'ble Gujarat High Court held that Section 25 A is not ultra vires.

f. If the industrial establishment is not a -

   i. Factory under the Factories Act, 1948

   ii. Mine under the Mines Act, 1952 and

   iii. Plantation under the Plantations Labour Act, 1951 [Explanation to Section 25 A]

   The Explanation to Section 25 A restricts the meaning of industrial establishments to the provisions of Sections 25 A, 25 C, 25 D and 25 E [Chaibasa Cement Works v/s Their Workmen, 1960 I LLJ 1 (SC)]. The meaning assigned to industrial establishment in the Explanation to Section 25 A also cannot be extended to the term industrial establishment occurring in Section 25 G of the Act, although no separate meaning is given in the Act [India Tyre & Rubber Co. (India) (P) Ltd. v/s Their Workmen, 1957 II LLJ 506].

g. If the provisions of Chapter VB are applicable to the industrial establishment.

h. If workman has not worked for continuous period of 240 days; computation of 240 days will have to be made in accordance with the provisions of Section 25 B. Section 25BisfullydiscussedinRetrenchmentdiscussion above.

i. If the Contract of Employment or the Standing Orders does not provide for lay-off compensation, then the workmen cannot be laid off (so no lay-off compensation, but the workmen will earn wages in that eventuality, as they will be deemed to be on duty). [Workmen of Diwan Tea Estate Mfg. v/s Management, AIR 1964 SC 1458]

j. If the name of the workman is not on the muster roll of the employer or if he is retrenched.

k. If the employer and the workman come to an agreement to the effect that no lay-off compensation will be payable after 45 days, if the lay-off period goes beyond 45 days (Section 25 C).

I. In a period of twelve months, if lay-off lasts for more than forty five days, no compensation is required to be paid and the employer is free to retrench his workmen. No doubt only after paying retrenchment and complying with the provisions of Section 25 F of the Act, the employer is given liberty to set off the lay-off Compensation paid during the preceding 12 months against the retrenchment compensation payable to the workmen **(Section 25** C).

11. Standing Orders

The Act does not require the employer to pay off his workmen, it only requires the employer, if has power and authority (under the Standing Orders or the service Rules/Regulation or the Contract of Employment) to pay lay-off compensation. Needless to state that if contract of Employment is silent on the issue of lay-off, the standing orders or service Rules, Regulations will apply. However, if better terms of payment of lay-off are in the contract of employment then the workmen is entitled to payment in terms of contract of employment but if

the standing order provides for better terms of payments then the payments will be in terms of standing orders. But in no case, a workmen can be paid lesser amount of lay-off compensation than prescribed under the Act, He can receive the benefits but cannot be made to suffer by taking lesser amount of lay-off compensation.

It is mandatory to have standing orders framed under the provisions of the Industrial Employment (Standing Orders) Act, 1946. This Act Provides that the employer should frame the standing orders according to his requirements and get it certified as prescribed under that Act. Such standing orders are known as Certified Standing Orders. But in the absence of the certified standing orders, (as is laid down under the said Act) the Model Standing Orders will apply. The Bombay Shops and Establishment Act (as applicable to Bombay) provides that provision of standing order in the said Act will be mutates-mutandi applicable to shops and establishments to which the said Act is made applicable.

12. Lay-off Whether a Right

The apex court in Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v/s. The FT&R Co. (India) Ltd., AIR 1976 SC 1775 held that the Act does not invest any right on the employer to lay-off his workmen, it only restricts the employer's right to lay-off to the extent of paying lay-off compensation to workmen laid off. The employer may lay-off his workmen only and only if the standing order or the contract of Employment gives any right to the employer to lay-off his workmen and not otherwise.

The Industrial Employment (Standing Orders) Act, 1946 lays down different model standing orders for different categories of employees. But, in substance, the provisions for lay-off are same and dealt with in clauses 19A to 21. Clauses 18 to 21 of Model standing orders are as under:

[19-A. 1. In the event of fire, catastrophe, breakdown of machinery, stoppage of power supply, an epidemic, civil commotion or other cause beyond the control of the Manager, the Manager may at any time without notice or compensation in lieu of notice, stop any machine or department wholly or partially or the whole or part of the establishment for a reasonable period.

2. In the event of a stoppage under clause (1) during working hours, the workmen affected shall be notified as soon as practicable, when work will be resumed and whether they are to remain or leave the establishment. The period of detention in the establishment shall not ordinarily exceed one hour after the commencement of stoppage. If the period of detention does not exceed one hour, workmen so detained shall not be paid for such period. If the period of detention in the establishment exceeds on hour, workmen so detained shall be entitled to receive wages (including all allowances) for the whole of the time during which they are detained in the establishment as a result of the stop-page. In the case of piece-rate workmen the average daily earnings for the previous month shall be taken to be the daily wages.

3. Wherever practicable, reasonable notice shall be given of the resumption of normal work, and all such workmen laid off under this Standing Order who present themselves for work when work is resumed shall be given preference for employment.

4. All notices required to be given under this Standing Order shall be displayed on notice-boards at the time-keeper's office and at the main entrance to the establishment. Where a notice pertains to a particular department or departments only,
it shall also be displayed in the department concerned.

19-B. In cases where workmen are laid off under Standing Order 19-A, they shall be considered as temporary unemployed and the period of such unemployment shall be treated as leave with pay to the extent such leave is admissible and leave without pay for the balance of the period. When however, workmen have to be laid off for an indefinite period exceeding two months, their services may be terminated after giving them due notice or pay in lieu thereof.

19-C. Workmen may be laid off due to shortage of orders, temporary curtailment of production or similar reasons and consequent stoppage of any machine or department, for a period not exceeding six days in the aggregate (excluding statutory holidays), in any month provided that seven days notice is given. A workman laid off, leave his employment on intimation of his intention to do so.

19-D. Notwithstanding anything contained in Standing Orders 19-A, 19-B and 19-C, the rights and liabilities of employers and workmen in so far as they relate to lay-off shall be determined in accordance with the provisions of Chapter V-A of the Industrial Disputes Act, 1947:

Provided that nothing contained in the said Chapter shall have effect to derogate from any right which a workman has under the Minimum Wages Act, 1948, or any notification or order issued there under or any award for the time being in operation or any contract with the employer.

19-E. The Manager may, in the event of a strike affecting either wholly or partially, any section or department of the establishment close down either wholly or partially such section or department as well as any other sections or departments affected by such closing down. The fact of such closure shall, as soon as practicable, be notified by notice displayed on the notice-boards in the departments concerned, at the gate or gates appointed under Standing Order 18, and in the time keeper's office or at or near the main entrance of the establishment. [The workmen concerned shall also be notified by a general notice put up at the place where notices of closure mentioned above are to be displayed, prior to the resumption of work as to when work will be resumed.]

20. In the event of the closure of the establishment or a department or part thereof,if the service of a permanent workman is dispensed with, he shall when the establishment or part thereof, as the case may be, is re-started be given an opportunity to serve in a post substantially similar in pay and status to the post he was holding at the time of the closure, provided he reports for duty within the time

specified in the relevant Standing Orders governing the re-starting in question.

21.1. The employment of a permanent workman may be terminated by one month's notice or on payment of one month's wages (including all allowances), in lieu of notice.

2. The reasons for the termination of service of a permanent workman shall be recorded in writing and shall be communicated to him, if he so desires, at the time of discharge, unless such communication, in the opinion of the Manager, is likely, directly or indirectly to lay any person open to civil or criminal proceedings at the instance of the workman.
3. Any permanent workman desirous of leaving service shall give one month's notice in writing to the Manager. He shall, when he leaves the service, be given an order of relief signed by the Manager.
4. If anypermanent workman leaves the service without giving notice, [no deduction on that account shall be made from his wages but] he shall be liable to be sued for damages.
5. All classes of workmen other than those appointed on a permanent basis may leave their services or their services may be terminated without notice or pay in lieu of notice; provided that the service of a temporary workman shall not be
terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in Standing Order 23.
6. Where the employment of any workman is terminated the wages earned by him shall be paid to him before the expiry of the second working-day from the day on which hisemployment is terminated. In the case of workman leaving the service
the payment of the wages earned by him shall be made within seven days from the date on which he leaves the service. All other sums due to a workman shall be paid before the expiry of one month from the date of termination of his services or from
the date he leaves the service.
7. An order relating to discharge or termination of service shall be in writing and shall be signed by the Manager. A copy of such order shall be supplied to the workman concerned. In cases of general retrenchment, closing down, strike or lock-out no such orders may be given.

From the above quoted Model Standing Orders, it should be clear that in the Act, the grounds for lay-off for the reasons of (1) Civil commotion and (2) Other causes beyond the control of the Manager are not included in. Similarly, clause 20 of the Model Standing Orders requires the Employer to give a Notice of seven days before resorting to lay-off on the ground of (1) shortage of orders or (2) temporary curtailment of production or (3) any reason for which work is suspended for a period not exceeding six days. But no such provision is included in the Act. The conflict was resolved by the Hon'ble Bombay High Court in the case of Association of Engineering Workers v /s. Is Sewree Iron & Steel Co., 1992 II CLR 629. It was held in this case that since the power to lay-off flow from the standing orders [as held by the apex court in the case of Firestone (AIR 1976 SC 177)] it is necessary to give Notice as contemplated under the standing orders, although the Act does not require any such Notice. The lay-off (resorted to without giving any such Notice under the standing orders) will be illegal and consequently an unfair labour practice under the provisions of the MRTU & PULP ACT.

13. Who is Badli-Casual?

Section 25 C lays down that a workman who is Badli or Casual will not be entitled to the lay-off compensation. It then proceeds to define the terms 'Badli/Casual'. According to definition available in Section 25C, a Badli or a Casual workman is in the nature of a substitute for a permanent workman whose name appears on the muster roll. The Explanation to Section 25C, however, clarifies that a Badli workman ceases to be Badli after he has, completed one year of 'continuous service' in the establishment. Needless to state that 'continuous service' will take its meaning given in Section 25B of the Act.

A Badli workman who has not completed one year of continuous service and who is denied work as no-permanent workman was absent is not entitled to lay-off compensation. In Prakash Cotton Mills (P) Ltd. v/s. RMMS 1986 LIC 1361 the apex court disallowed the claim of lay-off compensation to Badli workmen on closure of the undertaking.

The Explanation to Section 25C implies that the name of the Badli workman should not be found in the muster rolls of the establishment but he should act for some other workman whose name is found in the muster rolls. Undoubtedly, the meaning assigned to Badli Workman in Section 25C cannot be enlarged and necessarily, it has to be restricted to Section 25C only. The Badli workman will remain Badli workman for all other purposes other than the purposes of Section 25C - for lay-off compensation. This is clear from the use of words "For the purposes of this Section" and from the fact that the term (Badli-Casual) is especially defined only in Section 25-C and not in the definition clause-Section 2 of the Act. The effect of Explanation to Section 25-C is that a Badli Workman who has completed one year of continuous service, he will be entitled to lay-off compensation if he is available for work and yet he is not given the work. It is so because on completion of one year of continuous service, he ceases to be a Badli Workman. The Explanation indicates that when a workman has worked for one year continuously it is just and reasonable for him to presume that in the ordinary circumstances, he would be provided with work and when the whole industrial unit is working, he will also get the employment. But when the whole unit is unfortunately not working and all its workman are laid off, he will also be entitled to lay-off compensation. Such a Badli workman will not be disentitled to lay-off compensation on the broad and specious plea of the Employer that when the permanent workman themselves were laid off, the question of compensation to Badli worker would not arise. The Badli workman who fell within the Explanation to Section 25C will be entitled to lay-off compensation (1) Management of Shree Meenakshi Mills Ltd. v/s. L.C., 1970 LIC 836 (2) Laxmi Mills Co.Ltd. v/s. L.C. 1965 I LLJ 92 (3) P. Joseph v/s. Management of Gopal Textile Mills, 1975 I LLJ 136-1975 I LLJ 498]. In

some of the cases, a different view is taken but the view discussed above is the correct view of Section 25C of the Act.

14. Adjudication

It is entirely for the management to decide as a prudent businessman to lay-off its workman. The courts cannot dwelve upon the area of the management and cannot enquire whether the employer could have avoided the lay-off if he would have been more diligent. However, the employer cannot pretend to decide to lay-off the employees only teach to them a lesson or for extraneous reason. If malafied is pleaded, the writ court can certainly look into it and decide whether lay-off was malafied [Tatanagar Foundry Co. Ltd v/s Their Workman, 1961 I LLJ 382 (SC)]. In S.I. Corpn v/s All Kerala Cashewnut Workers Federation, 1960 II LLJ 103, the Industrial Tribunal found that work is available only for 245 days in a year. The Tribunal held that workers should get work at least 245 days and if it falls short of this number, on the ground of social justice, they should get compensation. The High Court held that the concept of social justice does not emanate from fanciful notions of any particular adjudicator but must be founded on a more solid foundation. The decision was then quashed.

15. Lay-off can be for a minimum period of half a day When there was electricity cut for half an hour for a week, the Labour Court granted lay-off for 3 1/2 hours. The High Court confirmed the order of the Labour Court. The High Court took the view that the expression "all days" in Section 25 C would mean compensation for a full day or half a day. [Rai Saheb Reckchand Mohtta Spy & Wvg Mills (P) Ltd. v/s L.C. 1968 480.]

16.Lay-off compensation - not a condition precedent Unlike Retrenchment compensation, lay off compensation is not a condition precedent. As such, the employer can wait and watch and then can pay. The Act only gives a right to workmen to receive the lay-off compensation and does not require the employer to first make the payment and then to proceed to lay-off his workmen. The justification appears to be that unlike retrenchment, the employer may be called upon to lay-off his employee all of a sudden. To require him to first pay lay-off Compensation may be impossible, not feasible and may result in denial of effecting lay-off even in cases of extreme urgency. The lay-off compensation cannot be awarded in advance of actual lay-off on the grounds of social justice [K.T. Rolling Mills v/s Meher MR, 1962 II LLJ 667, Central India Spg. Wvg. & Mfg Co. v/s I.C. 1959 ILLJ 468J.]

17. Quantum of Lay-off Compensation

Section 25 C provides that whenever a workman is laid off, he shall be entitled to receive lay-off compensation for all days during which he is so laid off except for such weekly holidays as may intervene. The lay-off compensation would be equal to fifty percent of the total of Basic Wages and Dearness Allowance that would have been payable to him had he not been so laid off. The workman can recover it if the employer fails and neglects to pay it. The workman can recover it in two ways, either by filing an Application under Section 33 C (2) of the Act, or by obtaining a Reference under Section 10(1) of the Act, While the jurisdiction under Section 33 C (2) is very limited it is not so in the Reference under Section 10 (1) of the Act.

18. Lay-off Compensation if Wages

The apex court in Payment of wages Inspector v/s Suraj Mai Mehta settled down the controversy and held that compensation required to be paid under the Act in wages under the provisions of Payment of Wages Act.

19. Section 25 E : Disentitlement

A Workman may be entitled to receive lay-off compensation under Section 25 C but he will be disentitled to receive it under Section 25 E, if -

1. he refuses to accept alternate employment
2. he defaults to present himself for work and
3. lay-off is on account of strike or go slow.

This disentitlement to receive lay-off compensation can also be explained under the Default Theory. The Workman disentitle himself for his (1) own default (a) default in accepting alternate employment or (b) default in presenting for the work and (2) for the default of his co-workman in as much as his workmen default in performing their work either by going on strike or resorting to Go Slow. Thus, Default may be -

1. on account of not accepting alternative employment
2. on account of not presenting for the work and
3. by co-workmen when they refuse to work either by going on strike or Go-Slow.

20. Refusal to Accept Alternate Employment

The workman will be disentitled to receive lay-off compensation if he refused to work in alternative employment offered by his employer. But the alternate employment must be -

1. In the same establishment from where he is sought to be laid of to or
2. In anyotherestablishmentbelongingto the same employer either
   a. Situated in the same town or village or
   b. Situated within a radius of five miles from the establishment to which he belongs or
3. In opinion of the employer, the alternate employment does not call for any special skill or previous experience and can be done by the workman to be laid off
4. The alternate employment should not reduce the status, benefit and wages of the workmen to be laid off.

21. What is Alternative Employment ?

In J.K. Cotton Spg & Wvg Mills Co. Ltd., and Their workmen, 1991 II LLJ 668 the employees working on machine were offered alternative work which was manual. The employees refused the alternative work on the ground that alternative work should be identical or similar. The court declined to accept the plea and held that the term "alternative" could only mean "other Jobs" and it had no reference to nature of employment. In Firth (India) Steel Co. Ltd. v/s 1C, 1990 I CLR 97, the term 'alternative' was construed to mean a suitable employment that is commensurate with the status and nature of duties of the workman concerned.

22. Not Presenting for the Work

In order to be entitled to the lay-off compensation, a statutory duty is cast upon the laid off workman to present himself for the work at least once a day during lay-off period.

This will be clear if one reads Section C, 25 D and Section 25 E with the Explanation to Proviso to Section 2 (kkk) in which lay-off is defined. The Explanation and proviso to Section 2 (kkk) lay down that workman shall be deemed to be laid off if (his name is borne on the muster rolls and) presents himself for work at the commencement of shift and is not given work within two hours. If no work is given at the commencement of the shift and asked to come in the second half of the shift and if work is given, he shall be deemed to have been laid off for one half of that day. Section E. in turn lays down that if laid off workmen fails to report for work once at the appointed time, he shall forfeit his claim of lay-off compensation accruing under Section 25 C. Section 25 D requires an employer to maintain a muster roll where the lay-off workman can make an entry therein, While Section 2 (kkk) requires a workman to come twice, Section 25 (E) requires the workman to come only once. Section 25 E only soften the burden of workmen when his right to claim lay-off compensation is forfeited. If laid off workman fails to report for the work even once a day, the employer is absolved from the liability of paying the lay-off compensation. [Zandu Pharmaceutical Works Ltd v/s R.N. Kulkarni, 1966 ILLJ 560]. However, when the employer lifts the lay-off the workman has a right to be recalled to work and this right is not forfeited along with the lay-off compensation for the infringement of the statutory requirement of reporting for work at least once a day during the period of lay-off. [Nutan Mills Ltd v/s ESIC, 1956 ILLJ 215].

23. Lay-off due to Strike or Go-Slow

If some of the workmen in key post and in continuing process, resort to strike or Go-Slow the employer will be left with no alternative but to shut down his work place in the whole. The employer cannot be faulted for this and as such, he is given the benefit by absolving him from paying the lay-off compensation to workman proclaiming to be not on strike or participating in go-slow. It must be borne in mind that if all workmen go on strike or resort to go-slow, no occasion will arise for the employer to effect lay-off. He will be compelled to clamp lay-off only when some of the employees go on strike/go-slow and some of them [either as a device or otherwise] do not go on strike/go slow. This will be justifying reason for exonerating the employer from liability to pay lay-off compensation [Lonetree Estate vis IT., 1962 II LLJ 319].

24. Another Part of Establishment

Clause III of Section 25 E says that the lay-off should be due to strike/Go-slow by workmen in another part of the establishment. It means (1) the strike-go-slow should have been started by workmen other than those workmen who are layed-off but doing same kind of work (2) in the same part of the factory premises. The use of the word 'establishment' in the clause under discussion should be read with the word "lay-off" defined in Section 2 (kkk) and it must be understood to mean the industrial establishment [ACC v/s Their Workmen, 1960 ILLJ 1 (SC)]. But the expression "industrial establishment" used here cannot be taken as the same as it is used in Section 25-A (2). The expression industrial establishment used here means one establishment whereas it is used in Section 25 A to show the kinds of industries to which provisions of Sections 25 C to 25 E will not apply.

25. Functional Integrality

When workmen in one part of an establishment resort to strike or go-slow and the workmen of another part of the establishment are permitted to be laid off then there must exist a functional integrality in respect of production. The inter dependence of different part of industrial establishment is the sole criteria to hold that the employer is entitled to lay-off his employees of one part when the employees of another part resort to strike or go slow. The apex court in several cases has considered various factors which can be taken into consideration to hold various parts as one single unit. Some of them are as under :

1. Functional integrality
2. Inter dependence
3. Geographical proximity
4. Unity of ownership
5. Unity of management
6. Unity of purpose
7. Unity of Staff
8. Unity of marketing and sale
9. Unity of conditions of service
10. Unity of transferability of service.

[See A.C.C. Ltd, 601LLJ 1, Prakash Studios, 1961ILLJ 380, Workmen of Straw Board 1974 ILLJ 499] However, the test of unity of establishment will depend upon the facts and circumstances of each case and cannot be mechanically applied [WIM Co. Ltd. vis Their Workmen, 1963 II LLJ 459 (SC)]

26. Chapter V B : Section 25 M

The significance of Chapter VB has already been discussed in the chapter of retrenchment. As such it is not discussed here but must be read here also because Section 25 M is part of Chapter VB. As is the legislative policy, under Section 25M it is provided that prior to effecting lay-off, permission of appropriate government will have to be obtained. The prohibition for lay-off is only (a) for the workman other than a badli workman or a casual workman (b) for the industrial establishment employing one hundred or more workmen (c) the industrial establishment which is not of a seasonal character or in which work is performed only intermittently. The lay-off permission need not be taken if it is due to natural calamity, shortage of power, fire, flood, excess of inflammable gas or explosion.

27. Application for Permission Sub-section (2)

The Rules have been framed under the Act for making Application for lay-off. Thus, the employer has to make an Application for lay-off in the prescribed form in the prescribed manner to prescribed authority. The appropriate Government or the prescribed authority has to -

1. make such enquiry as it may think fit

2. give opportunity of being heard to (a) employer (b) workmen and (c) the persons interested in the lay-off (union)
3. consider
   a. the genuineness and adequacy for lay-off
   b. interests of workmen and
   c all other relevant factors
4. records reasons for the order in writing and
5. communicate the order to the parties before it.

The provisions for seeking are same as are discussed in the retrenchment. The provisions for review, deemed permission, finality and penalty are also similarly adopted for lay-off. These provision are analogous to provisions laid down for retrenchment. Therefore, these provisions will have to be read with those provisions.

LESSON 13:
RETRENCHMENT AND RETRENCHMENT COMPENSATION

Learning Outcomes

Dear students,
After todays class you should be able to answer the following questions

- What is meant by retrenchment?
- What is a retrenchment compensation?

Retrenchment

Synposis

1. What is retrenchment
2. Definition : Section 2(oo)
   i. For any reason whatsoever
   ii. Present law on Section 2 (oo)
3. Temporary appointment
4. Casual workmen
5. Probationary appointment
6. Ad-hoc appointment
7. Badli appointment
8. Other termination
9. Abandonment of service
10. Re-employment after Retirement
11. Exceptions in Section 2 (oo)
    i. Sub-clause (a) voluntary retirement
    ii. Sub-clause (b) superannuation
    iii. Sub-clause (bb) contractual termination
    iv. Constitutional validity of sub-clause (bb)
    v. Sub-clause (c) continued ill-health
    vi. Other terminals
12. Retrenchment compensation : Section 25F
    i. Scope of Section 25F
    ii. No workman shall be retrenched until....
    iii. Clause (a) : one month's Notice to workman
    iv. Clause(b) : Retrenchment compensation
13. Continuous service : Section 25B
    i. uninterrupted service
    ii. sub-section (2)
    iii. Sub-section (1) and (2) distinction
    iv. Unit of measure
    v. Has actually worked
       a. Sundays Holiday
       b. Illegal strike
       c. Same employer
14. Retrenchment Compensation when payable
    i. Tender of Payment but non-acceptance by workman
    ii. Mode of payment
15. Acceptance, if Estoppel
16. Death of workman after retrenchment
17. Sub-Clause (c): Notice to government
18. Section 32 : Penalty
19. Section 25 G : Last come, First go
20. Seniority list

1. What is Retrenchment?

The termination of services may be by way of:

1. Punishment — Dismissal
2. Discharge — Simplicitor — Not for punishment
3. Retirement — Superannuation
4. Resignation — Abandonment of service
5. Retrenchment etc.

The retrenchment, is thus a mode of termination of service, and, necessarily therefore, every retrenchment but every termination of service is not. retrenchment.

Ordinary Accepted Connotation

The Employer when takes a stock of his work-force, and finds that - more number of employees are deployed than necessary then, as a prudent businessman, he terminates the services of all such surplus labour force. Such termination of surplus labour force in a running business is called as the retrenchment.

2. Definition : Section 2 (oo)

The term retrenchment was neither defined in the repealed Act of 1929 nor was it defined in the present Act as originally enacted. The Legislature then came forward to define the term and inserted Section 2 (oo) in the Act. The definition, as it stands now is in two parts :

1. In the first part it lays down as to what retrenchment means and
2. In the second part it excludes termination of services from the ambit of retrenchment.

For Any Reason Whatsoever ."

The definition in Section 2(oo) opens in its first part with the phrasology "retrenchment means the termination by the Employer of the services of a workman for any reason whatsoever'/) The words "for any reason whatsoever" in the definition are the key words. On the question whether the expression "any reason whatsoever" is susceptible to any limitations or admits no exception, there is a conflict in the judicial opinions, some of them are given below :

Pipraich Sugar Mills Ltd. v/s.. PSM Mazdoor Union 1957 I LLJ 235, the apex court held that the term retrenchment connotes in its ordinary acceptation that business itself is being continued

but that a portion of the staff or the Labour force is discharged as surplusage and the termination as a result of closure cannot come within the mischief of the term 'retrenchment'. The apex court was considering a case of closure in which the employees had contended that the key words "for any reason whatsoever" included the case in which employer had closed down the business and for that reason had retrenched all his employees. The apex court, on these facts of the case ruled that the term retrenchment as defined in the Act cannot include discharge of employees on closure of business.

Barasi Light Railway Co. Ltd. v/s. K.N. Joglekar, 1957 I LLJ 243, The question before the apex court was whether the definition merely gives effect to the ordinary accepted notion of retrenchment or does it go beyond the accepted notion. The apex court then concluded that surplusage in a running business or industry is the very basis of retrenchment.

Consequent upon the decision of the Apex court in Barsi Light Railway Co. 1957 I LLJ 243, Sections 25FF and 25FFF were substituted by the legislature and provided closure Notice at par with the provisions of Section 25F of the Act. But Section 2(oo) was not amended.

Anakapala Cooperative Agriculture and Industrial Society v/s. Workmen, 1962 II LLJ 621. This case came up before the apex court after the Legislature amended the Act, in 1957, by in serting Sections 25FF and 25FFF. As aforesaid, Section 2(oo) was not amended. Naturally, therefore, the apex court affirmed the ratio of Barsi Light Railway 1957 I LLJ 243 that surplusage in a running business is the very basis of retrenchment.

(State Bank of India v/s.. N.Sundramony, 1976 I LLJ 478. In this case, it was a termination of services of temporary workman under contract of employment. The apex court ruled that such a termination amounted to retrenchment. The apex court based its decision on the construction of words "for any reason whatsoever" and observed that these words were very wide and almost admitting of no exception.

Hindustan Steel Ltd. v/s. State of Orissa, AIR 1977 SC 31. The question before the apex court was whether automatic termination of service on the expiry of contractual period (by efflux of time) was retrenchment. The apex court took into consideration that:

1. Section 25F (a) provides that no Notice is necessary if retrenchment is under an agreement which specifies a date for the termination of service. If retrenchment as defined under Section 2(oo) was intended not to include termination of service by efflux of time in terms of agreement between the parties then the proviso [25F (a)] would have been unnecessary.
2. to streamline the organisation and to effect economy wherever possible, if the company had not chosen to renew the contract of employment, then terminations by efflux of time would fall within the purview of retrench ment.

Delhi Cloth & General Mills Co. Ltd. vis. Shambhu Nath Mukharjee, 1977 LIC 1895. In this case, a workman was appointed as a Labourer. After six months, he was promoted as Fitter - Helper. After a year and half, again, he was promoted to the post of motion setter. On re-organisation, the post of motion-setter was abolished and as such the workman was given a post of Assistant Line Fitter. This was on a **probation** period. But the workman was not found suitable and hence he was offered a post of Fitter. The workman worked in the post of Assistant Line Fixer upto 14-8-1965. 15th August was holiday and thereafter the workman did not report for duty. By a letter dated 24-8-1965, the company informed that his name was struck off the Muster-Roil for continuous absence for more than eight days without permission. Since retrenchment compensation was not paid as provided under Section 25F, the Labour Court granted reinstatement with full back wages. The apex court upheld the decision of the Labour Court relying upon the Sundramony (1976 I LLJ 478) and Hindustan Steel (AIR 1977 SC 31) and ruled that striking off the name from the Muster-Roil constituted retrenchment.

L. Robert D'Souza vis. Executive Engineer, S. Railway, 1979 I LLJ 211. A Full Bench of Kerala high court had held that expression retrenchment as defined in Section 2(oo) does not have a wider meaning than ordinary accepted connotation of the word, namely discharge of surplusage Labour force by the employer for any reason whatsoever.

L. Robert D'souza vis. Ex. Eng. S. Rly., 1982 LIC 811, A special leave petition against the full bench of the Kerala High Court in the L. Robert D'souza case (1979 I LLJ 211) above was filed in the Hon'ble Supreme Court of India. The Court held that if termination of a workman is brought about for any reason whatsoever, it would be retrenchment EXCEPT the cases falling in the excepted categories, namely, termination by way of punishment, voluntary retirement, superannuation, or continued ill health, Once the case is outside these categories then termination whether by automatic discharge from service under agreement or the name is struck of the muster roll would constitute retrenchment.

Santosh Gupta v/s. State Bank of Patiala, 1980 I LLJ 72. The apex court examined the correctness of the ordinary connotation of the term retrenchment. According to ordinary connotation, retrenchment means a discharge of workmen on account of surplusage. The apex court observed that if this meaning is accepted, "there was no need to define the expression retrenchment and in such wide terms. We cannot assume that the parliament was undertaking an exercise in futility to give a long widened definition merely to say that the expression means what it always meant." The apex court then held that every termination of service of a workman, whether being surplus or otherwise, amounts to retrenchment. In this case, the decision of the full bench of Kerala High court in L. Robert D'souza, 1979 I LLJ 211, was categorically and in express terms overruled. It was after this case that the case of L. Robert D'Souza, 1982 LIC 811 came up for hearing before the apex court and relying upon this decision, the apex court held that only the excepted categories will not fall in the retrenchment but otherwise all terminations will fall in the mischief of the term "retrenchment".

Sub-clause (bb) inserted

The legislature, inserted sub-clause (bb) to restrict to a limited extent, the scope of the words "for any reason whatsoever". It was done perhaps with intention to meet The needs of public

utilities such as Railways, Telephones, PWD which have to deploy extra labourers, per force, either for specified periods or for specific projects. By insertion of this clause (1) termination of ser-vices as a Jesuit of non-renewal of contract of employment en its expiry and (2) the termination of service in accordance with the condition stipulated in the contract of employment stand excluded. Consequently rulings of apex court in Sundramony (1976 I LLJ 478) Hindustan Steel (AIR 1977 SC 31) Santosh Gupta (1980 I LLJ 72) hold no good law in respect of above two categories **(only).**

Present Law on Section 2 (oo)

The rulings of the apex court given in State Bank of India (1976 I LLJ 478) and Santosh Gupta (1980 I LLJ 72) still hold good with only two categories ousted by Section 2(oo) (bb). The apex court in Rajesh Kumar *v/s.*. State of M.P. 1993 I CLR 846 held that any termination of service not excepted under Section 2(oo) is retrenchment and if Section 25F in violated then the termination will be illegal.

'The termination of services presupposes appointment because unless a person is appointed, the question of termination of service will not arise) As such it is the usual trick of the employers, while making appointments to adopt such a method that they can come out of the clutches of vigour of Section 2(oo) of the Act The Employers instead of making regular appointment, also appoint their workmen calling Temporary workmen, Badli workman, Casual workmen, Ad-hoc appointments, Probationary appointments and try to avoid the obligation arising under Section 2(oo) Similarly, while terminating services also such a modus operandi is adopted that they can come out from the obligation of Section 2(oo). According the Employer would terminate the service by oral termination or terminate the services under standing order or effect termination by abandonment of services loss of confidence etc. is, therefore, necessary to examine the vigour of Section 2(oo) in these cases}

3. Temporary Appointment

Employer when undertakes to carry on his business activities (etc.) Tie decides his work-force. On the basis of the requirement of his work-force, he appoints the employees. These appointmentsareonclear vacancy andonpermanent basis. However, due to some reason or the : other, there occurs sudden Increase in work and then he may have to deploy additional hands. Such appointments are "temporary appointments'' and as soon as the work-load is reduced to its normal level, he terminates the services of temporary employees appointed on temporary basis.

The apex court in the State Bank of India v/s. Sundramony, 1976 I LLJ 478 had held that except the termination falling in the excepted category, every termination will be retrenchment. As such an employee, even if appointed on temporary basis, he will be eligible and entitled to get the retrenchment Compensation under Section 25F. However, it does not mean that further requirements of Section 25F will not apply. The Employee appointed on temporary basis, if has not completed one years service he cannot get retrenchment compensation under Section 25F. Thus in order to entitle to retrenchment compensation, Section 2(00) 25F Section. Indian Bank, 1980 I LLJ 187, and Subhash Purohit v/s State of Rajasthan, 1981 LIC 719, the appointment was on temporary basis but one years service was not completed. It was held that termination did not amount toretrenchment.InCorporation of Cochin v/s. V.S. Juleja, 1985 LIG 1121, the appointment was temporary but termination was on the ground that the appointment was required to be made through public service commission and when a candidate of PSC was appointed, he could not be continued. Held that it was no retrenchment. In Santosh Gupta v/s. State Bank Patiala, 1980 II LLJ 72, Gujarat State Machine Tools v/s. Deepak J. Desai, 1988, I CLR 24 and Chairman Krishi Utpadan Mandi Samiti v/s. L.C., 1992 ICLR 972 the appointment was temporary but since condition precedent under Section 25F were not complied with terminations were held to be bad and inoperative. In G.M., Moradabad Dudh Utpadak Sahakari Sangh v/s. P.O. L.C., 1999 II CLR 32, it was contended that workman was Daily wager and therefore he cannot complain about retrenchment. But it was rejected.

4. Casual Workman

As aforesaid when employer deploys additional workforce for a temporary increase in work, he then makes the temporary appointment. These appointees are "Temporary Employees" because their appointment by its very nature is temporary. But if increase in work is only casual, the appointment is also casual appointment/In the case of Suresh Narkar v/s. Food Corporation of India; 1984 LIC 267, the Court held that the casual workman engaged for a work which is not occasioned or casual he cannot be styled as casual. In L. Robert D'Souza v/s.. Ex. Engineers. S. Rly., 1979 I LLJ 211 the apex court observed that after 20-30 years of service, a workman cannot be treated as casual labourer or daily wages labourer. The Court then laid down that the termination brought about for any reason whatsoever will be retrenchment if Section 25F is not compiled with and that the termination will be illegal and non-est/In G.M. Moradabad Dudh Utpadak Sahkari Sangh v/s. P.O.L.arl9_99 II CLR 32, the Court held that daily wage earner, if has completed 240 days, is also entitled to the benefits of Section 25 F of the Act.)

5. Probationary Appointment

Probation, in service jurisprudence, is a period of testing and trial for ascertaining the individual fitness or lack of fitness for his retention in job for which he is already appointed. Jacob V.N. vis. Zachariaz 1989 II LJLJ 59. The apex court in, 1983 (46) FLR 487, held that the probation is to judge the competence and make up mind, by the time probationary period expires. In order to take out the probationers from clutches and vigour of Section 25 F, the Legislature has added clause 2(bb) in Section 2(oo) of the Act. As such termination of service in pursuance of a clause in the Service Agreement (and during the period of probation for unsatisfactory work) falls within the exception provided in section 2(oo) (bb) of the Act. It is not retrenchment. [Sai Pal vis. Associate V.P. Swaraj Foundry Division, 1991 II LLN 213]. The workman was appointed for 44 days and reappointed after giving one days break everytime for three years. After last such appointment, at end of the period, his services were terminated. The question arose as to whether it amounted to retrenchment. It was held that the post was not

abolished and the nature of work performed by the workman also continued.; Consequently sub-clause (bb) of clause (oo) of Section 2 of the Act was not attracted, Consequently the termination does not fall in the exception carved out in Section 2(oo) (bb) of the act and hence it will be retrenchment under Section 2(oo) of the Act.

1. K. Rajendra v/s. Director, Project and Equipment Corporation of India, 1992 ICLR402.
2. Kezukshetra Central CHS v/s. State of Haryana, 1993, (66) FLR 197.
3. Jay Bharat Printers and Publishers (P) Ltd v/s. L.C 1993, II CLR 503.

6. Ad-hoc Appointment

Ad-hoc means stop gap arrangement [Savitridevi v/s. M.C. Delhi, 1979 S.L.R.540]. For example, when a sanction has to be obtained or awaited, and long drawn procedure of selection and appointment has to be undergone then it becomes necessary to make arrangement of personnel during this time. The appointment so made is obviously a stop gap arrangement. %The prolonged continuation will not turn the ad-hoc appointment as regular appointment [98J6) SCC 165]. The ad-hoc appointee cannot be replaced by another ad-hoc appointee [Archana v/s. Commissioner, Kendriya Vidyalaya Sangathana, 1994 LIC 2549]. The ad-hoc appointments fall in the, exception given in Sectipn_2(oo) (bb) and as such the termination cannot be called as retrenchment.

7. Badli Appointment

When the workman appointed on clear vacancy is not available for a day or for a specified period or for any indefinite period, the another person is appointed. The new appointee is on leave vacancy and he is called as badli employee? Badli means in place of. The appointments are made is place of workman going on maternity leave, study leave, long leave and so on If the period of Badli workman extends for 240 days, Section 2(oo) will be attracted, and not otherwise."

8. Oral Termination

It is for the Employer to pass the order of termination and he cannot, in law, terminate the services without passing the order in writing. But if the Employer terminates the services orally, he cannot take advantage of his own wrong. As such oral termination are deemed termination and such terminations attract provisions of Section 2(oo)J [T.A. Beny v/s. Rajasthan Cooperative Dairy Federation Ltd. 19911 CLR 460].

9. Abandonment of Service

There is no reason for the workman to abandon his service. It is the Employer who wants to treat the absence of workman as abandonment of service. As such, the Employer in the contract of Employment or in standing order (certified or model) incorporates a clause that continuous unauthorised absence for a prescribed time will be treated as abandonment of service. Such abandonment of service does not fell within the exception of Section 2(oo) .of the Act [Arun Kumar Meher v/s. L.C., 1993 I CLR 467 (ALL)]. In Hqrisingh v/s. Labour Court Cum-Industrial Court, 1993 II LLN - 244 it was held, that / abandonment of service amounts to germination and consequently retrenchment within the meaning "of Section 2(oo) of the Act.

Loss of Confidence

(In loss of confidence the workman is employed on a sensitive post or in a place of confidence^ For example a person is employed as a watchman or a secretary etc. If the confidence is shaken or breached no employer would like to retain such a workman. In second kind of loss of confidence, the relations between the Employer and employee are so much strained that even if, on facts it is proved that termination is for the Act of misconduct, a reinstatement is not granted because that will breed more industrial dispute than it seeks to resolve. Only the compensation on lieu of reinstatement is awarded. The quantum is moulded in accordance with the facts of each case.

10. Re-employment After Retirement

In Kunju Mohemed v/s. Chairman, Cochin Steamer Watchmen Scheme 1993 II LLN 850, the service of a workman was terminated after he was re-employed after superannuation. It was held that the age of superannuation marks the end of workman's service. Appointment in such a case is for a specific term. It can not be regarded as employment contemplated within" the definition of expression retrenchment.In Edwin A. Daniel v/s. L.C. 1993 I LLN 169 the Madras High Court relying upon the apex court ruling in Binoy Kumar, (1983) II LLN 30 held that the appointment after superannuation is only contractual and Section 25F is not attracted.

11. Exception in Section 2 (oo)

Section 2(oo) lays down the following Exceptions and as aforesaid, if a case falls under any of the following categories, the termination cannot be treated as retrenchment under the Act

1. Termination by way of punishment
2. Voluntary retirement
3. Retirement on superannuation, if there is a stipulation in the contract of employment.
4. Termination as a result of non-renewal of contract when it is stipulated in the contract of employment
5. Termination on the ground of continued ill health.

Termination by Way of Punishment

The definition of retrenchment given in Section 2 (oo) expressly excludes termination by way of punishment. Whether Termination is by way of punishment or not will have to be seen from the facts and circumstances of each case [State Transport Controller v/s. I.T. 1965 II LLJ 376]. It is always open to go behind the order. The form of the order may be merely to camouflage.

Sub-clause (a) - Voluntary Retirement

Sub-clause (a) of Section 2(oo) pre-fixes the term retirement with the term 'Voluntary". It is only to clearly indicate that it is the move of the workman. The dismissal is the act of employer. The voluntary retirement is the act of the Employee (workman). In National Engineering Industries Ltd v/s. Hanuman, 1967 II LLJ 883, the apex court ruled that the cases of Resignation and abandonment of services will also fall under this Head. Indeed it will be purely a question of intention or mens-rea and it is always open to go behind the order

and ascertain whether the workman had really an intention to leave his job. It would be prudent on the part of the employer to follow the procedure of holding a domestic enquiry and bring to the fore the intention of the employee to abandon his employment. In D.K. Yadav's case (1993 II LLJ 696) the apex court held that principles of natural justice must be followed. The apex court also held that denial of opportunity to defend violates the principles of natural justice. It offends Article 14 of the constitution of India. It also offends Article 21 of the Constitution of India in as much as it deprives of the livelihood without any opportunity [D.K. Yadav v/s. J.NA Industries Ltd, 1993 II LLJ 696] See also (1) Afsar Miyan v/s. L.C. 1992 I CLR 173. (2) Hem-raj v/s. I.C. 1989 II CLR 145. (3) Riaz Ahmed v/s. Munir Ismail 1991 II CLR 580. (4) A.K. Mathur vis. L.C. 1994 II LLJ 370. (5) Nathuram Saini v/s. Hindustan Corporation Ltd, 1995 I LLJ 421. (6) Depsn ETC v/s. P.O.L.C. 1995 LIC 88.

Sub-clause (b) Superannuation

In order to come under sub-section 2(b) it is necessary that there must be an age of retirement fixed in the contract of Employment, standing orders, certified or model. If age of retirement is not stipulated either in contract of Employment (appointment letter) or in standing order (certified or Model), the Employer can not retire his workman. It is well to remember that even if there is no stipulation as aforesaid, yet the workman is free to take retirement voluntarily. But then it is the voluntary act of the employee himself and there is no compulsion on him to take a retirement. Whereas if the Employer wants to force his unwilling employee to go out, on the ground of retirement, he must have a stipulation in the service condition. Once it is stipulated in the service condition, the Employee has to take retirement, even if he is healthy and capable of undertaking his usual duties. This marks the difference between the clauses (a) and (b) of Section 2(oo). In Fibre Foam v/s. K. Kanan Nair, 1979 LIC 252, the employees claimed retrenchment compensation under section 33 C(2) of the Act. The Employer contended that the employees had received their gratuity under the Payment of Gratuity Act 1972. The Gratuity Act prescribed the age of retirement as 52 years although otherwise there was no age of retirement prescribed. It was held that age of retirement prescribed under the gratuity Act cannot be extended to Section 2 (oo) of the Act, nevertheless, since the workmen had accepted the gratuity, it was not open to them to plead that it was not a case of retirement.

Sub-clause (bb)

contractual termination : Sub-clause (bb) was inserted by the Amending Act of 1984 to carve out an exception in the case of retrenchment and it narrows down the scope and ambit of Section 2(oo) of the Act. As a result of this amendment the rulings of the courts on the point of retrenchment on account of a stipulation in service condition stands corrected.

It is necessary for the applicability of sub-clause(bb) that the stipulation for terminating services should be "contained therein." If stipulation is else-where then it will not bring the case under sub-clause(bb).

Sub-clause (bb) uses the expression contract of Employment. The contract of Employment is the corner stone in industrial jurisprudence. The contract of employment records the terms of agreement between the Employer and Workman. The terms of agreement between the two may be for wages, period of employment, and other related issues. This agreement or the contract may be oral or in writing or express or implied. The law regards the Contract of Employment as a personal matter between the parties. However, sometimes it is also a result of collective bargaining. The contract of Employment is constituted by the Tietter of appointment'. In order to reduce the controversy and the industrial disputes arising out of the terms contained in the letter of appointment, the legislature came out with the Industrial Employment (Standing Orders) Act, 1946. It is provided in the said Act that it is mandatory for the Employer to obtain the standing orders certified according to their requirements. However, until Standing Orders are-certified, the said Act has provided for the Model Standing Orders.

Thus Contract of Employment means and includes (1) Letter of appointment (2) certified standing orders or in its place (3) the model standing order. In Government and allied organization, in place of standing order, the Service Rules govern the conditions of employment.

Turning back to sub-clause (bb) it may be stated that in the Contract of Employment, the Employer, inter-alia, provides for (1) appointment for a specified period on probation and (2) termination by employer upon one month's Notice as discharge simpliciter. As for the probation, it is fully discussed earlier. As for the provision for termination simpliciter in the appointment letter, in Central Inland Water transport Corpn. V/s. Brojonath, AIR 1986 SC 1571 the apex court held that such a provision is Henry VIII clause and unconstitutional.

Constitutional Validity of Sub-clause(bb)

In Ram Prasad v/s. State of Rajasthan, 92 LIC 2139, it was held that simply because sub-clause (bb) is misutilized or misused, it can not be said that the provision is arbitrary or violative of Articles 14, 19, 21, 23 and/or 39 of the constitution of India, (see also Terminated FT Employees LIC Employees Welfare Association v/s. Sr. Div. Manager, LIC 1992 II LLN 330).

Sub Clause (c): Continued Ill-health

In Bisva Stone Lime Co. Ltd v/s. Their workmen 1992 I LIC 451, it was held that continued ill health means, disease, physical defect, or infirmity or unsoundness. A person who is suffering from disease is certainly not possessing a sound health for active duties and if this sort of thing continued for a long period, he must be said to be suffering from continued ill-health. The continued ill-health suggests that it is prolonged for a considerable period. It should be sufficiently along duration and continuous. However, if ill-health is temporary sub-clause 2(c) is not attracted. The defective eye of Driver is not retrenchment (Anand Bihari v/s. Rajasthan S.R.T.C. 1991, CLR 525(SC).

In P. Muthukrishanan v Is. Mgmt. of Central Cinema, 1992 I CLR 743, it was held that the expression Continued ill-health has to be referable to a state of physical condition of the person incapacitating him for indefinite period though the same need not necessarily be co-related to any organic diseases in the system.

Other Terminations

- Termination as a result of direction from the statutory authority is not retrenchment Koodarnji Services CHS v/s. Lissy 1993 II LLR 998.
- Absence without leave or absence for more than 240 daysis not sufficient to depriveof a workman the retrenchment compensation.
- Termination by afflux of time is retrenchment

12. Retrenchment Compensation: Section 25 F

Whatever may be the reason for the Employer to reduce his work-force and whatever may be the justification for the reduction of work-force, what is inevitable and unavoidable is a sudden unemployment. The workmen are suddenly thrown out on street by one stroke of pen of the Employer. What can be their plight? Some kind hearted Employers, no doubt, used to give something to their employees but, perhaps, for the reasons other than mitigating the sorrows of their Employees. Similarly the industrial courts too began to award some compensation but it was far from satisfactory, and could hardly meet the expectations of the Employees. The recession which began from 1953 in textile industry forced several textile mills in the country to reduce their Labour force. It thus attracted attention of the Government which began to face problems occasioned by large-scale lay off and retrenchments. In order to meet with the situation, the President of India promulgated to ordinance which was than replaced by the Industrial Disputes (Amendment) Act, 1953. It revolutionised the whole concept of industrial law and also it updated the industrial law. This Amendment of 1953, for the first time in the country standardised the retrenchment as well as lay off compensation to be paid to the workers. It only softened the vigour of hardship of workmen who were suddenly thrown out of Employment for no fault on their part. For this purpose, the Amendment (of 1953) engrafted one whole chapter V-A in the main Act. this chapter V-A of the Act contains Sections 25 A to 25 J. However, presently, confining the discussion to section 25F, it be noted that the legislature made it compulsory and mandatory for the employers intending to effect retrenchment to first pay compensation at a prescribed rate if the workman has completed continuous service of one year.

Scope of Section 25F

Section 25F of the Act lays down that -

1. One Month's Notice to the workman who is to be retrenched must be given.
2. Notice of Retrenchment must be in writing.
3. Reasons for retrenchment must be given in the Notice of Retrenchment to the workman.
4. Notice period of one month must have expired unless one month's wages must have been paid in lieu of Notice of one month to the workman.
5. (Payment to workman must have been effected at the time of retrenchment and not after the retrenchment.
6. Notice in prescribed manner must have been served upon the appropriate Government or such other authority as may have been specified by the appropriate government.

"No Workman shall be Retrenched Until"

The use of word "until" in the first part of Section 25F shows that the condition laid down by the Legislature is the conditions precedent and this is fortified from the fact that the Head Note of the Section also recites "condition precedent to retrenchment of workman." Indeed, condition is precedent but only if the person retrenched is a "workman" under Section 2(s) of the Act and not otherwise [Sunil Kumar S.P. Sinha v/s. Indian Oil Corporation Ltd., 1983 LIC 1139].

So far as the Retrenchment Notice to the workman and payment of retrenchment compensation (popularly called as RC) are concerned, they are Mandatory conditions Precedents. As such, if these two Conditions are not complied with, the retrenchment is rendered null, void abinition and non-est. But the Notice to appropriate government is held to be not a condition precedent and not mandatory [Bombay Union of Journalists v/s. State of Bombay, 1964 I LLJ 351 (SC)]. Thus it should be absolutely clear that although the Head Note gives the impression that section lays down the conditions precedents and although it does lay down (two) conditions precedents, the third condition (of giving Notice to appropriate government) is not a condition precedent. The conditions precedents are confined to clauses (a) and (b) only and not extended to clause (c) of Section 25F of the Act.

Clause (a) - One Month's Notice to Workman

Clause (a) lays down that the Employer intending to retrench the workman or workmen must give one month's notice to workman/workmen sought to be retrenched. Notice under reference must clearly indicate the reasons for retrenchment, these reasons must be real and genuine. Alternatively, the Employer is given freedom to pay one Month's Wages in lieu of Notice 1(1) Vinaykumar Majoo v/s. State of Rajasthan, 1968 I LLJ 398 (2) K.V. Gopinath v/s. Senior Suptdt., 1970 LIC 375]. Notice or wages in Lieu thereof must precede the retrenchment. If not retrenchment is non-est or non-existing. As a result the retrenched workman is deemed to be continuously in employment because the retrenchment although effected did not come in existence. Consequently, the workman will be entitled to the full wages and continuity of service during the entire period of non effective retrenchment. [National Iron & Steel Co. v/s. State of W.B. 1967 II LLJ 23 (SC)].

In Dhirendra Kumar Vidyarthi v/s. Union of India,, 1982 LIC 1680, the reasons for retrenchment were not given specifically. It was held that taking into consideration the Notice in its entirety on the facts of the case, there was no contravention of the requirements of this clause. The expression in lieu of such Notice' is significant. Because where one month's wages in lieu of Notice' have been paid, the requirement of indicating reason thereof becomes redundant. [Bhaji Charan Singh vis. Union of India, 1973 II LLJ 589].

A Golden rule is to pay one full month's wages without any deduction, without any adjustment and even to include the

increment if falling due in that month. In Auto Engineering Pvt. Ltd., v/s. P.V. Gadekar 1992 LIC 1362, the court declined to accept the plea of the employer that the increment should not be included in computing one month's wages in lieu of notice. Similarly in Utkal Asbestos Ltd. v/s. T.S. Rao, 1991 II LLN 752, the court held the retrenchment invalid on the ground that one month's wages were not paid. In this case, the employer had deducted the dues from the wages of the workman.

Clause (a) requires either one month's Notice or wages in lieu thereof and not both. In Shivnandan v/s. Personnel Suptdt., 1969 II LLJ 373, one month's notice was given but wages for one month were not given. It was held that the two clauses (i) Notice and (ii) wages in lieu of Notice are alternative and if one is complied with then there is no violation of clause (a) of Section 25F of the Act.

Clause (b) Retrenchment Compensation

Clause (b) is a mandatory condition precedent. Non-compliance will render the retrenchment null, void abinition and non-est or non existing at law [Ramkrishna Ramnath v/s. P.O.L.C. 1970 II LLJ 306 (SC), National Iron & Steel Co. Ltd. vis. State W.B. 1967 II LLJ 23 (SC)]. Clause (b) Lays down that a workman shall be:

i. paid compensation

ii. at the tune of retrenchment (and not after the retrench ment)

in. calculated at the rate of 15 days (average pay)

iv. for every completed year of "continuous service" or

v. any part in excess of six months

The average pay has been defined in Section 2 (aaa). It means if in one month, a workman's pay was Rs.1000/- in second month, it was Rs.1400/- and in the third month, it is only Rs 900/-The Employer has to take the average pay and not the last drawn wages. As such in given illustration, the average pay will work out to be [1000 + 1400 + 900 = 3300 - 3] Rs. 1100/- p.m. Undoubtedly, it may work out against the workman also, if in first month, wages are Rs.900/- in the second month, it is Rs.1000/- and in the third month it is Rs. 1400/- but the workman will be paid at the rate of Rs. 1100/- (it being his average wages).

The another magic word is "continuous service" clause (b) requires the Employer to pay fifteen days average pay for every completed year of "continuous service". The clause does not restrict to every completed "year" but it qualifies the word "year" with the expression "continuous service". It is, therefore necessary first to understand the expression "continuous service" before undertaking the computation of retrenchment compensation.

13. 'Continuous Service JLlJ Seption 25B

For the purposes of chapter V A, a special definition continuous service" is given in Section 25 B. As such, it is not obligatory or it is not made mandatory for other provisions of the Act to follow the definition given in section 25 B of the Act. Section 2 of the Act gives out definitions of various terms used in the Act. However, instead of adding the definition (of continuous service) in Section 2 of the Act, the Legislature has chosen to include it in chapter V-A and opens the definition with the clear cut statement that the definition is tailored for the purposes of chapter V-A only.

Uninterrupted Service

The interruption of service, on account of any of the following reasons, namely -

1. sickness
2. authorized Leave
   an Accident
3. a Strike which is not illegal
4. a Lock out and
5. a cessation of work which is not due to any fault of the workman

shall be added back in computing the 'continuous service. This shows that the legislature has carved out an artificial meaning for the benefit of workers sought to be retrenched etc.

Sub-Section (2)

If services are uninterrupted, subsection (1) will apply but if services are interrupted then sub-section (2) will apply. Sub-section (2) deals with two sets of periods.

1. Period of one year.
2. Period of six months.

As per sub-section (2) interrupted services will be deemed to be "continuous services". If the workman has worked for

1. period of one year
   a. 190 days below ground (in mine) or
   b. 240 days in any other case.
2. period of six months,
   a. 95 days below ground (in mine) or
   b. 120 days in any other case, ^f^

Sub &-section (1) and (2) Distinction

Sub-section (1) does not specify the term "period". The "period" may be one year (October to September) a period of 12 months or one calendar year (from January to December) or 240 days or 190 days or 140 days or 95 days or any duration of time.

Whatever may be the duration of time, in order to ascertain the 'continue*[18] service' the days of interruptions on account of sickness, authorised leave, an accident or a strike as per sub-section (1) will h[ave] to be added back. Whereas sub-section (2) refers specifically to* period of 12 months and 6 months (as the case may be) and further states that these periods (of 12 months or 6 months) will t>[e] counted backward from the date of retrenchment. Sub-section (£) thus envisages a situation not covered under subsection (1).

Unit of Measure

It is not necessary for the workman to work all the days in any given period (sub-section 1) and he is given liberty to work less number of days if he is sick, on authorised leave or if he has met with the accident or if there is a strike (which is not illegal) or if there is cessation of work not on account of hi£ fault [sub-section (1)]. Sub-section (2) also similarly makes 240 day instead of 365 days in a year (or 190 days if he is working below

ground). Sub-section (2) further reduces these 240 days or 190 days if working is below ground) if interruption is caused on account of (a) lay off (b) leave with full wages (c) disablement accident or (d) maternity leave (for women)

The apex court in Mohanlal v/s. Mgmt. Of Bharat Electronics Ltd., 1981 LlC 806 has observed that it is not necessary for the purpose of sub-section (2) (a) that the workman should be in service for a period of one calendar year (January-December) and that if during the preceding twelve calendar months, the service is continuous within the meaning of sub-section(l), his case would be governed by sub-section (1). Sub-section (2) envisages a situation not governed by sub-section (1). Sub-section (2) provides for a fiction to treat £ workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of twelve calendar months counting backward and just preceding the relevant date being the date of retrenchment.

In S.K Verma vis. CGIT, 1980 LIC 1292 the apex court held that it is enough if the workman has worked 240 days in a period of twelve months. It is not necessary that the workman should have been in the service of the Employer for one whole calendar year.

'Has Actually Worked'

Sundays - Holidays

Really speaking, the workmen do not "actually work" on holidays and/or Sundays. Therefore one may be led to believe that while computing 240 days on which the workman has actually worked', Sundays and holidays should be excluded. But that is not so. The expression "has actually worked" has to be construed liberally. The expression takes in its fold the notional presence, such as Sundays and gazetted holidays. The Workman is paid for these days.Naturally,therefore,he is 'deemed'tobeinservice. TheapexcourtinWorkmen of American Express International Banking Corpn. v/s. Management

AEIBC, 1986 LIC 98 held that the expression "actually worked" under the Employer cannot mean those days only when the workman worked with hammer, sickle or pen but must necessarily comprehend all those days during which he was in the employment and for which he was paid wages either under express or implied contract of service or by compulsion of statute or standing order etc. In Babulal Sharma v/s. 'University of Ajmer, 1990 (60) FLR 255, it was held that a temporary workman working regularly can claim the benefit of Sundays and gazetted holidays for calculation of continuous services. Relying on the ratio laid down in the case of Workmen of American Express 1986 LIC 98 it was pleaded by the workman that though he had worked for 213 ½ days but if Sundays and paid holidays are included, he will have worked 240 days The plea was rejected and it was held that only Sundays and holidays are to be included for which workman is paid and not all Sundays and holidays are to be included [Baj-ranglal v/s. Assistant Engg. PWD, 1993 II CLR 205]

Illegal Strike

Section 25 B (1) specifically and in express terms lays down that the interruption caused by the strike will be condoned only if it is not illegal. Necessarily, therefore, if strike is illegal, it must be taken as **'interruption'** in service However, the apex court drew a very fine and thin line of silver rays for employees and held [Management of Standard Motors Product (India) Ltd. v/s. A. Parthasarthy, 1986 LIC 101] that service may not be continuous under Section 25 B (1) but if a workman has worked for not less than 240 days during a period of twelve calendar month preceding the date with reference to which calculation has to be made under Section 25 B (2), he shall be deemed to be in continuous service. In the case before the coi11^, the workman had completed 240 days even if the period of illegal strike is excluded. As such workmen were held to be in "continuous service" and were held to be entitled to closure compensation. The apex court thus did not consider the illegal strike as interruption in service. Although during the period of illegal strike, the factory was closed down and if Section 25 B (2) is understood to mean that illegal strike will result in uncondonable 2nd unpardonable interruption in service, the apex court, therefore COUW have construed that since the workmen's services were interrupted by an illegal strike on the date of reopening of the factory, these workmen were not in service and were thus not entitled to the closure compensation. It shows that the apex co ut took the vital fact into consideration that, otherwise also, the workmen had completed 240 days, and thus allowed the closure compensations to these workmen. Further, it also implies that if workmen have completed 240 days, no manner of computation in permitted by which workmen can be denied the benefits otherwise flowing to them from the provisions of the Act. Briefly, therefore, computation for 'continuous service' given in Section 25 B is for giving benefits to workmen and not for snatching them away from the workmen. Prabhudayal Jat v/s. Alwar Sahkar Bhumi Vikas Bank Ltd., 1991 II LLN 1042

In Kailash Paswan v/s. Union of India, 1985 LIC 43 also similarly it was held that it is quite immaterial if the service is not in the same category as long as the employer is one and the same. See also :

1. Sarju Singh Prasad vis. State of Bihar, 1984 LIC 1264
2. Management of Handicraft Handloom Export corporation of India v/s. D.B. Gupta, 1987 LlC 12 68
3. State Bank of India v/s. CGIT, 19911 CLR 540 and
4. Alexander Yasudas Michael v/s. Perfect Oil Seed1995 I CLR942

In the case of Sarvajanik Nirman Mazdoor Sangh v/s. L.C., 1995 LIC 2012, the workman had worked under two different units of electricity department. Where the unite were treated as independent establishments. It was held that, on the fact of the case, workman had not worked for 240 days under One Single Employer.

Same Employer

A Workman worked as LDC from 24-1-1987 to 14-5-1987 and as peon from 15-5-1987 to 12-10-1989. His services were then terminated. When the termination came to be challenged, it was contended that the workman had worked in two different capacities and as such, his services can not be held to be

'continuous service' under Section 25 B. It was held that all that is necessary to comply with Section 25 B (2) is :

i. Employer must be same

ii. Service must be 240 days in twelve calendar months prior to the date of termination of service and

iii. Employee must be a "Workman" under Section 2 (s) of the ID Act.

14. Retrenchment Compensation when Payable

The two words (i) 'until' and (ii) 'paid' used in the Section are very crucial. The use of the word 'until' indicates and ensures that the conditions are first complied with and then only after having complied with these conditions, the retrenchment can be effected. The use of word 'paid' means actual payment or actual tender of money. Further, actual payment or actual tender of money must be at the time of retrenchment and not thereafter (1) Bombay Union of Journalists v/s. State of Bombay, 1964 I LLJ 351 (SC) (2) State of Bombay v/s. Hospital Mazdoor Sabha, 1960 I LLJ 251, (SC) (3) Workmen of Subhang Tea Estate v/s. Subhang Tea Estate, 1964 I LLJ 333 (SC) (4) National (Iron & Steel Co. v/s. State of WB, 1967 II LLJ 23 (SC). In Mohanlal v/s. Management of Bharat Electronics Ltd. 1981 LIC 806 (SC) the apex court ruled that if conditions precedents are not complied with, the retrenchment is non-est. As Such, there is no question of reinstatement because the relationship of master and servant was never snapped off and that being continued, a mere declaration that workman continued to be in the employment has to be made by the courts.

Tender of Payment but Non Acceptance by Workman

In Straw Board Mfg. Co. Ltd. v/s. Govind 1962 I LLJ 420, the apex court ruled that when the Employer seeks to terminate the services of his workman, he should immediately pay him or offer him wages. This principle applies to retrenchment because, it is not expected of the Employer to run after the employee to pay him money. As is said one can bring the horse to the water but can not make it drink, the employer cannot make the employee to accept the payment. In Delhi Transport Undertaking v/s. I.T. 1965 I LLJ 458, the apex court observed that the Law does not mean that the wages for one month should have been actually paid because in many cases, the employer could only tender the amount before the dismissal but could not force the employee to accept the payment before the dismissal becomes effective.

However, this tender of payment by employer to workman must be bonafide. When the Employer sends a letter by post, calling upon the workmen to come and receive their retrenchment compensation, but by no chance the workmen would receive the letter the same day to enable them to collect money, it cannot be said that the offer or tender was bonafide. In National Iron & Steel Co. Ltd. v/s. State of W.B. 1967 II LLJ 23 the apex court held that asking a workman to collect his dues from the office is not a sufficient compliance When the workman is asked to go forthwith, he must be paid at the time when he is asked to go and could not be asked to collect his dues afterwards. In brief, all depends upon the facts and circumstances of the case. But the crucial test is the bonafide offer State Bank of India v/s. Sundramony 1976 I LLJ 478 (SC)].

Mode of Payment

In order to comply with the provisions of Section 25 F, it is necessary that there must be either an offer or a tender or an actual payment of amount of retrenchment compensation. Such an offer or tender can be made to the workman personally or by postal money order or by Bank Draft or by any other recognised means and if the workman refuses to accept the payment, it is for him. But provisions of Section 25F would be deemed to have been satisfied[Moinuddin v/s. Union of India, 1981 LIC 697 (2) Suresh Kumar v/s. Band Box 1982 I LLJ 362 (3) Bengal Chemicals v/s. Dye & Chemical Workers Union, 1988 II LLN 40] (4) Harisingh v/s. IT cum LC, 1993 II LLN 244 (5) Dinesh Kumar v/s. Union of India, 1993 LIC 678.

15. Acceptance, if Estoppel?

Acceptance of retrenchment compensation is no bar in raising an industrial dispute on the legality of the retrenchment. Because, retrenchment which is Void ab-initio and non-est does not snap off the relationship of master and servant between the Employer and Workman. As such even after acceptance of retrenchment compensation, a workmen is free to raise the legality of the retrenchment. (1) [Management of Oasis School v/s. L.C. 1991 LIC 425 (2)]

Umesh Chandra Panday vis. State of U.P. 1991 LIC 1449. There cannot be estoppel against the Statute [Subhang Tea Estate, 1964 I LLJ 333 (SC)]. The Rule of Estoppel or Waiver cannot be applied when on account of economic suffocation, a workman cannot refuse to accept the retrenchment compensation [B.N. Elias v/s. 5th I.C. 1968 LIC 326]. Similarly a condition in the contract of employment cannot over ride the statutory provisions [U.P.Electric Supply Co. Ltd. v/s. H.V. Bowen, 1968 LIC 326].

16. Death of Workman After Retrenchment

After the death of the workman who was retrenched during his life time, the right to receive wages for the period from the date of retrenchment till the date of sad demise of the workman devolves and passed on to the heirs of the workman. The right to receive such wages is a vested right and it devolves upon the heirs at law, though right of reinstatement does not survive. In un-reported judgement of Delhi Cloth & General Mills Ltd. v/s. Shambhunath Mukherjee in Civil miscellaneous petition No. 6170 of 1980 decided on 28-9-1984, the apex court ordered the compensation to the widow of the workman.

17. Sub-clause (c): Notice to Government

The apex court in its earlier judgements has held that three conditions stipulated in Section 25F of Act are mandatory. However, in Bombay Union of Journalists v/s. State of Bombay, 1964 I LLJ 351, the apex court specifically considered the provisions of sub-clause (c) and held that sub-clause (c) is not a condition precedent to a valid retrenchment. However, it must be clearly understood that although sub-clause (c) is not a condition precedent but yet it is a mandatory condition and must be fulfilled, if not breach of this clause will attract penal provisions of Section 31 (2) of the Act.

The intent and purpose of clause 2 (c) requiring the employer to give notice to the appropriate government is to keep the Government well informed about the production as well as the employment or unemployment in the State. The Government in turn, can take remedial action, can initiate conciliatory proceedings or can make reference of an industrial dispute for adjudication or take any other action in larger public interest.

18. Section 32 - Penalty

Sub-section 2 of Section 32 lays down that whoever contravenes any of the provision of this Act or any rule made under this Act, will be punishable with fine which may extend to one hundred rupees. This provision will have to be read with Section 34 of the Act. It lays down that cognizance of the offence punishable under the Act can be taken only upon a complaint by or under the authority of the appropriate Government.

It further lays down that only the judicial Magistrate of' First Class (JMFC) or a Metropolitan Magistrate can take the cognizance. As aforesaid, Section 25F(c) lays down that the Employer has to give Notice to the appropriate Government and if the Employer contravenes it, he invites the provisions of Section 32(2) read with Section 34.

The Central Government as well the State Government have framed the Rules. The ID (Central) Rules. Under rule 76 rules regarding retrenchment are laid down. Whereas the State of Maharashtra under the ID (Bombay) Rules under Rule 80, 80A lays down the relevant rules for the retrenchment. The Bombay Rules provide for 21 days notice if workmen are given Notice and 7 days notice if workmen are paid wages in lieu of notice. The contravention, will attract penalty, if the appropriate Government moves for the same.

19. Section 25 G : Last Come First Go

The courts have, long before evolved a principle which safe guards the interest of workers against the arbitrary discretion of the employer in the matter of effecting retrenchment. The principle so involved, does not allow the employer to adopt a 'pick-&-choose' method but gives him a guide line in effecting retrenchment / According to this principle, where all other things , are equal ordinarily the workman who was the last person to be, employed in that category is retrenched first. It means the workman who has come last will be retrenched first and the "workman who has came first (joined first) will be retrenched at the last, if need arises. This principle is popularly called as "Last come first Go" or First come Last go."

This principle is given a statutory recognition. The Legislature has introduced Section 25G / as part of Chapter V-A by ID (Amendment) Act, 1953. There are two distinct features which can be seen in Section 25 G., i.e.,

i. Voluntarily adopting a particular procedure or principle for retrenchment; by bi-lateral Agreement or an agreement with the Employees; for example, the Employer and employees may agree that a workman who has almost completed his tenure and has reached to the age of superannuation should be retrenched instead of retrenching any younger man. If there is any such valid agreement, the provision of Section 25 (G) does not come in operation and allows such bilateral Agreement to operate, and

ii. The Statutory principle is enshrined in Section 25 (G) of the Act. It lays down that the statutory provision will come in operation only when no procedure for retrench ment is voluntarily adopted. But when no such Agreement holds the field then the statutory provision will come in operation. This statutory provision (in Section 25G) requires the Employer to classify or categorised his workman, like Clerks, Typists, Stenos, Mechanics, Welders etc. Then the Employer should prepare a Seniority List : This Seniority List should have been accepted before it is acted upon. After this, the Employer, if necessary can first retrench the workman in the given category who is last in the given seniority list. Then the next and so on. There are apparent and invisible pre-conditions before Section 25G comes in operation. Those are as under:

    1. Employee must be a "workman" under Section 2(s) of the Act.
    2. Workman should be a citizen of India.
    3. The Employer's establishment must be an "industry" under Section 2(j) of the Act.
    4. Workman must have been categorised and the workman proposed to be retrenchment must fall in the given category of workmen which has surplus labour force.
    5. There should be no agreement to the contrary existing or subsisting in the industrial establishment.

The 'last come, first go' principle has to be applied category wise and for the industrial establishment. As such, while preparing seniority list for any given category, all workmen will be listed including the workmen who have not completed 240 days. In other words the last come, first go' principle will also apply to workmen who have put in less than 240 days.

The Legislature while adopting the 'Last come first go' principle in Section 25 G has inducted need-based flexibility. As such, it is provided (in Section 25G) that the Employer is free to retain the junior most workman in his employment and can, give go- by to 'last come first go' principle. In order to effect complete check and control on the Employer, in giving go-by to 'last come-first go' principle, the Legislature .has required to record 'Reasons in writing' for retaining the junior most instead of retrenching him. In such cases, the junior will take precedence over the senior workmen in the employment with the Employer. Undoubtedly, the reasons given by the Employer in retaining the junior must be judicious, reasonable and should satisfy the court's conscience. Otherwise, the same will be treated as not tenable or acceptable in law. The result will be that the retrench-ment of senior workman will be set aside (being void and non-est) by the Court. In which case the retrenched workman, will be deemed to have never been retrenched and he will be deemed to be in employment all through out. Naturally, the Employer will be compelled to provide employment and pay all (back) wages to the workman to whom he had chosen to retrench. It is thus from this angle that provisions of Section 25 **G are mandatory.** In Oil and Oil seeds Exchange Vs. Its

workmen, 1966 II LLJ 324, the apex court held that it cannot be inferred that wherever there is a departure from the principle of 'last come first go' there must be malafied. It has to be gathered from the cumulative effect of all the facts in the case. However, if facts clearly show that the Employer's action was not bonafide then giving preferential treatment to junior workman will violate Section 25 (G) and hence retrenchment will be illega]. [J.K. Iron & Steel Co. Ltd. v/s. its workmen 1960 II LLJ 64, Isha Steel Treatment v/s. Association of Engineering workers 1987 I LLJ 427]. Section 25 (G) would not come at all in operation if it is not a case of retrenchment. In State of U.P. v / s. K.K. Shukla, 1991 I CLR 732 the apex Court declined to interfere when it was complained that Section 25(G) was violated and infringed on the ground that the impugned order of termination was not on the ground of retrenchment but for some other reason.

In Workmen of Blundell Eomite Paints v/s. BEP Ltd., 1971 II LLJ 265 the Tribunal held that the retrenchment was not bonafide in carrying out reorganisation of company's work. The High Court held that the management has a right to reorganise its work. The Tribunal cannot go into the motive unless victimization is proved. In Swadeshmitram Ltd v/s. Its Workmen, 1960 I LLJ 504, the apex court held that when other things are equal, the Employer may take into consideration, the efficiency regularity and trustworthy character of the workmen or when he is satisfied that the workman of longstanding is inefficient, unreliable or habitually irregular in his work, the Employer is free to retain his junior workman in preference to senior workman in the category.

20. Seniority List

Rules framed under the Act, in Central Rule 77 (Rule 81 under Bombay Rules) provides for preparing a seniority list and displaying on the Notice Board of the Employer's premises for the information of the workmen. Rule 81 of the Bombay Rules provides that the Employer shall prepare a list of seniority for the workmen (category wise) proposed to be retrenched at least seven days before retrenchment and display it on the Notice Board. In Gaffer & Ors. vis. Union of India, 1984 LIC 645, the Railway published seniority list on 9-5-1980. The retrenchment order was passed on 13-5-1980. Retrenchment was to take effect on 15-5-1980. It was complained that the Rule 77 was violated and hence retrenchment was illegal. It was held that the period of seven days cannot be cut short by adding back the days of publication and retrenchment. The retrenchment was set .aside. In Nav Bharat Hindi Daily v/s. Nav Bharat Shramik Sangh, 1985 I LLJ 475, the Bombay High Court held that failure to comply with Section 25F or 25G will render the whole action of retrenchment illegal and invalid. See also Parry and Co. v/s. P.O. Lai 1970 II LLJ 429, Somukumar Chattarjee v/s. Dist. Signal Telecommunication Engineer, 1970 II LLJ 179, Borhon Kumar v/s. A.P.O. I.O.C., 1971 LLJ 50, Umayammal v/s. State of Kerala, 1983 ILLJ 267, Corporation of Cochin v/s. Jaleja & Ors, 1984 I LLJ 526.

LESSON 14:
RE-EMPLOYMENT OF RETRENCHED WORKMAN

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the provisions for reemployment of retrenched workman?

1. Section 25 H Re-employment of retrenched workman
2. Special provisions of Chapter VB
   - i. Introductory
   - ii. Application of Chapter VB Section 25k
   - iii. Industrial Establishment
3. Conditions Precedent to retrenchment Section 25N
   - i. Introductory
   - ii. Pre-condition to valid retrenchment
   - iii. Eligibility for Retrenchment Compensation
4. How Application for retrenchment permission has to be processed : Section 25 N (2) (3)
   - iv. Enquiry
   - v. Guidelines
   - iii Reasons to be recorded Sub-section(3)
   - iv. Finality of the order
5. Review - Sub-section (6)
6. Exemption from permission : Section 25 (N) (a)
7. Penalty for violation : Section 25Q
8. Procedural requirements are same as are given in earlier Section 25
9. Offences by companies : Section 32

Re-employment of Retrenched Workman

The Employer is free to retrench his surplus labour force but when he gets a chance to expand and start deploying more staff, it will be ideal and necessary for him to re-deploy the same staff which he had retrenched earlier as surplus labour force. This ideal is given the statutory recognition in Section 25H.

Section 25H was inserted in the Act vide I.D. (Amendment) Act 1956. It was further amended by ID (Amendment) Act 1964. By Amendment of 1964, the benefits of Section 25H were restricted to the citizen of India and it was brought at par with Section 25G.

Section 25 H is applicable to a person who:

a. is a workman within Section 2(s) of the Act.

b. is retrenched under Section 25 F of the Act.

c. is a citizen of India

d. offers for re-employment

e. to the Employer who had retrenched him.

The Section does not promise either the same job or same-remuneration or same terms and condition of service.

22. Special Provisions - Chapter V-B

Introductory

The Act, as originally enacted, did not have provisions of lay-off - retrenchment and closure. By Amending Act of 1953, chapter V-A was engrafted and as discussed earlier, the provisions of lay-off and retrenchment were included in the Act. Then by the Amending Act of 1972, the Employer was cast with the duty of giving sixty days Notice of intentions to close an undertaking employing fifty or more persons. The Act was again amended by the I.D. (Amendment) Act, 1976 and chapter V-B was engrafted in the Act. It was felt, at that time, that large-scale lay-off, closure and retrenchment had resulted in demoralising effect on workmen. As such, it was considered necessary to have checks and prevents on large scale lay off, retrenchment and closure. This chapter V B imposes, checks and prevents and on failure, penalty on the defaulting employer. The appropriate government by this chapter V B is vested with powers in respect of large scale lay off, retrenchment and closure in large industrial establishment. But the powers so vested in the appropriate government were so very wide and sweeping that the courts in diverse cases found that the provisions of Lay-off, Retrenchment and closure in Sections 25 M, 25 N, 25 O, 25 Q and 25 R were unconstitutional. As such, these provisions were further amended in the light of rulings of the Courts by Amending Act of 1982 and the Amending Act of 1984. Earlier, chapter VB was made applicable to industrial establishments employing 300 and more employees. However, it is brought down and chapter VB is made applicable to those industrial establishments in which 100 or more workmen, on an average, during preceding twelve months, are employed.

Application of chapter V B : Section 25 K

As aforesaid the whole intention of chapter V B is to impose checks and prevents on large scale lay-offs, retrenchments and closure. As such, Section 25 K makes it explicitly clear as to in which cases, chapter V B will be applicable. Chapter V B is applicable to:

1. industrial establishments in which not less than 100 workman were employed, on an average, per working day for the preceding twelve months
2. the industrial establishments is not of a seasonal character in which work is performed only intermittently and
3. chapter VB is restricted to Section 25 K to Section 25 C only.

In order to avoid all controversies, the appropriate government is vested with the powers to decide whether an establishment is of seasonal character or not. Even the writ court should not decide it. \AP Federation of I.L.T.D. vis. Govt of A.P. 1983 LIC (NOC) 91].

Industrial Establishment

The term "Industrial Establishments" is defined in:-

a. Section 2 (Ka)

b. Explanation to Section 25 A and

c. Section 25 L.

The definition given in the Explanation (to Section 25A) is meant for Section 25 A, 25 C, 25 D and 25 E only. The definition given in Section 25 L is similarly restricted to the provisions of Chapter VB, Sections 25 K to Section 25 S only. For the purpose of Chapter VB the term 'industrial establishment' means :

i. Factory as defined in Section 2(m) of the Factories Act, 1948.

ii. Mines as defined in Section 2 (i) (j) of the Mines Act, 1952.

iii. Plantation as defined in Section 2 (f) of the Plantation Labour Act, 1951.

It means that even if 100 or more employees are employed, in a 'commercial establishment' the requirements of obtaining prior permission of appropriate Government for (1) Closure, (2) Retrenchment and (3) Lay-off will not be necessary. In Maharashtra General Kamgar Union v/s Indian Gum Industrial Ltd., 2000 II CLR 509, on facts, the court held that there was no functional integrality amongst the three units/Factories (at Mumbai, Jodhpur and Ahmedabad). Contract Labour or Mathadi Workers and the Head Office Staff cannot be counted to satisfy the mandatory test of 100 or more workmen under Section 25K in Chapter VB of the ID Act. Further, the burden of proof is upon the Union to establish the fact that 100 or more workmen were employed so as to attract the provisions of Section 25K of the Act.

As aforesaid, the explanation (to Section 25 A) also defines the same terms (industrial establishment) in the same way. But the applicability is restricted to Section 25 B, 25 C and 25 E only. As such, only in respect of lay-off, the definition given in the Explanation (to Section 25 A) can be utilized and it cannot be used for the closure and retrenchment. In other words, the definition of industrial establishment given in explanation (to Section 25 A) will be applicable only to

1. a. Factories
   b. Mines, and
   c. Plantation
2. Where fifty or more workmen on an average are employed and/or
3. the Factories, Mines and Plantation are not of a Seasonal character or in which work is performed only intermittently.

This will make it clear that for retrenchment and closure are concerned, the definition of "industrial establishment" given in the Explanation (to Section 25 A) will not apply. Hence the expression industrial establishment", for the purpose of retrenchment and closure covered in chapter V-A is wider than the above definitions. For the definition of industrial establishment as used in chapter V-A for the purpose of retrenchment and closure (excluding lay-off) one will have to fall back to the definition given in Section 2 (Ka). The definition given in Section 2 (Ka) is :

a. couched in widest possible terms

b. does not restrict it only to Factories Mines or Plantation.

c. but also covers all the establishments

d. does not exclude industries of seasonal character or where work is performed only intermittently or

e. the minimum number of workmen required to attract the provisions of Section 2 (Ka) is not prescribed.

From the above discussion, it should be more clear that for retrenchment and closure in Chapter VA are concerned, it is wholly immaterial that less than 50 or more than 50 workmen are employed. But if the provisions of prior permission of appropriate government is to be made application (to retrenchment and closure also) then the definition of industrial establishment is restricted as shown in Section 25 L i.e., to

a. Factories, Mines and Plantation

b. Where 100 or more workmen are employed in Mines, Factories or Plantation or

c. The Mines, Factories or Plantation are not of a seasonal character wherein work is not performed only intermittently.

To repeat, prior permission of the appropriate government for closure and 'retrenchment will be necessary only if the industrial establishment is :

a. Factory, Mines or Plantation.

b. Factory, Mines or Plantation deploys hundred or more employees

c. Factories, Mines or Plantations are not of a seasonal character or where work is not performed only intermittently.

23. Conditions Precedent to Retrenchment: Section 25 N

Introductory

As aforesaid, the Act as originally enacted did not have provisions or retrenchment. By Amending Act, 1953, Chapter V A was engrafted. By Amending Act, 1972, the main Act, was further amended and it was further amended in 1976. But in order to have checks and prevents on large scale retrenchment the legislature empowered the appropriate government to grant or refuse permission of large scale retrenchment. These powers, vested in the appropriate government, especially with regard to retrenchment under Section 25 N were held to be unconstitutional. [B.K. Rajendra v/s. Dy. Commissioner of Labour, 1981 LIC 799 and J.K. Synthetics v/s. Union of India, 1984 (48) F.L.R. 125)]. The main Act was then further amended in 1982 and 1984 and that is how the present Section has come to stay. The apex court, in Workmen of Meenakshi Mills Ltd. v/s. Meenakshi Mills Ltd, 1992 I CLR 1010 has upheld the constitutional validity of the present Section 25N.

Pre-Conditions to Valid Retrenchment

The Employer, under Section 25 N, is prohibited from retrenching a workman without giving three months Notice or Wages in lieu of Notice (It is well to remember here that under Section 25 F, it is only one month's notice or wages in lieu of notice is necessary whereas, here, under Section 25N, the period of Notice is three months). But more important and material is that the clause (b) requires the Employers to obtain a prior

permission of the appropriate Government to effect retrenchment, if he has employed not less than one hundred workmen on an average per working day for the preceding twelve months. Needless to record that Section 25 N has to be read with Section 25 K and Section 25L. As aforesaid the effect of combined reading of Section 25 N, 25 K and 25 L will be that even if 100 or more workmen are employed in commercial establishment, prior permission of appropriate government will not be necessary. It is also discussed above that the definition of industrial establishment given in the Explanation (to Section 25 A) will not apply for the purposes of retrenchment/ under Section 25 N. Necessarily, therefore, it follows that retrenchment under Section 25 F will be wider in its application. It is so because the term retrenchment used in Section 25 F will take the meaning given hi Section 2 (K) which defines it in the widest possible term. The term 'retrenchment' used in Section 25 N will leave the narrower meaning and will apply only to :

1. Factory, Mine and Plantation
2. Mines, Factories and Plantation deploying 100 or more workmen and
3. Factories, Mine and Plantations are not of a seasonal character or where work is not preformed only intermittently.

Eligibility for Retrenchment Compensation

From the point of view of employee, (who can be entitled to receive the Retrenchment Compensation), the following workmen will be eligible for R.C.

i. An Employee who is a workman as defined in Section 2 (s)
ii. the workman should have been employed in an industrial establishment namely (a) Factories, Mines and Plantations (b) Factories, Mines and Plantations should deploy hundred or more workmen on an average per working day for the preceding twelve months, (c) Factories, Mines and Plantations should not be of a seasonal character of where work is not performed only intermittently.
iii. the workman must have put in continuous service for not less than one year within the meaning of Section 25 B
iv. appropriate government should have granted permission for the retrenchment
v. If within sixty days the appropriate government does not communicate the order of granting or refusing permission, the permission will be deemed to have been granted and the workmen will receive the benefit granted under Section 25 N.

If the above conditions are fulfilled, the workmen who is to be retrenched, under Section 25 N, shall (a) receive Notice of three months (and not one month-under Section 25 F) or (b) the wages (in lieu of Notice) for three months. Over and above this, the workman, as a further condition precedent, shall also receive retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months. In order to be more clear and explicit. It must be noticed that there are Three conditions precedent for the retrenchment, if Section 25 N is to be applicable, (1) prior permission of appropriate government or deemed permission of appropriate government for retrenchment. (2) Three months notice in writing indicating reasons for retrenchment or wages in lieu of such Notice and (3) payment of retrenchment as specified in Section 25 F(b). It is not necessary to repeat that all the three conditions precedents are mandatory and non-compliance of any one of them will render the retrenchment null and void-ab-initio. As a result, the workmen will be deemed to be in the employment, entitled to full wages, all benefits and continuity of Services.

It is well to take a mental note that conditions precedents shown in Section 25N have not been listed serially but have been humbled jumbled. Clauses (a) and (b) of sub-section (1) of Section 25 N have to be read with sub-section (9) of Section 25 N of the Act.

In A.P. Patel vis. Gujarat State Machine Tools Corpn. 1993 I CLR 1094. It was contended that clauses (a) and (b) of Section 25 (1) are both mandatory and pre-conditions for effective retrenchment. Clause (a) requires the Employer to give Notice of three months to the workmen whereas, clause (b) requires prior permission of the appropriate government. Since the Employer had neither given notice in writing indicating the reasons for retrenchment nor had he given wages in lieu of such notice, the permission granted by the appropriate government was invalid inoperative and the workmen were deemed to be in the employment of the Employer. It was held that it is not necessary to comply with the requirements of clause (a) for the purposes of clause (b) and hence the permission was not invalid. The Employer after fulfilling the requirements of clause (a) namely after obtaining permission of the appropriate government for the retrenchment can proceed to fulfill the requirement of clause (b) namely either giving notice of three months or wages in lieu thereof. If the employer effects retrenchment after obtaining permission [clause (a)] but without giving notice [clause (b)] of retrenchment, retrenchment will be ineffective or inoperative. However, in the later case, Shiv Kumar v/s. State of Haryana, 1994 II ELR 408, the apex court, although did not grant reinstatement and only granted additional benefits to retrenched workmen, nevertheless, it laid down that the Notice of retrenchment must be served on each individual workmen. The apex court laid down in the above Case that the Proof of such individual Notice must be submitted to the competent authority along with the application for permission for retrenchment.

24. How Application for Retrenchment Permission has to be Processed: Section 25 N (2) (3)

The Application for retrenchment permission has to be made in the prescribed manner (see Rules 76 and 76-A of Central Rules) and in prescribed Form (Form P and Form P-A of the Central Rules). The Apex Court in Shiv Kumar (1994 II C.L.R. 408) has laid down that it is mandatory to give Notice [The High Court had also similarly held (1) Bhusan Lai Sharma v/s. L.C. 1990 LIC 1683 and (2) Pratap Kumar Patnaik v/s. M.D. Orissa S.R.T.C, 1991 LIC 944]

Enquiry

On receiving the Application from the Employer for permission of retrenchment, the prescribed authority is under statutory obligation to make an exhaustive enquiry. The information required to be furnished in the Form prescribed for

retrenchment permission bring into focus all aspects which need to be considered by the competent authority on the said Application of the Employer. The specified (the competent) authority should give 'hearing' to (a) the Employer, (b) the workman and/or (c) union or the (d) other persons interested in such retrenchment.

Guide Lines

As aforesaid, for absence of guide lines, Section 25N was held to be unconstitutional. But the Legislature has now provided ample guide lines. Sub-section 3 of Section 25N, now provides the necessary guidelines. After enquiry and hearing the competent authority is required to consider

1. genuineness of retrenchment
2. adequacy of reasons for the retrenchment
3. interests of workman
4. and all other relevant factors.

In other words the competent authority should

a. ascertain as to whether really retrenchment is necessary and it is real.
b. any alternative to retrenchment is available
c. whether interest of other parties is dependent upon retrenchment. In the sense, interest of ancillary industry, their workmen, interest ofcustomers, economy etc. will have to be looked into:

In Workmen of Meenakshi Mills v/s. M.M. Ltd. 1992 I CLR 1010, the apex court discussed the manner in which the competent authority should consider the Application for retrenchment. It held that the object of permission for retrenchment is to prevent avoidable hardship bearing in mind interest not only of the workmen to be retrenched but also of the entire workforce so that it may maintain a highest tempo for production. In another case the Hon'ble Kerala High Court in Muslim Printing (P) Ltd v/s. Secy, to Govt, 1992 II CLR 450 held that the competent authority cannot be equated with the Tribunal but nevertheless, it should consider the issue objectively. The authority must direct itself properly in law he must call his own attention to the matter which he is bound to consider, he must exclude irrelevant consideration. The decision of the authority should be duty conscious and not power charged.

Reasons to be Recorded Sub-section (3)

Sub-section 3 of Section 25 N requires the competent authority to give reasons to its order refusing or granting permission for retrenchment. The reasons given by the competent authority allows the judicial authority to scrutinise the order of the competent authority when it is challenged. It means that the reasons must be relevant and germane to the issue. The decision of the competent authority should not be perverse, capricious or arbitrary. [Electric Steel Castings Ltd. v/s. State of W.B. 1978 II LLJ 521]. Any party aggrieved by the reasons or the order of the competent authority can raise an industrial dispute.

Finality of the Order

Sub-section (5) of Section 25N makes the order of the competent authority final and conclusive. The order remains in force for a period of one year and till then no question arises for challenging it, save and except by Review, raising an industrial dispute under Section 10 or challenging it in writ jurisdiction.

25. Review Sub-section (6)

Sub-section (6) prior to amendment did not contain any provision for a Review or a Reference. It is now amended and it is subjected to scrutiny in three ways

1. The Government itself suo-motto can review its own order
2. The aggrieved party, the Employer, Workmen or Union can move the appropriate government to review its order of competent authority and
3. A reference can be made to the industrial tribunal to adjudicate the dispute on proposed retrenchment.

The time limit of 30 days is laid down. In Association of Engineering Workers v/s. Indian Hume Pipe Co. Ltd. 1986 I LLJ 450, the Application for Review was referred to for adjustification. It took some time in making a reference and the period of limitation in the meanwhile, expired. It was, therefore, contended that a reference after period of limitation was not tenable and the Tribunal is functus officio. The Bombay High Court held that if this is upheld then it will result in injustice and general inconvenience, it will defeat the very purpose of the provision. In Indian Hume Pipe Co Ltd. v/s. Its workman, 1986 ICLR 14 it was held that a reference contemplated under Section 25N (6) is a special reference in as much as the Tribunal's Jurisdiction is limited to the extent of taking Judicial review of the order passed by the competent authority.

26. Exemption from Permission - Section 25N (a)

Sub-section (8) of Section 25(N) empowers the appropriate government to exempt the industrial establishment from the provisions of Section 25N (1) of the Act. It is also provided in sub-section(S) of the Section 25N (N) that the appropriate government can exercise its powers only when exceptional circumstance exist. But it is not explained and it is indicated that if there is an accident in the establishment or death of the Employer or for the like reasons exemption can be granted. The expression "the like" is to be construed ejusdem generis with preceding contingencies.

27. Penalty for Violation : Section 25Q

Section 25Q lays down that any employer who contravenes the provisions of Section 25N shall be punishable. From the language deployed in the Section, it appears that mens-rea is not a necessary condition to attract the provisions of this Section. The very contravention itself will be sufficient to convict the Employer. In case of contravention, the Section provides imprisonment for a term which may extend to one month or with fine which may extend to five thousand rupees or with both (imprisonment and fine). The actual punishment is at the sole judicial discretion of the court trying the offence.

The forum is not indicated in the Section but Section 34 of the Act indicates forum. Section 34 lays down that -

1. No court will take cognizance of any offence punishable under this Act
2. Save on a complaint made by or under the authority of the appropriate government and
3. No court shall try offence punishable under this Act which is inferior to
   a. Metropolitan magistrate or
   b. A judicial magistrate of first class.

28. Procedural Requirements are Same as are Given in Earlier : Section 25

Chapter VA and Chapter VB deal with lay off, retrenchment, closure and transfer depending upon the workmen employed in the industrial establishment. The legislature has no doubt given detailed procedure in Sections 25B, 25D, 25FF, 25G, 25H and 35J. In order to avoid repetitions, it is laid down in Section 25S that those procedure will mutatis mutandis apply to provisions of chapter VB also. Necessarily, therefore the discussion on these Sections will have to be read here also in order to complete the reading of the provisions on retrenchment, lay off and closure contained in chapter VB.

29. Offences by Companies - Section 32

Section 25 Q makes the violation of Section 25N penal, Section 32 makes special provision for the company or the corporate body - whether incorporated or not. The company or corporate body are treated as artificial person in law. The artificial person carries on its day-to-day activities through human being only. The natural persons who act for the artificial persons are roped in under Section 32 for the penalty. The only exception is that the offence should not have been committed with the knowledge of the natural person for the obvious that in criminal law mens-rea plays a vital role. When four Directors of the company were prosecuted, they were acquitted. Two were acquitted on the ground that at the time of prosecution, they had ceased to be Directors. The other two Directors were acquitted on the ground that the offence was committed without their knowledge. An appeal against the acquitted was dismissed. [Mohd. Siddiqui vis. Raghunath Singh, 1979/LIC 876]. In Ravindra Chamaria v/s. Reg. of Companies, 1992 I LLN 921, it was held that provisions of

Companies Act (S. 633) cannot be invoked in trying the offence punishable under ID Act.

Burden of Proof

The initial burden of proving that a valid award was passed, accused were Directors, etc. lies on the prosecution. But once the prosecution discharges its this burden, it is shifted upon the accused. The prosecution need not prove that after passing the award when the accused, took over as - Directors, the existence of the award was within their knowledge State of W.B. v/s. United Rubber Works Ltd., AIR 1959 Cal. 759. But, as aforesaid, the accused can prove that commission of the offence was without their knowledge.

LESSON 15:
CLOSURES

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is meant by closure?
- What is the difference between closure and lockout ?

Closure

Synopsis

1. What is Closure?
2. Closure and Lock-out — Distinction.
3. Analysis of definition in Section 2 (cc)
   i. Mens-rea
4. Effect of closure on contract of employment.
5. Section 25 FFF : Object and Reasons
   i. Undertaking
6. Closed down for any reason whatsoever.
   i. Partial closure
   ii. Closure by stages
   iii. Right of Closure
7. Quantum of compensation
8. Proviso to Explanation
9. Special provisions for mines
10. Special provisions for Building Industry
11. Section 25 FFA - pre-condition of closure
    i. Introductory
    ii. Condition Precedent: Sector 25 FFA
12. Exception and Exemption
13. Penalty for non-compliance of Section 25 FFA

1. What is Closure?

The term “closure” was not defined in the Act. However, when a lot of litigation centred around the closure, the Legislature felt the need of defining the term and accordingly, it is defined in section 2(cc) in the Act by the Amending Act of 1982. Certain judicial dicta have taken the view that even a temporary closure could be taken as the closure. But the present definition restricts it only to the permanent closing down of place of employment or part thereof.

2. Closure and Lock-out - Distinction

The apex court has, time and again, explained the distinction between closure and Lock-out [(1) Express News Papers Ltd. v/s. Their workers, 1962 II LLJ 227 (2) Tatanagar Foundry Co. Ltd. vis Their workmen, 1970 I LLJ 348]

In the case of closure, the Employer closes down his business permanently, finally and irrevocably. There is no intention on his part to restart the work. The right of closing down is as much a fundamental right as to “carry on business”. [Management of Hindustan Steel Ltd. v/s The Workmen, 1973 LIC 461 (SC)]. But in the case of Lock-out the employer does not and he has no intention to close down the business itself. On the contrary, he has clear cut intention not to close down the business itself but to run it as soon as industrial dispute is over or as soon as practicable. The reason and object of Lock-out is only to counter blast the efforts of employees of going on strike. That is absolutely no such case, in case of a closure. No doubt in closure as well as in Lock out the employer stops running the business and so he closes his business. But in Lock out, he closes business premises temporarily whereas in the case of closure, the business itself is closed down permanently and so consequently the business premises is closed down. The difference lies in the intention. In closure the intention is to permanently close down the business, in Lock-out, the intention is to close the business temporarily. The another difference is in the object or the reason in Lock out the object is the collective bargaining or to compel the employees to accept his terms and conditions in employment, in case of closure, reason can be anything except this reason. The closure is a right very akin to fundamental right. That is not ®o in the case of Lock out. The distinction between the two is so narrow and thin that it is always very difficult to judge whether purported closure is real and genuine closure or it is a sham one, or a disguise for a lock out [Express Newspapers Ltd., 1962 II LLJ 227 (SC)]. In General Labour Union v/s B.V. Chavan, 1985 I LLJ 82, the apex court had held that in the case of a closure, an Employer does not merely close down the place of employment but the business itself. It is the duty of the Industrial Tribunal or the Labour Court to enquire if the closure was genuine and bonafide or a camouflage for a lock out. A company, on closure, leased its plant and machinery to another company. The chairman of the lesee company happened to be a son of the chairman of the Lessor company. The union pleaded that it was not a genuine closure but a malafied transaction. It was held that it was not a sufficient reason to hold that there was no closure [Mazdoor Congress v/s W.L. Bhalchandra 1993 II CLR 788.

The definition does not indicate what factors may indicate the permanent closure or a temporary closure. All depends upon the facts and circumstances of each case.

(3) Analysis of Definition in Section 2(cc)

The term “closure” is defined in Section 2 (cc) to mean “the permanent closing of a place of employment or part thereof. Thus a closure may be of the entire undertaking or even a part of it. But a partial closure must be of such a part of the undertaking that the closed part has the independent functioning [Raj Hans Press v/s K.S. Sidhu, 1977 LIC 1633]. The closure of a part of a business is an act of management which

is entirely at the sweet discretion of the employer. The Industrial Tribunal cannot even in a reference under Section 10 (1) of the Act interfere and direct an Employer to continue the whole or part of the business which the employer has decided to shut down [Workmen of Indian Leaf Tobacco Development Co. Ltd. v/s ILTD Co. Ltd., 1970 I LLJ 343 (SO.

Mens-rea

In Banaras Ice Factory Ltd. v/s. Their Workmen, 1957 I LLJ 253, the apex court observed that if there is no real closure but a mere pretence of a closure, or it is malafide, there is no closure in the eyes of Law. Later, the apex court clarified its observations in Banaras Ice Factory [1957 I LLJ 253] on the issue of 'mala fide'. It clarified that the observations are not to be read as laying down an unqualified and categorical proposition of Law that where a closure is malafide, closure must be deemed to be unreal and non-existent while it is true that closure must not be malafide but must be bonafide. However, bonafide should not relate to or should not refer to the 'motive' or "mens-rea' but it should refer to the fact of the closure. [Indian Hume Pipe Co. Ltd. v/s Their Workmen, 1969 I LLJ 242]. In Andhra Prabha Ltd. v/s Madras Union of Journalists, 1968 I LLJ 15, the apex court pointed out that there might be more than one motive working in the mind of the employer leading him to closure of his establishment and it was not for the Industrial Tribunal to examine and decide on the bonafides of the motive. In Indian Hume Pipe Co. Ltd. v/s Their Workmen, 1969 I LLJ 242 the Industrial Tribunal on examining the evidence took the view that the decision to close down the factory was in retaliation of a strike notice given by the union over the question of Bonus and went into the question as to whether the closure was bonafide and justified. It came to the conclusion that the reason given by the company for the closure was malafide for the purpose of dispensing with the service of the workers who had, since the formation of their union, been fighting with the company for their betterment. The apex count held that it was not open to the Tribunal to go into the question as to the motive or mens-rea of the company in closing down its factory and to enquire whether it was bonafide or malafide, with some oblique purpose, to punish the workmen. In Kalinga Tubes Ltd. v/s Their Workmen, 1969 I LLJ 557, the apex court said that the essence of the matter is the factum of closure by whatever reasons motivated. Thus motive behind the closure is not material. What is material is the factum of closure -is it in effect closed down or not. It means the closure should be bonafide and not that the motive should be bonafide.

4. Effect of Closure on Contract of Employment

The closure does not by itself bring about termination of services of the employees because the **contract of service** does not automatically stand terminated just because the company stops its activities. In order to terminate services, it is absolutely necessary that a Notice is given to the employees whose services are desired to be terminated. The Notice of termination may be given individually or collectively but a notice is a must [(1) Workmen of Sur Iron & Steel Co. (P) Ltd. v/s Sur Iron & Steel Co. (P) Ltd., 1971 I LLJ 570 (Bombay) (2) D.S. Vasavada v/s PRF - Commissioner, 1985 I LLJ 263 (Guj)]

5. Section 25 FFF : Object and Reasons

The closure brings about en-mass termination. It, in turn; creates large-scale unemployment. The sudden unemployment poses great hardship, not only to the concerned workmen but to his entire family. The large scale unemployment is not a healthy sign of a prospering nation and it is, therefore, in the national interest to do something about it.

The Legislature, therefore, has considered it necessary,

1. to provide for such an involuntary unemployment
2. to create a sense of security in workmen; and
3. to raise the position and status of labour

[See Rajkumar Singh v/s Authority under PWA, 1960 II LLJ 543 (MP)]

Where an undertaking is closed down for any reason what-soever

Section 25 FFF opens with the phraseology "where an undertaking is closed down for any reason, whatsoever." The terms "undertaking" "closed down" and "any reason whatsoever" need to be clearly understood in the light of judicial dicta.

Undertaking

This term is used in Sections 25 FF, 25 FFA, 25-0 and 25 R. The term "undertaking" is defined in Section 2 (ka). The definition given in S 2(ka) broadly follows the interpretation of the term "industry" given by the apex court in Bangalore Sewerage Board v/s Rajappa, 1978 I LLJ 349. However, the judgement of the apex court in S.G. Chemicals and Dyes Trading Employees Union v/s SGCDT Ltd., 1986 I LLJ 490, with respect does not appear to stand the test of the scrutiny. It is with respect submitted that the ruling (in S.G. Chemicals 86 I LLJ 490) seeks to imply that the word "Industry" has to qualify both, establishment as well as "undertaking". The apex court, however in earlier decision in Hindustan Steel Ltd v/s Its Workmen, 1973 II LLJ 250 had held that the term 'undertaking* was used in its ordinary sense and not intended to cover the entire industry. Whereas in Workman of Straw Board Mfg. Co. Ltd. v/s SBM Co. Ltd., AIR SC 1974 1132, the apex court held that it is most important to bear in mind whether one unit has such componential relation that closing of one must lead to the closing of the other, or one cannot reasonably exist without the other.

It should be thus be clear that the term "undertaking" used here is in a narrower sense than the term industry inasmuch as the 'industry* is a whole of which undertaking is a part. The term 'undertaking' must mean a separate and distinct business or commercial or trading of industrial activity.

6. Closed Down for any Reason Whatsoever

"Closure" as defined in section 2 (cc) means only the permanent closing down of a place of employment or part thereof. The total physical shut-down on permanent basis is the only requirement. The 'motive' or mens-rea is wholly irrelevant so long as shut-down is permanent, final and irrevocable. The use of phraseology of 'for any reason whatsoever' is the clear and sure indication that motive is not relevant on the issue of closure.

Partial Closure

In Radio and Electrical Ltd, v/s I.T. 1970, II LLJ 206, the closure was challenged on the ground that, part of the business was continuing and hence it was a retrenchment and not the closure. The Madras High Court held that partial closure under section 25 FFF is permissible.

Closure by Stages

In Workmen of SBM Co. Ltd. v/s Straw Board Manufacturing Co. Ltd., 1974 I LLJ 499, it was contended that there was no closure on 7th may 1977 as the process of closure was continued upto 28th July 1967. The apex court held that it may not always be possible to immediately shut down a mill or concern even though a decision to close down the same was taken much earlier. There is, therefore nothing wrong in arranging a closure in such a way that it guards against unnecessary inconvenience and against possible avoidance of wastage. Commencement of liquidation proceedings would not amount to closure. The closure must relate to closure of the establishment -[United Provinces Electric Supply Co. Ltd. v/s I.T., 1974 LIC 902 (Gal)].

Right of Closure

In Hathesing Manufacturing Co. v/s Union of India, 1960 II LLJ 1, the apex court held that it is as much a fundamental right to close down the business as to carry on the business [Management of Hindustan Steel Ltd. v/s The Workmen, 1973 LIC 461, the apex court held that the termination of services in the case of closure is inevitable, howsoever, it may be unfortunate. In Workmen of Straw Board Case, 1974 I LLJ 499, the apex court held that no employer can be compelled to carry on business against his own wishes and for reasons of his own. But undoubtedly a duty is cast upon the employer who chooses to close down the business to comply with this Section.

7. Quantum of Compensation

The employees are thrown out of employment suddenly on account of closure. The sudden unemployment, in its turn, brings tons of misery and untold hardship. The legislature, no doubt, cannot prevent closure, it being a fundamental right, has made provision for payment of money to these employees thrown out of employment on account of closure.

The Legislature for computing quantum of money, on closure, has adopted the same methodology as adopted for the retrenchment. The methodology of payment in case of retrenchment is given in Section 25 F of the Act. However, it must be clearly understood here that payment of compensation for retrenchment is a condition precedent and non-payment treats the retrenchment non-est - not in existence. That is not the condition here. While closure compensation is mandatory but non-payment does not render the closure non-est (or not in existance). [Avon - Services (Production) Agencies Ltd. v/s I.T., 1979 I LLJ 1 (SC)]. Since, the retrenchment provision is dealt with, it is not repeated here but must be deemed to have been set out here.

8. Proviso to Explanation

The Proviso is the exception to the general rule of payment of compensation. It lays down that if closure is on account of unavoidable circumstances beyond the control of the employer the maximum closure compensation will be equal to a workman's average pay for three months. Although in the Explanation, the circumstances which cannot be the unavoidable circumstances beyond the control of the employer are enumerated nevertheless it depends upon the facts and circumstances of each case. In Savana Transport Ltd. v/s Savana Transport Employees Association, 1994 II LLJ 269, the Kerala High Court held that closure on account of employees indiscipline was for the reasons beyond the control of the employer.

The circumstances which cannot be called as the unavoidable circumstances beyond the control of the employer, as given in the Explanation, are as follows:

1. financial difficulties/Losses
2. accumulated stock
3. expiry of Lease period
4. in case of mining operations, exhausting of minerals in the area of operation.

When the shop was closed down because the owner was suffering from T.B. and was admitted to a sanatorium it was not held to be unavoidable circumstances, beyond the control of the Employer Antony v /s Kumaran, 1979 I LLJ 406.

9. Special Provisions for Mines

Sub-section 1-A provides that in case of Mines, workmen will not be given closure compensations if minerals get exhausted and as a result, the mining operations have to be discontinued. This benefit is available only on conditions :

1. If minerals get exhausted and
2. Employer fulfills three conditions
   a. alternative employment on same terms and condition and remuneration is given to workman
   b. Services remain un-interrupted and
3. in subsequent closure, employer undertakes to pay closure compensation for the throughout period - on the basis of continuous service.

10. Special Provisions for Building Industry

The second exception to the general rule of closure compensation is laid down in sub-section 1-A. It is applicable to undertakings set up for construction of

1. Buildings
2. Bridges
3. Roads
4. Canals
5. Dams or
6. Construction work which is over on completion of job.

The benefit of this exception is available only when the undertaking is closed down within two years from the data of its set up. However, if no closure within two years then workmen will be entitled to the closure compensation at the same rate as prescribed under sub-section (1), if an undertaking takes up construction work wherever available, and if it deploys local persons for local work then it has freedom of discontinuing the local staff and the test of Unity of ownership, unity of management or unity of control on all different local units is not available. As such, the workmen of local units, if re-

trenched, do not have any right to demand the benefits flowing from this Section [Hindustan - Steel Works, Construction Ltd. v/s HSWC Employees Union, 1995 LIC 1594, (SC)].

11. Section 25 FFA - Pre-condition of Closure

Introductory

The right to carry on business is a fundamental right. The right of closure is implicit in the fundamental right (enshrined in article 19(1) (g) of the constitution of India) [Hathesing Manufacturing Co. Ltd. vis Union of India, AIR 1960 SC 923]. The natural and consequent result of implicit fundamental right of closure is an en-mass unemployment. But when the en-mass unemployment in West Bengal became acute, a local amendment was carried out in the Act to control the misery and maladies of unemployment in the State of West Bengal. Later on, Section 25 FFA on the lines of WB Amendment came to be inserted in 1972 in the Act.

Condition Precedent: Section 25 FFA

Section 25 FFA requires that an Employer who intends to effect a closure shall give Notice :

a. at least 60 days before intended closure

b. Serve a Notice in the manner prescribed in Rules framed under the Act.

c. On the appropriate Government

d. Stating clearly the reasons

e. for the intended closure.

This Section does not take away the Employer's fundamental right implicit in the closure, it only requires the Employer to give Notice of 60 days to the appropriate Government giving reasons of closure. The failure to give such Notice attracts penalty of imprisonment for a term upto 6 months or fine upto Rs. 5000/- or both under Section 30 A of the Act. In Walford Transport Ltd. v /s State of West Bengal, 1978 II LLJ 110, (and also 1979 LIC 70) the Calcutta High Court held that if Notice is not given, the closure will not be illegal or non-est. But the Bombay High Court in Maharashtra General Kamgar Union v/s Glass Container (P) Ltd., 1983 I LLJ 326 took the view that if closure Notice is not given then the closure becomes illegal and invalid. A Similar view was taken by the Gujarat High Court in the D.S. Vasavada v/s R.P.F. Commissioner, 1985, I LLJ 263. But later on the Bombay High Court too has taken the view that non compliance of Section 25 FFA does not render closure illegal or non-est.

1. Mazdoor Congress vis N.L. Bhalchandra, 1994 II LLJ, 692 II CLR 692 (Bombay).
2. Miscellaneous Mazdoor Sabhav/s State of Gujarat, 1992 II CLR 754. Also see
    1. Management of Town Bidi Factory v/s P.O. L.C. 1990 II CLR 358 and
    2. Poonavasi and Ors. v/s Crown Silk Wearing Industries, 1994, ICLR 1047,

12. Exception and Exemption

The Proviso exempts the following from the vigour of subsection (1)

1. an undertaking in which
    a. less than fifty workmen are employed or
    b. less then fifty workness were employed, on an average, per working day on the preceding twelve months and
2. an undertaking engaged in construction of buildings, bridges, roads, canals, dams or other construction work or project.

Sub-section (2) invest the power granting of exemption in the appropriate government and the power so invested in the appropriate government is unrestricted because of the non-obstante clause. The only requirement is that the appropriate Government has to satisfy itself with the necessity to grant exemption. The Government can exercise its powers only in exceptional circumstances exist and not otherwise.

13. Penalty for Non-compliance of Section 25 FFA

Section 30 A provides a Penalty for breach of Section 25 FFA. The penalty is of deterrent nature. It is necessary to bring home the offence, to prove that:

1. Employer has in fact closed down the undertaking and
2. the provisions of Section 25 FFA have not been complied with

If the above two facts are proved, the Employer will be punished with

1. imprisonments for a term which may extend upto six months or
2. with fine which may extend upto five thousand rupee or
3. with both (imprisonment and fine).

The actual quantum of punishment is left to the sole judicial description of the court trying the offence.

The forum is not indicated here but Section 34 of the Act provides the forum. Section 34 lays down that

1. No court will take cognizance of any offence (including as provided in Section 25 FFA) punishable under this Act
2. Save on a complaint made by or under the authority of the appropriate Government, and
3. No court shall try offence punishable under this Act which is inferior to
    a. Metropolitan - Magistrate or a
    b. Judicial Magistrate of First-class.

LESSON 16:
OTHER PROVISIONS UNDER THE INDUSTRIAL DISPUTES ACT

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the other provisions under the act?
- What happens when the service conditions remain unchanged?

Other Provisions Under Chapters VA, VB and VC

Synopsis

1. Effect of law inconsistent with Chapter VA : Section 25 S.
2. Special Provisions for restarting an Undertaking Closed down before ID Act Section 25P.
3. Section 25B, 25D, 25FF, 25G, 25H and 25J to apply to Chapter VB - Section 25 S.
4. Fifth Schedule.

1. Effects of Law Inconsistent with Chapter VA: Section 25 S

Section 25 J gives overriding effect to Chapter V A over all other provisions under any law, if these provisions are in consistent with chapter VA and only to the extent of - inconsistency [Brahmachari Research Institute v/s Its Workmen, 1959 II LLJ 840 (SC), British India corporation v/s I.T. 1962 I LLJ 577, Bhan-warlal v/s RSRTC 1984 LIC 1794 (1851)]. Chapter V B as such, determines wider rights and liabilities of workmen and Employers and it is not limited to lay off- retrenchment etc. M.A. Veirya v/s C.P. Fernandez, 1956 I LLJ 547. The standing order, if inconsistent with the lay off retrenchment etc. then instead of those inconsistent provisions of Standing orders, the provisions of chapter VA will apply and even workmen cannot contract out or settle out the statutory rights conferred on him under Chapter V A [Nandlal v/s Union of India, 1978 LIC 1267, Bhaskaran v/s Sub-divisional officer, 1982 I LLJ 248, R.B. Bansilal Abirchand Mills v/s L.C. 1972 285 (SO, Mahavir v/s O.K. Mittal 1979 II LLJ 363, Bulak-hidas Mills v/s Ramabhai 1995 LIC 675]. The service of Badli workmen cannot terminated by discharge simplicitor under S.O. if Badli workmen satisfy the provisions of Section 25B [Mohanlal v/s Bharat Electronics Ltd. II LLJ 70 & Mukunda v/s M.D. KSRTC, 1986 I LLJ 470].

The general overriding effect has two exceptions which have been set out in two sub-section to Section 25J. The same are as under:

1. If the other provisions (which are not given over riding effect of the provisions of Chapter V A) are better provisions, give better benefits and better rights to workmen then the provisions of chapter VA giving lesser benefits will not have the over riding effects. But the provisions beneficial to workmen will prevail upon the provisions of Chapter V A.
2. If the state government have set up provisions for settlement of industrial disputes by enacting the state Acts then the provisions of State Act will prevail. But there is an exception to (this) exception. It is provided that in any case, the provisions of Chapter V A in respect of lay off and retrenchment will prevail in all cases (and not the State provisions for settling industrial disputes). (Hand Lamps Ltd. v/s State of U.P. 1989II LLJ 230).

2. Special Provisions for Restarting an Undertaking Closed Down Before I.D. Act: Section 25P

If an undertaking was closed down before the I.D. (Amendment) Act, 1976 was brought into effect. The appropriate government is vested with powers under Section 25P to direct such an undertaking to which this Chapter (V B) applies to restart it. There are four conditions which must cumulatively apply. The appropriate government on the basis of material before it forms the opinion to direct the undertaking to - restart it. The conditions which must cumulatively apply are :

1. the undertaking was closed down for the reasons otherwise than the reason of unavoidable circumstances.
2. restarting should not result in hardship to the Employer in selection to the undertaking.
3. restarting should be possible.
4. the restarting of the undertaking is necessary for (1) rehabilitation of the workmen. (2) the maintenance of supplies and services essential to community.

3. Section 25B, 25D, 25FF, 25G, 25H and 25 J to apply to chapter V B - Section 25S

Section 25B	deals with continuous service.
Section 25D	requires Muster Roll to be maintained.
Section 25FF	lays down provisions of compensation to workmen in case of transfer of undertaking.
Section 25G	lays down the rule Last Come First Go.
Section 25H	lays down the rule of Re-employment of retrenched workmen.
Section 25 J	says that inconsistent law will have no application over the provisions of chapter VA.

All these provisions deal with the procedure with regard to lay off retrenchment and closure. These - procedure are primarily laid down for Chapter V A. As is clear, chapter V B also deal with lay off, retrenchment and closure but where one hundred or more workman are employed. However, in chapter VB these procedural rules are not enacted. Hence, for brevity's sake, under Section 25 same procedural rules confined to Sections 25B, 25D 25FF, 25G, 25H and 25J are adopted. Therefore these Sections

will be read as part of Chapter V B also. However, it should be clearly noted that provisions of Sections 25C, 25E, 25F and 25FFA are excluded because Chapter V B does not apply to these provisions.

By Amending Act 46 of 1984, a new Chapter V C has come to be inserted, perhaps, to take advantage of new concept of unfair labour practices. This appears to be on the basis of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1974, a Maharashtra State Legislation, first of its kind in the entire country. The term unfair labour practice is defined in Section 2 (ra). But it does not say anything except that any practices specified in Schedule V. Thus, more than definition, it is a list of practices which will be treated as unfair labour practices under the Act. The Fifth Schedule has, more or less, adopted the unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of unfair Labour Practices Act, 1972. Therefore, since the two Acts (I.D. Act & MRTU & PULP Act) have the same or the similar unfair labour practices the judicial interpretation given in the MRTU & PULP Act can be beneficial used for ID Act. Nevertheless, it cannot be over looked that there are always limitations in this regard. It is because, there is undoubtedly difference in scope concept enforcement of penalty, quantum of penalty and type of relief the aggrieved party can be given and so on.

Section 25 T lays down that Employer Workmen or their trade union will not indulge into commission of unfair labour practice. While Section 25 U makes the commission of unfair labour practices, as an offence punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both.

The noteworthy features of Chapter V C is that although it renders unfair labour practices punishable but it does not clarify as to who will prosecute, in which court and the procedure to be followed. Section 34 is the only provision which answers these questions.

Section 34 lays down that the court, nor inferior to that of Metropolitan Magistrate (or the judicial Magistrate of First Class) shall take cognizance and try the offence on a complaint by or under the authority of appropriate government. Needless to record that the appropriate government hardly moves and thus the whole remedy is nothing but on eye wash.

4. Fifth Schedule

Fifth Schedule lists unfair labour practices in two parts First part lists unfair labour practices on the part of Employers and then-trade unions. Such unfair labour practices are sixteen in number. The Second part lists unfair labour practices on the part of Employees and their unions. Such unfair labour practices are Eight in number. As already stated the MRTU & PULP Act provisions can be beneficial used here.

Part H-

Pendente Lite

The Service Conditions To Remain Unchanged

Synopsis

1. Evolution - Section 33.
2. Employer - meaning under Section 33.
3. Sub-section (1) of Section 33.
4. Condition of service
5. Deemed alteration of service.
6. Pendency.
7. Suspension of workman before permission
8. Sub-section (2) - approval.
9. Concerned with dispute.
10. Scope of enquiry.
11. Can interim relief be granted?
12. Application of principles of Res-judicta.
13. Nature of proceedings under Section 33(2)(b) & Section 10.
14. When pending dispute is over - Jurisdiction - how - long lasting.
15. Explanation - Protected Workmen
16. Sub-section (4) - Number of “Protected Workmen”.
17. Sub-section (5) - Limitation in disposing of the application under Section 33(2).
18. Section 33(A).
    i. Remedial Relief.
    ii. What way Section 33 is contravened.
    iii. Nature and scope of enquiry under Section 33A.
    iv. If anticipatory or interim relief permissible under Section 33A.
    v. Res-judicta applicability to Section 33A.
19. Section 33B.
20. Section 33C.
21. Section 33C(2).
22. Ingredients of Section 33C(2).
    i. Entitle to receive.
    ii. Any money or any benefit which is capable of being computed in terms of money.
    iii. Gratuity.
23. Scope of nature of enquiry.
24. Limitation.

1. Evolution : Section 33

The Act is enacted to give a judicial remedy for industrial disputes. The Act, as such, under Section 22 and 23 prohibits illegal strikes and lock-outs. At the same time, it has also laid down the constitutional method of resolving the industrial disputes leading to illegal strike - lock out. The Act also envisages a situation wherein the Employer may have to change the service condition or dismiss / discharge his workmen pendente lite [pending litigation (of industrial dispute)]. Section 33 is, therefore, introduced to allow the Employer to take such action, but only in genuine cases. Section 33 thus protects employers and workmen, both. Workmen are protected in as much as the Employer is required to take prior permission of the authority before which the proceedings of industrial dispute is pending. In Air India Corporation v/s V.A. Rebello, 1972 I LLJ 501, the apex Court held that the ordinary right of Employer to alter Service condition or effect termina-

tion is altered and it is subjected to certain conditions. Section 33 imposes **Status-quo** on master and servant relationship which is already strained on account of earlier industrial dispute

2. Employer-meaning Under Section 33

The expression "Employer" in Section 33-33A has wider meaning and even if the lessee is not a party to the original proceeding, the workmen of lessee can file an application under Section 33A, if action of the lessee is in contravention of Section 33A. [S.G. Sugar Ltd. v/s AIi Hasan, 1957 II LLJ 513].

3. Sub-section 1 of Section 33

Section 33(1) provides that during pendency of any proceedings, no employer shall alter service conditions of workmen to their prejudice. It means that some proceedings must be pending before the authorities under the Act. What are the authorities before which proceedings can lie? Authorities mentioned in Section 33 are two, (1) conciliatory Authorities and (2) Ad-judicatory Authorities. The conciliatory Authorities, in turn, are two, (i) the conciliation officer and (ii) conciliation Boards. But the Adjudicatory Authorities are three, (i) Labour Courts, (ii) the Industrial Tribunals and (iii) the National Tribunals. Thus proceedings of an industrial dispute should have been pending before anyone of these Authorities. Then and then only provisions of Section 33 can come into operation. Undoubtedly the other conditions namely discharge, dismissal or change in service condition by the Employer to the prejudice of workman should also be present. In ICI India Ltd. P.O.I.C., 2000 I CLR 282, during the course of inquiry, the workman had made an application for recalling the witness for further cross examination but it was rejected by the Enquiry Officer. Since the workman was found guilty of misconduct, the management decided to dismiss him from the service. However, it was necessary to make an Approval Application before the Industrial Court, so it was made. The Industrial Court held that since the witness was not recalled for cross examination, the domestic enquiry held against the workman was vitiated for violation of principles of natural justice and hence rejected the approval sought by the Employer. High Court held that since the application for recalling the witness was not bonafide, it could not be said that the principles of natural justice were not followed and hence the approval to dismiss the workmen could not have been rejected by the Industrial Court. To summarise :

i. A proceeding must be pending, either before Conciliation Officer, Conciliation Board, Labour Court, Industrial Tribunal or National Tribunal,
ii. pending proceedings must be in respect of industrial dispute (Section 2 (k) of the Act).
iii. the service condition of workmen intended to be changed/ or changed must be earlier applicable to them just before the pending proceedings.
iv. the change in service condition is to the prejudice of the workmen. If advantageous, no question arises.
v. there is a discharge, dismissal for a misconduct.
vi. Alteration or misconduct is connected with the pending proceedings.

If all the above conditions exist then Section 33 of the Act comes in operation. As a result, the employer cannot effect the change in service condition or discharge, dismiss his workmen in respect of whom the proceedings of industrial disputes are pending, without prior approval of the Authority before which proceedings are pending.

4. Condition of Service

The service conditions contemplated under Section 33 (1) (a) relate to basic conditions of service such as permanency. In Nava Krishna Chakrawarthy v/s CSRTC, 1979 LIC 966, the Bus conductors were also on occasions, asked to work as cashier. During the pendency of a conciliation proceedings the conductors working as cashier were asked to work as conductors. The Calcutta High Court held that in the instant case the workmen were holding substantive post of conductors. Asking them to work on their substantive post did not amount to alteration of service conditions. However when workmen were on strike and when they refused to resume their work, the employer terminated their service on the ground that they had abandoned their services. The apex court held that absence from duty because of peaceful strike cannot be held to be abandonment of service. The company's action amounted to alteration of conditions of service [G.T. Lad v/s. Chemicals and Fibres India Ltd, 1979 LIC 290. In Bhavnagar Municipality v/s. Alibhai Karimbhai, 1979 I LLJ 407 the court held it a clear breach of Section 33(1) (a) when services of temporary workmen were retrenched when they raised the issue of permanency. But in case of L.M. Thapar v/s. State of Bihar 1970 II LLJ 611 the Patna High Court held that retrenchment does not mean alteration in service conditions. In M.S. Manickram v/s. Cheran Transport Corpn, 1981 I LLJ 396 termination under standing orders was not held to be in violation of Section 33. In Ayodhaya v/s. The Addition I.T. 1989 LIC 1302, Alteration in promotion rules was held to be no alteration in service condition.

5. Deemed Alteration of Service

The alteration of service must be such that law must take it as alteration. It means that even if there is, in fact an alteration but law may not recognise it as alteration then not withstanding that in reality there is an alteration, it will not be deemed to be alteration. For example, A dispute on promotion was raised and it was pending. While such a dispute was pending the employer announced changes in promotion conditions for some other Section. Although it did cause some prejudice to the employees who had raised dispute, the apex court held that alteration caused prejudice to **chances** of promotion and hence it cannot be said to be hit by provisions of Section 33(1) (a) of the Act. In other words, it was not deemed to be an alteration in service conditions Reserve Bank of India v/s. P.O. N.T.I. 1103.

Workmen should be Concerned with the Dispute

If workmen are not concerned with or if he is not one of the workmen who had raised the industrial dispute which is pending, the provisions of Section 33 (1) (a) are not attracted. In other words, the workmen referred to in the Section are those who are concerned with the dispute. The provisions of Section 33 (1) and 33 (2) (b) in respect of "Workman concerned in a dispute" are pari materia. As such case laws in 33 (2) (b) in

this regard can be beneficially used in Section 33 (1) (a) also. From the judgements given in Hindustan Copper Ltd. v/s. I. T. 1979 LIC 172 and Dig-wadish Colliery v/s. Ramji Singh 1964 II LLJ 143, it should be clear that only workman who are concerned are covered by the Section. And if a union has raised the dispute then all its members, concerned or not concerned, are not covered under this provision. But only those workmen members who are concerned with the pending dispute are benefited by this provision. The workman concerned in a dispute should prove that

1. he has either raised or sponsored the pending dispute
2. he will be bound by award ultimately passed in the pending dispute and
3. he has direct connection or interest in the pending dispute.

6. Pendency

The benefit of Section 33 is available as aforesaid only when proceedings of adjudication, arbitration or conciliation, are pending. The period between the commencement and conclusion or final determination is called as "pending of the proceedings". Obviously, when there is an interim settlement the proceedings are not concluded and hence the same are pending [Indian Tobacco Co. Ltd. v/s Government of W.B. 1971 I LLJ 89]. In Raja Kulkarni v/s. State of Bombay 1965 II LLJ 128, the apex court held that the Section requires no more than that the proceedings are pending. It is not necessary that the proceedings should be valid or competants. In H.D. Sharma v/s. Northern India Textile Research Assn., 2000 II CLR 8, the workman was dismissed and since an industrial dispute was pending, the Employer moved the application for approval under the UP ID Act. The workman on dismissal raised an industrial dispute, which came to be referred to for the adjudication. Thereupon, the employer moved for withdrawal of approval application. The Industrial Tribunal dismissed the application for withdrawal but the High Court, in Writ Jurisdiction, allowed it. The apex Court set aside the Order of the High Court and held that the scope of proceedings under approval application and adjudication of the industrial dispute are substantially different and separate rights, remedies and protections have been provided under these two proceedings. The reference for the adjudication of the industrial dispute would not come to an end on grant of approval application. It cannot be said that two proceedings cannot be continued at the same time.

7. Suspension of Workmen before Permission

In Hotel Imperial, New Delhi v/s. Hotel Workers Union, AIR 1959 SCI 352, the apex court held that if the Employer applies for permission under Section 33 (1) or 33 (2) (b), he can suspend his employee, if so desired and if there is any provision for suspension under the standing orders. However, if there is no provision in the standing orders, the right to suspend the employee may be presumed in the contract of employment. Later on, in the case of Fakirbhai Fulabhai Solanki v/s. P. O. 1986 LIC 879, the apex court reconsidered the case of (Hotel Imperial AIR 1959 SC 1352) and laid down that just as Employer's right to suspend his employee can be treated as an implied condition, the suspension allowance to workmen should also be treated as an implied condition of contract of employment.

In Ram Lakhan v/s. P.O. 2000 II CLR 563, the employees were given chargesheet and after Domestic Enquiry, decision was taken to dismiss them. However, as an industrial dispute was pending before the Tribunal, the management suspended them and moved the Approval Application before the Tribunal. The employees objected to the said Application and claimed the sub-**sistence allowance.** The Industrial Court as well as the High Court, relying upon the ruling of the apex Court in Hotel Imperical v/s. Hotel Workers' Union, 1959-60 (17) FJR 39 (SC) rejected the claim of the subsistence allowance raised by the employees. Since the ruling given in the Hotel Imperial case was of the Bench of three judges of the apex Court the case of Ram Lakhan (under discussion) was also placed before the Bench of the Three judges of the apex court.

In the case of Hotel Imperial, 1959-60 (17) FJR 39 (SC), the apex Court had held that the Employer can suspend his employee. The view expressed in Hotel Imperial's case [1959-60 (17) FJR 39 (SC)] was reiterated in T. Cajee v/s. Sarmanik Siem 1961 FLR 304, R.P. Kapur v/s. Union of India 1964 (5) SCR 431 and Bal-vantray Ratilal Patel v/s. State of Maharashtra, 1968 (17) FLR 445. In Balvantray's case, the apex Court noted that the only question that can arise is about the payment of wages to the servant during the period of suspension. But the Employer has no right to suspend his employee unless such a right is available to him either under the Contract of Employment or in some Statute or Rules or the Standing Orders. But yet if he does so, in the sense that he forbids the employee to work, he will have to pay full wages to his employee suspended by him. The apex Court also noted that the right to life is guaranteed to a person under Article 21 of the Constitution of India and the same has to be read in the Service Rulers relating to payment of subsistence allowance. It was for this reason, in State of Maharashtra v/s. Chanderbhan, 1984 (48) FLR 57 the apex Court struck down a service rule, which provided for payment of nominal amount of rupee one as subsistence allowance. Only in the case of Fakirbhai Fulabhai v/s. P.O. 1986 I CLR 440, the apex Court in clear terms laid down that the employees are entitled to receive subsistence allowance during the pendency of the approval application.

The apex Court also considered several other judgements and held (in the case of Ramlakhan, 2000 II CLR 563) that while the employer is entitled to suspend the employees, the employees are entitled to receive subsistence allowance while the approval application is pending before the. Industrial Tribunal exercising the jurisdiction under Section 33 of Act.

Thus, as it stands now, (1) the Employer is free to suspend his workmen pending his Application for approval (2) Employer should pay suspension allowance as prescribed under the Standing Orders or if no Standing Orders then as directed by the Authority before whom application for approval is made (3) if Employer fails to pay subsistence allowance his application is liable to be rejected on this ground alone (4) But he can make a fresh application for permission for approval after he has discharged his liability in respect of suspension allowance.

8. Sub-section (2) - Approval

Section 33 in its sub-section (2) permits the Employer to change the service condition but only in cases in which service conditions are not connected with the pending dispute. Indeed such a change in service conditions can be made only after :

1. making application for the permission of the Authority before whom the dispute is ending and
2. paying one month's Notice pay. The Application to the Authority, one month's wages and the action taken must be in one single transaction simultaneously. It means, unlike earlier provision, the Employer is not required to wait for the approval of the concerned Authority
3. The workman is concerned in the dispute (but misconduct is not connected with the pending dispute) and
4. The proposed action is by way of either discharge or dismissal.

9. Concerned with Dispute

In order to be concerned with the dispute a workman must have raised or sponsored the pending dispute. Thus if dispute of individual workman is pending (Bus conductor was dismissed for not issuing ticket and an industrial dispute in respect of dismissal is pending) that by itself will not require the Employer - to obtain approval on subsequent dismissal of the another conductor on the ground that he had not issued tickets. [Bihar S.R.T.C. v/s. Janardhan Singh, 1979 LIC 312]. Similarly if a strike matter is pending and the workman who had not participated in the strike and who was dismissed for misappropriation of funds, it cannot be said that the workman was concerned with the dispute [Indra Singh v/s. 7th I.T. 1981 LIC 890]

10. Scope of Enquiry

If the Employer makes an Application for seeking approval, the Authority before granting or refusing the approval has to consider.

1. Whether standing orders or rules and regulations or contract of service justify dismissal
2. Whether enquiry is held as provided in the standing orders or under the principles of natural justice
3. Whether one month's wages are paid or offered to be paid and
4. Whether the Application is simultaneously made to it for seeking approval.

If the above conditions are fulfilled, the Tribunal or the Authority is not justified in refusing the approval. The Authority cannot under Section 33 assume the powers of appellate authority. Only the appellate Authority can go into the questions of adequancy of evidence or sufficiency of evidence and the Authority considering the application for approval cannot go into all these. [Lord Srikrishna Textile Mills vis. Workmen, AIR SC. 860]

It is generally accepted that where requirements of Section 33 (3) and 33 (2) (b) are satisfied, where the employer's action is bonafide coupled with the facts that the principles of natural justice are not infringed or violated there is a prima facie case and then there is no further scope to make any enquiry. The concerned authorities then have to accord the required approval to the Employer's application for the proposed action against the concerned workman pending the litigation. Thus, if there is no Domestic Enquiry into the alleged misconduct by the workman, it cannot be said that principles of natural justice are not violated or say that the sham or illegal Domestic Inquiry is held, the concerned Authority must pierce the veil of the order of the Employer and judge the real intention of the Employer in passing the orders. In such cases, undoubtedly the scope of the inquiry by the concerned authority is enlarged. Further, where evidence is led in the Approval Application on prima facie case, the scope of inquiry cannot be cut down. The Industrial Tribunal must adjudicate the issue [Shashikant Somapurkar v/s. Tata Memorial Hospital, 1993 II CLR 696] The apex Court in Delhi doth and General Mills Co. Ltd. v/s. Ludh Budh Singh, 1972 II LLJ 180 has laid down that the scope of concerned Authority before which industrial dispute is pending initially has a limited jurisdiction (under Section 33) to see whether prima facie case is made out. This is, however, the position only when Domestic Enquiry to inquire into charges or allegations of misconduct against the workman is held and when the Domestic Enquiry does not suffers from any vice of principles of natural justice. But if principles of natural justice are violated, the scope of enquiry is enhanced and no difference remains between adjudication proceedings under Section 10 and Approval Application under Section 33 of Act.

The Scope of the enquiry under Section 33 then will not be confined merely to consider whether a prima facie case is made out or not. The Tribunal should then give opportunity to employer to produce evidence, if any, and also to workman, if he so chooses. In such an eventually, the Employer's Findings in the Domestic Enquiry will lapse and this will be substituted by the independent conclusions of the Court on merit.

The scope of enquiries under Section 33 (1) and 33 (2) (b) was held to be similar in the case of Lord Krishna Textile Mills vis. Workman, AIR 1961 SC 860. Thus the scope of enquiry under Section 10, Section 33 (1) and 33 (2) (b) is same. But it is for the parties to be on their guards and they must make a proper application to the Court to seek their right. In Copper Engineering v/s P.P. Mundhe, 1976 SCR 361, the apex court has held that a quasi judicial Tribunal is under no obligation to acquaint parties before it about their rights more so in an adversary system.

Courts not Suo-moto to Grant Permission to Lead Further Evidence

As aforesaid, the Employer has a right to prove charges of misconduct levelled against his workman, in case, the court holds that Enquiry held by the employer was not fair and proper or there is no enquiry at all. But it is for the Employer to make a request to the Court to allow him to lead evidence and prove the charges of misconduct. If no such request is made, at any stage of the proceedings, there is no such obligatory duty in law, upon the Courts/Tribunals to suo-moto to give any such opportunity to the Employer to prove his case [Shankar Chakravarty vis Britania Biscuits Co., 1979 II LLJ 194]

11. Can Interim Relief be Granted?

In ITC Ltd. vis. L.C., 1985 II LLJ 243, it was held that under Section 33, the Authority has powers to accord the approval or reject it but it has no power to grant the interim relief.

12. Application of Principles of Res-judicta

The legal principle of Res-judicta has no application to the orders passed under Section 33 (2)(b). An employer's action can be challenged and Courts exercising jurisdiction under Section 10 or 33 A under the Act are free to ignore the orders passed under Section 33 (2) (b). In Graphite India Ltd. vis. State of WB 1980 II LIT 29 it was held that the purpose of Section 33 (2) (b) is only to grant or reject the approval. There is no adjudication prescribed. As such, any finding recorded under section 33 (2((b) would not operate as Res-judicta. A similar view was taken in the cases of

1. General Electric Co. of India v/s. V I.T. 1986 II LLJ 27
2. Lagan Jute Machinery Co. Ltd. v/s. VIII I.T. 1988 I LLJ 421
3. DTC v/s. Ram Kumar, 1982 II LLJ 19 and (4) M. Venkat Rao v/s. Mg ofOrissa Road Transport Co. Ltd, 1993 I LLJ 468.

13. Nature of Proceedings Under Section 33(2)(b) and Section 10

The Authority exercising jurisdiction under section 33(2)(b) has only to see the prima facie case and grant purely a temporary relief to the Employer. The permission given by the Authority under section 33(2)(b) has no relevance to the legality, validity or propriety of the order of the Employer. As such, the workman is free to make an application under section 33-A or can raise an industrial dispute under section 10 of the Act. Whereas under Section 10, the Court has to adjudicate upon the industrial dispute on merits.

14. When Pending Dispute is Over - Jurisdiction - How Long Lasting

In Tata Iron & Steel Co. Ltd. v/s. S.N. Modak, 1965 II LLJ 128 the apex Court took the view that notwithstanding the fact that the pending industrial disputes come to an end and ultimately an Award is passed and that is published as required under section 17-A of the Act, the concerned Authority under Section 33(2)(b) continues to have the jurisdiction. In other words the jurisdiction of the concerned authority under Section 33(2)(b) ends only after approval is granted or refused and it does not depend upon the pending dispute. In later decision in P.D. Sharma v/s. State Bank of India, 1969,1 LLJ 513 the apex Court confirmed its earlier decision.

Sub-Section (3)

Sub-section (3) deals with cases of **"Protected Workmen".** While in cases of workmen who do not fall in the category of "Protected Workmen" the employer has to simply to seek **"approval"** under Section 33(2((b) whereas in the cases of 'Protected Workmen' under Section 33(3) employer is required to take **express prior permission in writing** of the concerned authority [Machinery Manufacturing Corpn. Ltd. v/s. P.N. Pal, 1963 I LLJ 131]. The reason for giving total protection to Protected Workmen is to ensure healthy growth of trade unionism [Air India Corp v/s V.A. Rebello, 1972 I LLJ 501 (SC)]. A "protected workman" enjoys the immunity against being discharged or dismissed while the adjudication or conciliation proceedings relating to an industrial dispute are pending between the Employer and workmen [Union of India v/s. Rajasthan Anushakti Karmchari Union, 1977 LIC 155 (160)].

15. Explanation - "Protected Workmen"

In relation to an industrial establishment and (further) for the purposes of Section 33 of the Act, the"Protected Workmen" means a workman who being a member of the executive (Managing) committee or other office bearer of a Registered Trade Union, connected with the industrial establishment is recognised as such in this behalf. In other words,

1. he must be a workman under Section 2(s) of the Act
2. employed in the industrial establishment concerned in the pending proceedings
3. must be a member of the executive (managing) commit tee or any other office bearer of the trade union
4. the trade union must be a registered trade union (5) union must beconnected with the industrial establishment concerned and
6. theworkman shouldhave been recognised bythe Employer as the "Protected Workman" under the rules and regulations. It may be noted in this connectionthat a registered trade union is under an obligation to communicate to the Employer before 30th September, every year the names of workmen it (Union) wishes to be recognised as Protected Workman". Since the names aretobecommunicatedeveryyear,necessarily,it means that status of a **"Protected Workman"** lasts only for a period of one year and further that the Employer too must accept it, recognise it, and communicate it to the concerned union.

16. Sub-section(4): Number of "Protected Workmen"

This proviso lays down that the "Protected Workmen" in an industrial establishment can be one percent of the total number of workmen subject to a minimum of "Five Protected Workmen" and a maximun of one hundred. If the union informs the names of Protected Workmen and that exceeds the prescribed limit, the Employer has an option to accord its recognition only such maximum number of protected workmen as he wishes. Obviously the proviso is intended to give option to the union to select workmen whom it wants to be treated as 'protected workmen'. This proviso, apart from fixing the number of protected workman, also empowers the appropriate government to make rules for choosing and recognising the protected workmen and their distribution among various trade unions operating in the establishment.

17. Sub-section (5) : Limitation in Disposing of the Application Under Section 33(2)

In Lord Krishna Textile Mills Ltd v/s. Its Workmen, 1961 I LLJ 211 (SC), the apex Court observed that sub-section(S) is directed to expeditious disposal of the Application. The proviso is (1) to hear the Application without delay and (2) to pass its order within three months from the date of receipt of

the Application. But the concerned authority has the discretion to extend the period of limitation. The limitation of three months prescribed is only directory and not mandatory, (V.K. Varma v/s. H.M.T. Ltd., 1994 I LLJ 621).

18. Section 33-A

Remedial Relief

Prior to amendment of the Act by the Industrial disputes Act, (Appellate) Tribunal) Act, 1950, the Employer could breach the provisions of Section 33 with some immunity. The victim workmen then could only go for a conciliation and upon failure, for adjudication - a long drawn legal battle. The legislature upon the complain of trade unions in the country, devised an expeditious remedy. It has now provided an instant access and also punishment for the Employer to deter him from contravening the provisions. Indeed, punishment may not help the workmen in getting him, his employment back, but the direct approach to the concerned Authority would undoubtedly assure him back his lost employment. The direct approach to the concerned authority is in two fold. If the pending dispute is before the conciliatory authority. The said Authority has to treat the complaint of Workmen for violation of Section 33 as an independent industrial dispute and initiate the conciliation proceedings as contemplated under Sections 10 and 12 of the Act. But if pending dispute is before adjudicating authority then the adjudicating Authority should hear it and pass the appropriate Award on the industrial dispute coming through a complaint (Application) for the breach of Section 33 of the Act.

What Way Section 33 is Contravened

The contravention of Section 33, [in order to give jurisdiction to the concerned Authority under Section 33A] takes place, if during the pendency of the industrial dispute,

1. If theEmployeraltersthecondition s of serviceof workmen other than protected workman i.e. in contravention of Section 33(1) or alters the conditions of service of protected workman [i.e. contravention of Section 33(3)(a)]
2. If the employer discharges or punishes a "protected Workmen" by dismissal or otherwise for misconduct (even not connected with the pending dispute) without obtaining prior permission as required under Section 33(3)(b)
3. If the Employer discharges or punishes a Workman for a misconduct connected with the pending industrial dispute without prior approval as required under Section 33(l)(b)
4. If the Employer discharges or punishes a workman for a misconductnotconnectedwiththe pendingdispute without complying with the provisions of Section 33 (2Kb) Needless to record that if Section 33 is not contravened, as aforesaid, provisions of Section 33A do not at all come into operation.

Nature and Scope of Enquiry under Section 33A

The apex Court in Punjab Beverages v/s. Suresh Chand, 1978 LIC 693 held that the Authority should first ascertain if Section 33 was at all contravened because then only it has the requisite jurisdiction to cause enquiry under Section 33A. Then the next question arises as to how wide is the scope of enquiry to be made under this provision. The apex Court (Punjab Beverages, 1978 LIC 693) held that the Authority vested with jurisdiction should decide the case on merits and exercise its jurisdiction, as it exercises jurisdiction under Section 10 of the Act. In Dalmia International Ltd. v/s. Thomas and Anr., 1975 II LLJ 526 also the apex Court had clearly ruled that the Authority under Section 33 A has the same jurisdiction as is prescribed under Section 10 of the Act. Thus the complaint under Section 33 A can be legitimately be said to be a "Deemed industrial dispute and so Section 11-A too will be attracted.

If Anticipatory or Interim Relief Permissible under Section 33 A

The scope of enquiry under Section 33 A is at par with Section 10 of the Act. The appropriate forum, in a case of a Reference under the Act can grant appropriate relief only after considering the case on merits. As such, neither under Section 10 nor under Section 33 A the Authority is competent to grant interim relief. In Delhi Cloth and General Mills Co. Ltd, v /s. R. Dayal AIR, 1961 SC 689, the apex Court held that Section 33 A does not contemplate the grant of an anticipatory relief for prevention of any apprehended contravention of Section 33 A by way of interim relief. In Dhan Laxmi Bank Ltd v/s. Parmeshwara Menon, 1960 II LLJ 45 and Bhavnagar Municipality v/s. Alibhoi Karimbhai, 1977 I LLJ 407, the courts have taken the view that since no powers are conferred on the Authority exercising jurisdiction under Section 33 A, the Authority cannot grant the interium relief in the nature of injunction.

Res-judicta - Applicability to Section 33 A

As aforesaid, jurisdiction under Section 33 A is at par with Section 10 of the Act. As such, the Authority has to decide the matter on merits. Once a case is tried on merits, the principle of Ras-judicata requires that such a case should not be heard again. Therefore in Punjab Cooperative Bank Ltd. v/s. R, S. Bhatia, 1975 II LLJ 373, the apex Court ruled that a decision given by the Authority under Section 33 A operates as Res-judicata.

19. Section 33 B

Power of Government: This Section to withdraw the proceedings pending before the adjudicatory authority (and not before the conciliatory authority) and transfer it before the other adjudicatory authority. In Bengal Chemical and Pharmaceutical Works Ltd v/s. Their Tribunal, 1959 I LLJ 413 the apex Court observed that Section 33-B is to be read along with the definition of Tribunal [Section 2 (b)]. The confused reading of Section 33-B and Section 2 (r) indicates that proceedings pending before a Tribunal constituted before 10th March 1957 can be withdrawn by the appropriate Government and can be transferred to another similar authority.

Proviso

The proviso lays down that where proceedings either under Section 33 or Section 33-A are pending, the same can be transferred to Labour Court. The proviso does not use the word "withdraw" but simply provides its "transfer" from Tribunal to Labour Court. In Management of Senpathy Whileby Ltd. vis. State of Karnataka, 1884 LIC 1890, it was held that the appropriate Government has power to transfer proceeding from Tribunal to Labour Court.

Sub-section (2)

The Labour Courts have jurisdiction to try the matters specified in Second Schedule given in the Act. The matters specified in Second Schedule and as referred to in Sections 33 and 33 A are similar in nature. These matters normally pertain to individual workmen (and not the disputes of collective nature).

However, the Tribunal before which a collective dispute is pending and an individual dispute under Sections 33 or 33 A comes up before it then, subject to the appropriate government's such powers, the Tribunal can transfer the same to the Labour Court, which can more effectively and conveniently dispose it of expeditiously.

It may be noted that no authority or power left with the appropriate government to withdraw; cancel or transfer the proceedings once it had made a referrence under Section 10 of the Act. Therefore, in order to enable the appropriate government to withdraw, cancel or supersede any reference it had earlier made, the legislature carved out to make the provisions of Section 33-B by amendment, being the Industrial Disputes (Amendment & miscellaneous Provisions) Act, 1956. In sub-section (1), these powers are given to the appropriate government. But, in the proviso, it is made clear that the industrial disputes of individual workmen, if come up before the Tribunals (which is specialized in industrial disputes of collective nature) (in Contradiction to individual disputes), those disputes can be transferred to the Labour Court which is specialized in individual disputes. In consonance with this philosophy (that collective disputes should be before the Tribunals and individuals disputes should be before the Labour Courts) enstrrined in the Act, it is provided in sub-section (2) that instead of appropriate government transferring the proceedings, Tribunals too can transfer the industrial disputes of individual workmen coming under Sections 33 and 33 A to the Labour Court.

20. Section 33-C

Recovery of money Dues from an Employer : The Words "Where any money is due" necessarily indicate that the money claimed by the Workman is known and is already decided. Further there is no dispute either about the amount or about the Workman's claim to it. Sub-section (1), in any case, makes it clear that such money due should be under a Settlement, Award or provisions of chapters V A and V B. Needles to State the Words "Settlement" and "Award" will have to be understood with reference to definitions of these words given in Sections 2(b) and 2 (p) respectively. The workman has to make an application to the appropriate government under sub-section (1) and to the Labour Court under sub-section (2) to recover the money due from his Employer. The format of Application is given in the Rules framed under the Act. While period of Limitation one year is prescribed in sub-section (1) no period of limitation is prescribed under sub-section (2). The Application can be made by workman himself or on his behalf by any person authorised by him or assignee or heir. No doubt the workman may have other constitutional modes or statutory modes to recover his money nevertheless, he can adopt the proceedings under these provisions as such these proceedings are without prejudice to any other modes of recovery available to the workman. The appropriate government has to hear the matter summarily in contradistinction to a detailed hearing. That makes the remedy very quick and expeditions. The appropriate government then has to finally issue a Certificate of Recovery to the collector. In P.V. Shreedharan Nair v/s. Spl. Duty Tahasildar, 1993 LIC 543, it was held that the appropriate government can delegate its power to issue recovery certificate to the District Labour Officer and as such the Recovery Certificate issued by him was competent. But before a Recovery Certificate is issued it is rather implied mandate to hear the Employer. In Dayal Laminates (P) Ltd. v/s. L.K. Pandey, 1995 II CLR 954, the High Court set aside the Recovery Certificate on the ground that no Notice was given to the Employer before issuing the Recovery Certificate and that no opportunity of "being heard" was given to him.

21. Section 33 C (2)

Sub-section (2) of Section 33 C is one most sought after provisions. As is discussed in the later chapter, the Scheme of the ID Act does not provide direct access to Court. Section 33 C (2) is one of the exceptions to the said rule in the Scheme of the Act. The workmen are given direct approach to the Court and that also for recovering money dues or any benefit capable of computing in terms of money. It may be noted here that sub-section (1) does not allow direct approach to Court and further only money dues to a limited extent can be recovered under sub-section (1). The workman cannot recover "any benefit which is capable of being computed in terms of money." The Scope of recovering money dues is widened because the jurisdiction is vested with the court and not with the "Executives" or the Administrative authority. The workman under Section 33 C (2) has to simply -j make an application in the prescribed form to the Labour Court | and if Court grants the application, the recovery of money is put on the highest priority, the recovery of arrears of land revenue by the government.

22. Ingredients of Section 33 C (2)

There are three ingredients of sub-section (2) of Section 33-C. Firstly the claimant must be a Workman Secondly the workmen must be entitled to recover thirdly, it must be money due or benefits capable of being computed in terms of money.

Workman

Section 33 C (2) opens with the word "Where any Workman" it means, the person who can make an application must be a "Workman" as defined in Section 2 (s). Even if a workman is retired, he can make application under Section 33 C (2) for the claim relating to the period while he was in employment. But if the Application requires determination of legality of retirement then the Application will not be maintainable. But it must be clearly understood that it is not because he is not treated as workman but it is purely for the reason that the claim is about dues which are not crystalised and settled. An employee retired in 18.8.1973, made an application for recovering arrears of salary on 27.11.1975. The management pleaded that a retired employee is not a workman. Following the ruling of apex Court given in Manicka Mudiliar v/s. L.C., 1961 I LLJ 592, the High Court held that the retired employee too is a workman [See also GM, Southern Ely. v/s. M.S. Saranapani, 1982 I LLJ 370]. In Div. Suptdt. S.C. Ely. v/s. U.K. Kulkarni, 1982 I LLJ 370, the

Court rejected the claim of the retired employee on the ground that he had claimed salary on the footing that he should have been retired at the age of 60 years and not 58 years.

Following the ruling of the apex Court in the case of National Building Construction v/s. Prem Singh Gill, 1972 LIC 857, it was held that an employee who has resigned can also make the application under Section 33 C (2) [Sailesh Chandra De u/s. L.C. 1992 II LLJ 623],

Sub-section (1) of Section 33 C, clearly says that either a workman or any person authorised by him or assignee or the heir can make an application for recovery. But in Section 33 C (2) such a provision is missing. It means only the aggrieved workman has to make the application. Nevertheless, even if the workman dies before making an application under Section 33 C (2), the claim will not lapse. [Div. Suptdt. Eastern Rly vis. L.C., 1986 LIC 36, Ambalal Amin vis. P.L. Majumdar, 1987 I LLJ 36, Rathi Kan-thamani v/s. B. Pankahmal, 1988 I LLJ 423]. If the workman in his life time had filed an application, that would not **abate** upon death of workman and his heirs can prosecute it [Penchu Mahas-kad v/s. Mohanty, 1995 LIC 832]. In Sitabai N. Pujari v/s. Auto Engineers, 1972 I LLJ 290 it was held that the cause of action (to recover money dues) survives even after the demise of the workman.

Entitled to Receive

The most important of all is the fact that the workman can claim only undisputed claims or the right to claim money due or benefits in terms of money must exist at the time of making the Application. If the claim is not crystalised or does not exist, no application -under Section 33 C (2) can be maintainable or sustainable. There is a plethora of case laws on the issue. However, if right to claim exists but only computation is required to grant the claim, the application is maintainable. A workman claimed higher wages on the basis of a settlement. The High Court held that the application under Section 33 C (2) was maintainable because the claim was based on existing settlement which was not denied by the management. V.M. Vankar v/s. I.F. Fertilizers, 1984 LIC 1342.

Any Money or any Benefit which is Capable of Being Computed in Terms of Money

The scope of sub-section (2) of Section 33 C is not restricted to money due under a settlement, or an award or under the provisions of chapter V A or VB as is the case under sub-section (1) but it is much wider than that. Any money due under any other provisions of the Act or in any manner whatsoever, can be claimed. Sub-section (2) contemplates computation of such amount. If money due is already calculated and computed, sub-section (1) will apply. But if money is due but yet to be computed then sub-section (2) will apply. Thus bonus, retrenchment compensation, over time wages, back wages, HRA, can be claimed under this provision. In Indian Airlines v/s. P.O.L.C., 1988 LIC 848, it was held that application by contract labour against the Principal Employer for payment of equal pay for equal work is maintainable. But in Municipal Corporation of Delhi v/s. Ganesh Razak, 1994 I CLR 370 the daily rated employees claimed equal pay to that of regular workmen. Delhi High Court granted the claim on equal pay for equal work. This was finally carried to the Hon'ble Supreme Court of India. The apex Court then held that Section 33 C (2) deals with an existing right. The dispute relating to entitlement (of equal pay to that of regular workmen) is not incidental to the benefit claimed and is, therefore, clearly outside the scope of Section 33 -C (2) of the Act. The ruling of Delhi High Court was then set aside. Municipal Corporation of Delhi v/s. Ganesh Razak, 1995 I CLR 170. The Bombay High Court in the later case, accepted the claim of daily wages sweeper for pay equal to that of regular sweepers, in Municipal Council v/s. Vijaynath Kamble, 1995 I CLR 284. However, with due respect it must be recorded that the Bombay High Court judgement is in conflict with the ruling of the apex Court in Delhi Municipality's case (1995 I CLR 170) and cannot be taken as good law.

Gratuity

In State of Punjab v/s. L.C., 1981 I LLJ 354, the apex Court held that the Parliament intended that the proceedings for Gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other Act that being so, it must be held that application under Section 33 C (2) is not maintainable.

23. Scope of Nature of Enquiry

The apex Court in the case of Punjab National Bank v/s. Kharbanda, 1962 I LLJ 234 observed that the nature of enquiry under Section 33 C is in the nature of Executing Court. If the amount is already calculated and there was no dispute, Section 33 C (1) would apply. But if the amount is not stated or worked out, Section 33 C (2) would apply. Then what is executing court? The apex Court explained that a Civil Court (not the executing Court) has to decide (1) the Plaintiffs right to relief (2) the corresponding liability of the Defendant, including whether the Defendant is at all liable and (3) the extent of Defendant's liability, if any. Sometimes the third stage (the extent of Defendant's liability to pay) be left over for determination in execution proceedings. It should, therefore, follow that an 'investigation of the nature of determination (1) and (2) above is normally outside the scope of Executing Courts. Though as in an Execution proceedings, it may be necessary to determine the identity of the person by whom or against whom the claim is made, if there is a challenge on the score. But that is merely "incidental". To call determination (1) and (2) incidental to an execution - proceedings would be a perversion. The last stage in the process leading to final relief is the only Execution proceeding i.e. to determine the extent of Defendant's liability [Central Inland Water Transport Corporation Ltd. v/s. The Workmen, 1974 LIC 1018]. In Lakshinarayanapuram Sub-ramaniam Natrajan vis A.P. Lakhanikar, 2000 238, it was held that when the Lock out was declared legal and valid, the Court under Section 33 C (2) of the Act cannot decide the justifiability and as such wages for lock out period in a proceedings under Section 33 C (2) of the is not maintainable.

In Bombay Gas Co. Ltd. v/s. Gopal Bhiva, 1963 II LLJ 608 the apex Court held that the Labour Court under Section 33 C (2) would be competent to interprete the Award or Settlement. However, if Award is nullity, the Court can refuse to enforce it. In Central Bank of India Ltd. v/s. P.S. Rajagopalan, 1963 II LLJ

89 the apex Court held that the executing Court cannot go behind the decree nor can it add to or subtract from the provisions of the Decree. These limitation will also apply to the Labour Court exercising the jurisdiction under Section 33 C (2). Although, the Labour Court cannot go behind the Award, it is, nevertheless, competent to construe the award where it is ambiguous and to ascertain, its precise meaning, for, unless that is done, it cannot enforce the award when it is called upon to do so. [Voltas Ltd. v/s. J.M. DeMello, 1971II LLJ 307 (SC)].

24. Limitation

Section 33 C (2) as originally enacted did not have any period of limitation. However, now the Act contains a clear cut provision prescribing the period of limitation of three months. This period of limitations of three months was introduced by the Amending Act of 1982. As such, the earlier judgements have lost the significance and relevance.

LESSON 17:
EMPLOYMENT CONTRACT AND WAGE DETERMINATION

The Contract Labour (Regulation and Abolition) Act, 1970

Dear students by now you must have got accustom to legal language so let me come straight to the point. This is an Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

Be it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:

Chapter I

Preliminary

1. Short Title, Extent, Commencement and Application

1. This Act may be called the Contract Labour (Regulation and Abolition) Act, 1970.
2. It extends to the whole of India.
3. It shall come into force on such date' as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.
4. It applies -
   a. to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;
   b. to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen:

   Provided that the appropriate Government may, after, giving not less than two months' notice of its intention so to do, by notification in the *Official Gazette,* apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.
5. a. It shall not apply to establishments in which work only of an intermittent or casual nature is performed.
   b. If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation- For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature -

i. if it was performed for more than one hundred and twenty days in the preceding twelve months, or
ii. if it is of a seasonal character and is performed for more than sixty days in a year. .

2 The Definitions

1. In this Act, unless the context otherwise requires,-

[a. "appropriate Government" means,-

i. in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government.

   The Central Government will be appropriate government if the establishment pertaining to any industry is carried on by or under the authority of the Central Government, such an authority may be conferred either by statue or by virtue of relationship of principal and agent or delegation of power and not because of the fact that the establishment is and instrunmentality or an agency of Central Government for purpose of Article 12 of the constitution.

   Steel Authority of India Ltd. & Ors. v. National Union Water Front Workers & Ors., 2001 II LLJ 1087 (S.C.): 2001 (99) FJR 332: 2001 (91) FLR 182: 2001 (4) Un 135: 2001 UC 3656: 2001 III CLR 349: 2001 LLR 961

ii. in relation to any other establishment, the Government of the State in which that other establishment is situated;]

b. 'a workman' shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer; .

   Permanent employees at different establishments by contractor are not contract labourers.

   Basanta Kumar Mohnty v. State of Orris a, 199211 LLJ 190 (Ori. H.C.):1992 II CLR 712

   Employees of licensee are not contract labour

   Bhuwaneswari P. v. Union of India, 2000 I LLJ 386 (Mad. HC): 2000 II LLN 756

c. "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;
d. "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;
e. "establishment" means -.
   i. any office or department of the Government or a local authority; or
   ii. any place where any industry, trade, business, manufacture or occupation iscarried on;

The expression establishment under the act has to be with reference to the principal employer hence appropriate government for contractor will be same as of principal employer.

Sarkar D., alias Dipak Sarkar v. State of Bihar, 19971/ LLJ (Pat. DB): 1997 (76) FLR 700: 1997 LLR 849.

f. "prescribed" means prescribed by rules made under this Act;

g. "principal employer" means -

i. in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case maybe, may specify in this behalf,

ii. in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named,

iii. in a mine, the owner or agent of the mine and where a person has been named as the mal1ager of the mine, the person so named,

iv. in any other establishment, any person responsible for the supervision and control of the establishment.

Explanation -For the purpose of sub-clause (iii) of this clause, the expressions "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause (j), clause (I) and clause (c) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

Any person reponsible for the supervision and control of the establishment.

J.R. Prabhu Principle, College of Agricultural Banking Pune v. State (rep. by shri Govind Ram) Labour enforcement Officer (Central), 2001 II LLJ 1469 (Bom H.C.): 2001 III LLN 420

h. "wages" shall have the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act; 1936 (4 of 1936);

i. "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person

A. who is employed mainly in a managerial or administrative capacity; or

B. who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

C. who is an out worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer

2. Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as .a reference to the corresponding law, if any, in force in that State.

Chapter II

The Advisory Boards

3. Central Advisory Board

1. The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act. .

2. The Central Board shall consist of-

a. a Chairman to be appointed by the Central Government;

b. the Chief Labour Commissioner (Central), *ex-officio;*

c. such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government, bought to be represented on the Central Board.

3. The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions, by, and the manner of filling vacancies among, the members of the Central Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors

4. State Advisory Board

1. The State Government may constitute a board to be called the State Advisory Contract Labour Board (hereinafter referred to as the State Board) to. advise the State Government on such matters arising out of the administration of this Act as may be referred to it *and to carry* out other functions assigned to it under this Act.

2. The State Board shall consist of -

a. a Chairman to be appointed by the State Government;

b. the Labour Commissioner, *ex~officio,* or in his absence any other officer nominated by the State Government in that behalf;

c. such number of members, not exceeding eleven, but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests

which, in the opinion of the State Government, ought to be represented on the State Board.

3. The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

5. Power to Constitute Committees

1. The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.
2. The committee constituted under sub-section (I) shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business as its meetings as may be prescribed.
3. The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed:

Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

PartIII

Registration of Establishments Employing Contract Labour

6. Appointment of registering officers

The appropriate Government may, by an order notified in the Official Gazette,-

a. appoint such persons, being Gazetted Officers of Government, as it thinks fit to be registering officers for the purposes of this Chapter; and

b. Define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

7. Registration of Certain Establishments

1. Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:

   Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.
2. If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

8. Revocation of registration in certain cases

If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been. obtained by misrepresentation or suppression of any material fact, or that for any other reason the registration has become useless or ineffective and therefore requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government revoke the registration.

9. Effect of Non-registration

No principal employer of an establishment, to which this Act applies, shall-

a. in the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section,

b. in the case of an establishment the registration in respect of which has been revoked under section 8,

employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b) as the case may be.

Contract labour cannot become employees of principal employer merely because contractor or employer has not obtain license or registration respectively.

Dinanath v. National Fertilizers Ltd. 1992 I LLJ 289 (S.C.): 1992 (64) FLR 39: 1992 I CLR 1: 19921 LLN53

10. Prohibition of Employment of Contract Labour

1. Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.
2. Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-
   a. whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
   b. whether it is of perennial nature, that is to say, it is of sufficient duration, having regard, to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
   c. whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
   d. whether it is sufficient to employ considerable number of whole-time workmen.

Explanation. –If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

Appropriate Government only can issue notification *for* prohibition of the employment of Contract labour in any process operation or other work of establishment after considering the facts and circumstances of each case.

All India General Mazdoor Union v, Delhi Administration 1999 II llJ 101 (S.C): 1995 LlR 456; 1995 SCC (L&S) 1420

If there is a genuine contract in accordance with the Contract labour Act, only appropriate government under the provision of Sec.10 can abolish the Contract labour system.

Gujarat Electricity Board, Thermal Power Station Ukai v. Hind Mazdoor Sabha, 1995 II LLJ 790 (S.C.): 1995 (71) FLR 102: 1995 II LLN 59: 19951 CLR 967.

Labour Court or any other Court doesn't have any jurisdiction to deal with abolition 0' Contract labour.

Cipla Ltd. v. Maharashtra General Kamgar Union 2001 I LLJ 1063: (S.C): 2001 (89) FLR 163: 2001 II LLN 19: 2001 CLR 754.

There cannot be automatic absorption of contract labour by principal employer on issuence of notification by government on abolition of contract labour as there is no provision to that effect in the Act.

Steel Authority of India Ltd. & Ors. National Union Water Front Workers & Ors. 2001 II LLN 135j 2001 LlC 3656: 2001 III CLR 349.

The expression process operation or other work is vide in ambit to cover other activity arising in the industry and not merely the actual manufacture.

Sharat Fritz Wemer Ltd v. State of Kamataka, 2001 I LLJ 763 (S.C.) : 2001 89 FLR I: 2001 II LLN 45:

After abolition of Contract Labour the principal employer should absorb Contract Labour, ifall labopurers cannot be fully absorbed immediately, then they should be absorbed as an when vacancies arrise and contract labourer are free to resort to proceedings under I.D. Act if there is a deniel of employment.

Chandra Mohan Nair T. v. Fertilizers & Chemical Trivincore Ltd. 1994 (84) FJR 327 (Ker. H.C.): 1994 I LLN 966: 1994 LLR 626

On issuance of notification prohibiting contract labour or otherwise if a dispute is raised before Industrial adjudicator for abosorption of the Contract Labour by the principal employer and the Industrial adjudicator comes the conclusion that the Contract is Sham or is a mere ruse camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder, the worker will be treated as workmen of principal employer.

Steel Authority of India Ltd. & Ors. National Union Water Front Workers & Ors. 2001 II LLN 135: 2001 LlC 3656: 2001 III CLR 349.

Part IV

Licensing of Contractors

11. Appointment of Licensing Officers

The appropriate Government may, by an order notified in the Official Gazette,-

a. appoint such persons, being Gazetted Officers of Government, as it thinks fit to be licensing officers for the purposes of this Chapter; and

b. define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

12. Licensing of Contractors

1. With effect from such date as the appropriate Government may, by notification in the *Official Gazette*, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.
2. Subject to the provisions of this Act, a licence under sub-section (I) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum if any, as security for the due performance of the conditions as may be prescribed.

Contractor cannot be registered as a Contractor as well as principal employer. Gammon India Ltd. Bombay v. Assistant Labour Commissioner, 1976 I LLN 410 (Born. DB): 1976 LlC 745.

13. Grant of Licences

1. Every application for the grant of a licence under sub-section (I) of section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.
2. The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.
3. A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

14. Revocation, Suspension and Amendment of Licences

1. If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that-
   a. a licence granted under section 12 has been obtained by misrepresentation or suppression of any material fact, or

b. the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performanceof the conditions subject to which the licence has been granted.

2. Subject to any rules that may be made in this behalf, the licensing officer may vary or amend a licence granted under section 12.

15. Appeal

1. Any person aggrieved by an order made under section 7, section 8, section 12 or section 14 may, within thirty days from th~ date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:

   Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

2. On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an. opportunity of being heard dispose of the appeal as expeditiously as possible.

Part V

Welfare and Health of Contract Labour

16. Canteens

1. The appropriate Government may make rules requiring that in every establishment -
   a. to which this Act applies,
   b. wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and
   c. wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.
2. Without prejudice to the generality of the foregoing power, such rules may provide for-
   a. the date by which the canteens shall be provided;
   b. the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
   c. the foodstuffs which may be served therein and the charges which may be made therefor.

17. Rest-rooms

1. In every place wherein contract labour is required to halt at night in connection with the work of an establishment -
   a. to which this Act applies, and
   b. in which work requiring employment of contract labour is likely to continue for such period as may be prescribed,

   there shall be provided and maintained by the contractor for the use of the contract, labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed,
2. The rest-rooms or the alternative accommodation to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

18. Other Facilities

It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain

a. a sufficient supply of wholesome drinking water for the contract labour at convenient places;
b. a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
c. washing facilities.

19. First-aid Facilities

There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.

20. Liability of Principal Employer in Certain Cases

1. If any amenity required to be provided under section 16, section 17, section 18 or section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed.
2. All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

21. Responsibility for Payment of Wages

1. A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
2. Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
3. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

4. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

The principapl employer is statutorily responsible for payment of wages to contract labourers in full to the contract workmen if contractor fails and recover the same from the contractor as debth payable by him.

Food Corporation of India (Rep. by Regional Manager) Calcutta v. Tulsi Das Bauri, 199711 LLJ 747 (S.C): 199776 FLR 493: 1997 II LLN 458: 1997 I CLR 20..

Contractor to pay equal wages as paid by principal employee to his worker doing similar works.

Hindustan Steel works Construction v. Commissioner of Labour, 1997 I LLJ 656 (S.C.): 1996 (74) FLR 2151: 199611 LLN 1068: 199611 CLR 610.

LESSON 18:
PENALTIES, PROCEDURES AND FORMS

Penalties and Procedure

Obstructions

l. Whoever obstructs an inspector in the discharge of his duties under this Actor refuses or willfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

2. Whoever willfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

23. Contravention of Provisions Regarding Employment of Contract Labour

Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour or contravenes any condition of licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Court cannot issue any mandamus for deeming the Contract Labour as the employees of principal employer merely because the contractor or the employer had violated any provision of the act or the rules for which the remedt is under section 23 & 25 of the Act. Dinanath v. National Fertilizers Ltd. 1992 I LLJ 289 (S.C.): 1992 (64) FLR 39: 1992 I CLR 1: 1992 I LLN 53.

24. Other Offences

If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may, extend to three months, or with fine which may extend to one thousand rupees, or with both.

25. Offences by Companies

1. If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

   Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2. Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. -For the purpose of this section-

a. "company" means any body corporate and includes a firm or other association of individuals; and

b. "director", in relation to a firm, means a partner in the firm.

26. Cognizance of offences

No Court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

27. Limitation of Prosecutions

No Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.,

Part VII

Miscellaneous

28. Inspecting Staff

1. The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

2. Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed -

a. enter, at all reasonable hours, with such assistance (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or Rules made thereunder, and require the production thereof for inspection;

b. examine any person whom he finds in any such premises or place and who, he has, reasonable cause to believe, is a workman employed therein;

c. require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;

d. seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and

e. exercise such other powers as may be prescribed.

3. Any person required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code 1860 (45 of 1860). .

4. The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to any search or seizure under sub-section (2) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

Continue to execute work without license constitute fresh offence every day and is not time-bared.

Padm Prasad Jain v. State of Bihar, 1978 (53) FJR 389 (Pat. H.C.) 19791 LLN 111: 1978 LlC 1475.

29. Registers and Other, Records to be Maintained

1. Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed..

2. Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

30. Effect of Laws and Agreements Inconsistent with this Act.

1. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act:

   Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.

2. Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of my matter which are more favourable to them than those to which they would be entitled under this Act.

31. Power to exemption in special cases

The appropriate Government may, in the case of an emergency, direct, by notification in the Official Gazette, that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.

32. Protection of Action Taken under this Act

1. No suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other Government servant or against any member of the Central Board or the State Board, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

2. No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

33. Power to Give Directions

The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

34. Power to Remove Difficulties

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

35. Power to Make Rules

1. The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

a. the number of persons to be appointed as members representing various interests on the Central Board and the State Board, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies;

b. the times and places of the meetings of any committee constituted under this Act, the procedure to be followed at such meetings including the quorum necessary for the transaction of business, and the fees and allowances that may De paid to the members of a committee;

c. the manner in which establishments may be registered under section 7 the levy of a fee therefor and the form of certificate of registration;

d. the form of application for the grant or renewal of a licence under section 13 and the particulars it may contain;

e. the manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing a licence;

f. the form of a licence which may be granted or renewed under section 12 and the conditions subject to which the licence may be granted or renewed, the fees to be levied for the grant or renewal of a licence and the deposit of any sum as security for the performance .of such conditions;

g. the circumstances under which licences may be varied or amended under section l4

h. the form and manner in which appeals may be filed under section 15 and the procedure to be followed by appellate officers in disposing of the appeals;

i. the time within which facilities required by this Act, to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the principal employer;

j. the number and type of canteens, rest-rooms, latrines and urinals that should be provided and maintained;

k. the type of equipment that should be provided in the first-aid boxes;

1. the period within which wages payable to contract labour should be paid by the contractor under sub-section (1) of section 21;

m. the form of registers and records to be maintained by principal employers and contractors;

n. the submission of returns, forms in which, and the .authorities to which, such returns may be submitted;

o. the collection of any information or statistics in relation to contract labour; and

p. any other matter which has to be, or may be, prescribed under this Act.

3. Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive immediately following both Houses agree in making any modification in the rule or bothHouses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Form "I"

[See Rule 17(1)]

Application for Registration of Establishments Employing Contract Labour

1. Name and location of the Establishment
2. Postal address of the Establishment
3. Full name and address of the Principal Employer

   (Furnish father's name in the case of individuals).
4. Full name and address of the Manager or person responsible for the supervision and control of the Establishment.

[2]4A.Estimated date of commencement of each contract work under each contractor.

5. Type of business, trade, industry, manufacture, occupation carried on in the establishment.
6. Particulars of contractors and contract labour-

Name and address of Contractor	Nature of work in which contract labour is employer or was employer on any day of the preceding twelve months.	Number of workmen directly employed by principal employer	Maximum No. of contract Labour expected to be employer on any day through each contractor.	1[Estimated date or commencement of each contract work under each contract.]	Estimated or actual date of termination of employment of contract labour.
1	2	3	4	4-A	5

7. Particulars of treasury Receipt enclosed :

I hereby declare that the particulars given above are true to the best of my knowledge and belief.

Principal Employer Seal or Stamp.
Officer of the Registering Office,

Time and Date of receipt of application with
Treasury Receipt No. and date.

Signature of Registering Officer

Form "I-A"

2[******]

Form "II"

[See Rule 18 (1)]

Certificate of Registeration

No.

GOVERNMENT OF MAHARASHTRA

Office of the Registering Officer ……..

A Certificate of Registration containing the following particulars is hereby granted under sub-section (2) of section 7 of the Contract Labour (Regulation and Abolition) act, 1970 and the rules made thereunder, to -

Name and address of Contractor	Nature of work in which contract labour is employed or was employed on any day of the preceding twelve months.	Maximum Number of contract labour to be employed on any day through each contractor	Estimated or actual date of termination of employment of contract labour.
1	2	3	4

Place : ……

Date : ……. Signature of Registering Officer with Seal.

Form "III"

[See Rule 18 (2)]

Register of Establishment

Sl. No.	Registration Certificate No.	Name and address of the establishment registered	Name of the principal employer and his address	Type of business, trade, industry, manufacture or occupation carried on in the establishment	Total No. of workmen directly employed.
(1)	(2)	(3)	(4)	(5)	(6)

Particulars of contractor and contract labour				
Name and address of contractor	Nature of work in which contract labour is employed or is to be employed	Maximum No. of contract labour to be employed on any day through each contractor	Estimated date of termination of employment of contract labour	Remarks.
(7)	(8)	(9)	(10)	(11)

Form "IV"

[See Rule 21(1)]

Application for Licence

1. Name and address of the contractor (including his father's name) ……
2. Particulars of establishment where contract labour is to be employed ……

Name and address of the Establishment	No. and Date of Certificate of Registration of Establishment under the Act	Name and Address of the Principal Employer	Nature of process, operation or work in which Establishment is engaged.
(1)	(2)	(3)	(4)

Name of process, operation of work for which contract labour is or is to be employed in the Establishment	Duration of the proposed contract work (give proposed date of commencing and ending)	Name and Address of the Agent or Manager or contractor at the work Establishment	Maximum No. of employees proposed to be employed on any day as contract labour in the Establishment
(5)	(6)	(7)	(8)

3. [1][******]
4. [1][******]
5. Number and date of the Treasury Receipt enclosed ……..……..

Declaration.- I hereby declare that the details given above are correct to the best of my knowledge and belief

Place:

Date:

Signature of the Applicant (Contractor)

Note:- The application should be accompanied by a Treasury Receipt and a certificate in Form V from each of the Principal Employers.

(To be filled in by the office of the licensing officer)

Date of receipt of the application with challan for fees/security deposit.

Signature of the Licensing Officer

FORM "IV-A"

[2][******)

Form "V"

[See Rule 21(2)]

Form of Certificate by Principal Employers

Certified that I have engaged/propose to engage the applicant as a contractor in my establishment. I undertake to be bound by all the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, and the Maharashtra Contract Labour (Regulation and Abolition) Central Rules, 1970, in respect of the employment of contract labour by the applicant in my establishment.

Signature of Principal Employer

Place: …… Name and address of Establishment

Date: ……

FORM "V -A "

[2][******]

43

Form "VI"

[See Rule 25 (1)]

Government of maharashtra

Office of Licensing Officer ……

Licence No …….Dated …….Fee paid Rs. …….

Licence

Licence is hereby granted to …….under Section 12 (2) of the Contract Labour (Regulation and Abolition) Act, 1970, in respect of the registered establishment No ……. Name …… Address ……. ……..……..……..…of which ……. is the Principal Employer subject to the conditions specified in Annexure.

The Licence shall remain in force till……..……

Date: …….

Signature and Seal of the Licensing Officer.

Renewal (Rule 29)

Date of Renewal	Fee aid for Renewal	Date of Expiry
1.		
2.		
3.		

Date: ……. Signature and Seal of the Licensing Officer.

Annexure

The licence is subject to the following conditions:-

i. The licence shall be non-transferable.

ii. The number of workmen employed as contract labour in the establishment shall not, on any day, exceed : …….

iii. Except as provided in the rules, the fees paid for the grant, or as the case may be, for renewal of the licence shall be non-refundable

iv. a. The rates of wages payable to the workmen by the contractor shall not be less than the minimum rates of wages fixed under the Minimum Wages Act, where that Act applies, where the rates have been fixed by agreement, settlement or award, shall not be less than the rates so fixed and where rates have been fixed under the Minimum Wages Act and under any agreement, settlement or award the rates shall not be less than the higher of the two rates

b. Where the workmen employed by the contractor perform the same kind of work as the workmen or a class of workmen directly employed by the principal employer, the rates of wages payable to the workmen by the contractor shall be the rates payable to the workmen directly employed by the principal employer doing the same kind of work.

c. In any other case, the rates of wages shall be such as may be specified in this behalf by the Commissioner of Labour.

v. a. The hours of work and other conditions of service of the Workmen of the contractor shall. be in accordance with the provisions of the Minimum Wages Act, where that Act applies and where any agreement, settlement or award is in force, in accordance with the provisions of the said agreement, settlement or award; and where in any employment the Minimum Wages Act applies and there is also in force any agreement, settlement or award, the conditions of service shall be governed by provisions which are more beneficial to the workmen.

b. In other cases where the workmen employed by the contractor perform the same kind of work as the workmen directly employed by the principal employer of the establishment, the hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment;

c. In cases not falling under sub-clause (a) or (b) the hours of work and other conditions of service of the workmen of the contractor shall be such as may be specified by the Commissioner of Labour.

Explanation.- While determining the wages, hours of work and other conditions of service under sub-clause (c) of clause (iv) and sub-clause (c) of clause (v), the Commissioner of Labour shall have due regard to the wages, hours of work and other conditions of service obtained in similar employments.

vi. a. In every establishment, where twenty or more women are ordinarily employed as contract labour there shall be provided and maintained by the contractor a room or rooms for the use of children under the age of six years as may be required by the Commissioner of Labour and the standard of construction, scale of accommodation and the facilities shall be such as may be specified by the Commissioner of Labour:

Provided that, where the principal employer is required under the Factories Act and the Rules thereunder to provide and maintain a creche or other alternative arrangements for the use of children of women employees directly employed by him any arrangements made by the contractor with the principal employers for the use of the creche (or other alternative arrangements in lieu of creche) by the children under the age of six years of the female workmen employed by the contractor, shall be considered as the compliance of the provisions of this clause:

Provided further that, such arrangements are according to the standard prescribed in the Factories Act and the' Rules framed thereunder.

b. In other cases, there shall be provided and maintained a room or rooms for the use of children under the age of six years, as may be specified by the Commissioner of Labour.

vii. The contractor shall provide other essential amenities for contract labour employed in accordance with the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1970.

viii. The licensee shall notify any change in the number of workmen or the conditions of work *to the* licensing officer.

ix. [1][******]

2[Form "VI-A"

[See Rule 25 (2) (viii)]

Intimation of Commencement/Completion of Contract Work

I/We, Shri/M/s. (Name and address of the Contractor) hereby intimate that the Contract Work

(Name of work) in the establishment of (Name and address of principal employers) for which Licence No. ……..... dated ……. has been issued to me/us by the Licensing Officer (Name of the Headquarter) has been commenced/completed with effect from (date) on (date)

.....

Signature of the Contractor(s).]

To

The Inspector ……

Form "VII"

[See Rule 29(1)]

Application for Renewal of Licences

1. Name and Address of the Contractor ……..
2. No. and date of the licence …….
3. Date of expiry of the previous licence ……
4. Whether the licence of the Contractor was suspended or revoked S. ……
5. Particulars of establishment where contract labour is to be employed …….

Name and address of establishment	No. and date of certificate of registration of establishment under Act	Name and Address of the principal employer	Nature of process, operation or work in which establishment is engaged.
1	2	3	4

Nature of process, operation of work for which contract labour is to be employed in the establishment	Duration of the proposed contract work (give proposed date of commencing and ending)	Name and address of the agent or manager or contractor at the work establishment	Maximum No. of employees proposed to be employed as contract labour in the establishment.
1	2	3	4

6. No. and date of the treasury receipt enclosed.

Place : ……..

Date : …….. Signature of Applicant

(To be filled in by the office of the Licensing Officer) Date of receipt of the Application with Treasury Receipt No. and date.

……

Signature of Licensing Officer.

Form "VII-A"

[******]

Form "VIII"

[See Rule 55]

Part I

Register of Contractors

1. Name and address of the Principal Employer ……

……

2. Name and address of the Establishment ……

……

Sr. No.	Name and Address of Contractor	Name of work in contract	Location of contract work	Period of contract
1	2	3	4	From To 5

Amount / Value of contract work	Maximum No. of workmen employed by contractor	Security deposits with the Principal Employer
6	7	8

Part II

Progress of Contract Work

Name of Contractor ……

Nature of work ……

Wage Period 1	Maximum number of workmen employed by the contractor during the wage period 2	Total amount of wages earned by the workmen 3	Amount actually disbursed on pay day 4

[2][Form "IX"]

(See Rule 56)

[3][Form "X"]

(See Rule 57 (i))

Identity Card

1. Name of the Establishment :
2. Name of the Employee :
3. Age :
4. Sex :
5. Date of entry in service :
6. Designation / Nature of work :
7. Department :

Signature of the [1][Employer]

[2][Form "XI"]

(See Rule 5)

[3][Form "XII"]

[See Rule 59 (2) (a)]

[3][Form "XIII"]

[See Rule 59 (2) (a)]

[3][Form "XIV"]

[See Rule 59 (2) (proviso)]

[3][Form "XV"]

[See Rule 59 (2) (b)]

[3][Form "XVI"]

[See Rule 59 (2) (d)]

[3][Form "XVII"]

[See Rule 59 (2) (d)]

[3][Form "XVIII"]

[See Rule 59 (2) (d)]

[3][Form "XIX"]

[See Rule 59 (2) (e)]

[1][Form "XIX-A"]

[See Rule 60 (3)]

[3][Form "XX"]

[See Rule 63 (1)]

Identity Card

Form "XXI"

[See Rule 63(2)]

Annual Return of Principal Employer to be Sent to the Registering Officer

Return for Year ending 31st December ……

1. Full name and address of the Principal Employer.
2. Name of establishment-
   a. District ……
   b. Postal address ……
   c. Nature of operation/industry/work carried on.
3. Full name of the manager or person responsible for supervision and control of the establishment.
4. Maximum No. of workmen employed as contract labour on any day during the year.
5. Total. No. of days during the year on which contract labour was employed.
6. Total No. of man-days worked by contract labour during the year.
7. Maximum No. of workmen employed directly on any day during the year.
8. Total No. of days during the year on which directly employed labour was employed.
9. Total No. of man-days worked by directly employed workmen.
10. Nature of work on which contract labour was employed.
11. Amount of Security Deposits made by Contractors (give Contractor-wise).
12. Amount of Security Deposits forfeited together with the names of. Contractor, if any.
13. Whether there is any change ip the management of the establishment, its location or any other particulars furnished to Registering Officer in the form of Application for Registration at the time of Registration. If so, from what date.

Place:

Date: Principal Employer

Points To Remember

Preliminary
Short title extent and commencement
Definition
Part II-
The Advisory Board
Central Advisory Board
State Advisory Board
Power to Constitute Committee
Part III-
Registration of establishment employing contract labour -
Appointment of registering officer
Registration of certain establishments
Revocation of registration in certain cases
Effect of non- registration
Prohibition of employment of contract

Licensing of contractors-
Appointment of licensing officer
Licensing of contractors
Grant of licenses
Revocation, suspension and amendment of licenses
Appeals
WELFARE AND HEALTH OF CONTRACT LABOUR
Canteens
Rest-rooms
Other facilities
First-aid facilities
Liability of principal employer in certain cases
Responsibility for payment of wages

PENALTIES AND PROCEDURE –
Obstructions
Contravention of provisions regarding employment of contract labour
Other offences
Offences by companies
Cognizance of offences
Limitation of prosecutions

MISCELLANEOUS –
Inspecting staff
Registers and other records to be maintained
Effect of laws and agreements inconsistent with this Act
Power to exempt in special cases
Protection of action taken under this Act
Power to give directions
Power to remove difficulties
Power to make rules

Questions for Test

1. Discuss the purpose and objective ofThe contract Labour (regulation &abolition) act 1970?
2. Define the following- (a) Appropriate Government (b) A workman (c) contractor (d) establishment (e) principal employer ?
3. Write short notes on – (a) Central Advisory board (b) State Advisory Board (c) Licencing of contractors ? (d) penalties and procedures (e) miscellaneous under the act.
4. Explain registration of establishments employing contract labour?
5. What are the necessary methods required by the act for welfare and health of contract labour?

LESSON 19:
CHILD LABOUR

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is the history of Child Labour Act in India?
- What are the provisions of the Act?

Introduction

The complex issue of child labour is a developmental issue worth investigating. The notion that children are being exploited and forced into labour, while not receiving education crucial to development, concerns many people. India is the largest example of a nation plagued by the problem of child labour. Estimates cite figures of between 60 and 115 million working children in India — the highest number in the world (Human Rights Watch 1996, 1).

What are the causes of child labour in India? How do governmental policies affect it? What role does education play in regard to child labour in India? A critical analysis of the answers to these questions may lead in the direction of a possible solution. These questions will be answered through an analysis of the problem of child labour as it is now, investigating how prevalent it is and what types of child labour exist. The necessity of child labour to poor families, and the role of poverty as a determinant will be examined. Governmental policies concerning child labour will be investigated. The current state of education in India will be examined and compared with other developing countries. Compulsory education policies and their relationship to child labour will be investigated using Sri Lanka and the Indian state of Kerala as examples of where these policies have worked. Finally, India's policies concerning compulsory education will be assessed.

Causes of Child Labour in India and Governmental Policy Dealing with it

How Necessary is Child Labour to Families in India?

Child labour is a source of income for poor families. A study conducted by the ILO Bureau of Statistics found that "Children's work was considered essential to maintaining the economic level of households, either in the form of work for wages, of help in household enterprises or of household chores in order to free adult household members for economic activity elsewhere" (Mehra-Kerpelman 1996, 8). In some cases, the study found that a child's income accounted for between 34 and 37 percent of the total household income. This study concludes that a child labourer's income is important to the livelihood of a poor family. There is a questionable aspect of this study. It was conducted in the form of a survey, and the responses were given by the parents of the child labourers. Parents would be biased into being compelled to support their decision to send their children to work, by saying that it is essential. They are probably right: for most poor families in India, alternative sources of income are close to non-existent. There are no social welfare systems such as those in the West, nor is there easy access to loans, which will be discussed.

What is apparent is the fact that child labourers are being exploited, shown by the pay that they receive. For the same type of work, studies show that children are paid less than their adult counterparts. Table 2.1 shows a comparison of child wages to adult wages obtained by a study of child workers in the Delhi region of India. Although 39.5% of employers said that child workers earn wages equal to adults, if the percentage of employers admitting that wages are lower for children are added up, a figure of 35.9% is found. This figure is significant when taking the bias of employers into account. Employers would have been likely to defend their wages for child workers, by saying that children earn the same wages as adults. The fact that no employers stated children earned more than adults, should be also be noted. Other studies have also concluded that "children's earnings are consistently lower than those of adults, even where there two groups are engaged in the same tasks" (Bequele and Boyden cited in Grootaert and Kanbur 1995, 195).

What Role does Poverty Play?

The percentage of the population of India living in poverty is high. In 1990, 37% of the urban population and 39% of the rural population was living in poverty (International Labour Organization 1995, 107). Poverty has an obvious relationship with child labour, and studies have "revealed a positive correlation - in some instances a strong one - between child labour and such factors as poverty" (Mehra-Kerpelman 1996, 8). Families need money to survive, and children are a source of additional income. Poverty itself has underlying determinants, one such determinant being caste. When analyzing the caste composition of child labourers Nangia (1987) observes that, "if these figures are compared with the caste structure of the country, it would be realised that a comparatively higher proportion of scheduled caste children work at a younger age for their own and their families' economic support" (p. 116). Scheduled caste (lower caste) children tend to be pushed into child labour because of their family's poverty. Nangia (1987) goes on to state that in his study 63.74% of child labourers said that poverty was the reason they worked (p. 174).

The combination of poverty and the lack of a social security network form the basis of the even harsher type of child labour — bonded child labour. For the poor, there are few sources of bank loans, governmental loans or other credit sources, and even if there are sources available, few Indians living in poverty qualify. Here enters the local moneylender; for an average of two thousand rupees, parents exchange their child's labour to local moneylenders (Human Rights Watch 1996, 17). Since the earnings of bonded child labourers are less than the interest on the loans, these bonded children are forced to work, while

interest on their loans accumulates. A bonded child can only be released after his/her parents makes a lump sum payment, which is extremely difficult for the poor (Human Rights Watch 1996, 17). Even if bonded child labourers are released, "the same conditions of poverty that caused the initial debt can cause people to slip back into bondage" (International Labour Organization 1993, 12).

Even though poverty is cited as the major cause of child labour, it is not the only determinant. Inadequate schools, a lack of schools, or even the expense of schooling leaves some children with little else to do but work. The attitudes of parents also contribute to child labour; some parents feel that children should work in order to develop skills useful in the job market, instead of taking advantage of a formal education.

Indian Government Policy on Child Labour

From the time of its independence, India has committed itself to be against child labour. Article 24 of the Indian constitution clearly states that "No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment" (Constitution of India cited in Jain 1985, 218). Article 39 (e) directs State policy such "that the health and strength of workers . . . and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength" (Constitution of India cited in Human Rights Watch 1996, 29). These two articles show that India has always had the goal of taking care of its children and ensuring the safety of workers. The Bonded Labour System Act of 1976 fulfills the Indian Constitution's directive of ending forced labour. The Act "frees all bonded laborers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded laborers by the state" (Human Rights Watch 1996, 30). In regard to child labour, the Indian government implemented the Child Labour Act in 1986. The purpose of this act is to "prohibit the employment of children who have not completed their 14th year in specified hazardous occupations and processes" (Narayan 1988, 146). ILO convention No. 138 suggests that the minimum age for employment should not be less than fifteen years, and thus the Child Labour Act of 1986 does not meet this target (Subrahmanya 1987, 105).

A recent advance in government policy occurred in August of 1994, when then- Prime Minister Narasimha Rao announced his proposal of an Elimination of Child Labour Programme. This program pledges to end child labour for two million children in hazardous industries as defined in the Child Labour Act of 1986, by the year 2000. The program revolves around an incentive for children to quit their work and enter non-formal schooling: a one hundred rupee payment as well as one meal a day for attending school (Human Rights Watch 1996, 119-120). Where the funds for this program will come from is unknown. The government needs eight and a half billion dollars for the program over five years, and yet "about 4 percent of the five-year estimated cost was allocated for child labour elimination programs in 1995-1996" (Human Rights Watch 1996, 120).

All of the policies that the Indian government has in place are in accordance with the Constitution of India, and all support the eradication of Child Labour. The problem of child labour still remains even though all of these policies are existent. Enforcement is the key aspect that is lacking in the government's efforts. No enforcement data for child labour laws are available: "A glaring sign of neglect of their duties by officials charged with enforcing child labor laws is the failure to collect, maintain, and disseminate accurate statistics regarding enforcement efforts" (Human Rights Watch 1996, 131). Although the lack of data does not mean enforcement is nonexistent, the number of child labourer and their work participation rates show that enforcement, if existent, is ineffective.

Part I

Preliminary

1. Short title, extent and commencement – (1) This Act may be called Child Labour (Prohibition and Regulation) Act, 1986.
2. It extends to the whole of India
3. The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.
3. Definitions – In this Act, unless the context otherwise requires,
    - i. "Appropriate Government" means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government
    - ii. "child" means a person who has not completed his fourteenth year of age;
    - iii. "day" means a period of twenty four beginning at midnight;
    - iv. "establishment" includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;
    - v. "family", in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;
    - vi. "occupier", in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;
        - i. " port authority" means any authority administering a port;
        - ii. "prescribed' means prescribed by rules made under Section 18;
        - iii. "prescribed" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;

iv. "workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Section 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

Part II

Prohibition of Employment of Children in Certain Occupations and Processes

3. Prohibition of Employment of Children in Certain Occupations and Processes

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on;

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school establishment by, or receiving assistance or recognition from, Government.

4. Power to amend the Schedule.

The Central Government, after giving by notification in the Official Gazette, not less than three months notice of its intention so to do, may, by like notification, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.

5. Child Labour Technical Advisory Committee

1. The Central Government may, by notification in the Official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereafter in this section referred to as the Committee) to advise the Central Government for the purpose of addition of occupation and processes to the Schedule.
2. The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.
3. The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.
4. The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub- committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.
5. The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed.

Part III

Regulation of Conditions of Work of Children

6. Application of Part

The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in Section 3 is carried on.

7. Hours and Period of Work

1. No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.
2. The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
3. The period of work of a child shall be so arrangedthat inclusive of hisinterval for rest, under sub- section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
4. No child shall be permitted or required to work between 7 p.m. and 8 a.m.
5. No child shall be required or permitted to work overtime.
6. No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

8. Weekly Holidays

Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

9. Notice to Inspector

1. Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely: -
   a. the name and situation of the establishment;
   b. the name of the person inactual management of the establishment;
   c. the address to which communications relating to the establishment should be sent; and
   d. the nature of the occupation or process carried on in the establishment.
2. Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written

notice containing the particulars as are mentioned in sub-section (1)

3. Nothing in Sections 7,8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

10. Disputes as to Age

If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

11. Maintenance of Register

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing

a. the name and date of birth of every child and so employed or permitted to work
b. hours and periods of work of any such child and the intervals of rest to which he is entitled
c. the nature of work of any such child; and
d. such other particulars as may be prescribed.

12. Display of Notice Containing Abstract of Section 3 and 14

Every railway administration, everyport authorityand every such occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a portor at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3 and 14.

13. Health and Safety

1. The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.
2. Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:-

a. cleanliness in the place of work and its freedom from nuisance;
b. disposal of wastes and effluents;
c. ventilation and temperature
d. dust and fume
e. artificial humidation
f. lighting
g. drinking water
h. latrine and urinals
i. spittoons
j. fencing of machinery
k. work at or near machinery in motion
l. employment of children on dangerous machines
m. instructions, training and supervision in relation to employment of children on dangerous machines
n. device for cutting off power
o. self – acting machines
p. easing of new machinery
q. floor, stairs and means of access
r. pits, sumps, openings in floors, etc
s. excessive weights
t. protection of eyes
u. explosive or inflammable dust, gas, etc
v. precautions in case of fire
w. maintenance of buildings; and
x. safety of buildings and machinery.

Part IV
Miscellaneous

14. Penalties

1. Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extent to twenty thousand rupees or with both.
2. Whoever, having been convicted of an offence under Section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.
3. Whoever
   a. fails to give notice as required by Section 9, or
   b. fails to maintained a register as required by Section 11 or makes any false entry in any such register; or
   c fails to display a notice containing an abstract of Section 3 and this section as required by Section 12; or
   d. fails to comply with or contravenes any other provisions o f this Act or the rules made there under,

shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

15. Modified Application of Certain Laws in Relation to Penalties

1. Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub – section (2), he shall be liable to penalties as provided in sub – sections (1) and (2) of Section 14 of this Act and not under the Acts in which those provisions are contained.
2. The provisions referred to in sub – section (1) are the provisions mentioned below: -

a. Section 67 of the Factories Act, 1948 (63 of 1948);

b. Section 40 of the Mines Act, 1952 (35 of 1952);

c. Section 109 of the Merchant Shipping Act, 1958 (44 of 1958); and

d. Section 21 of the Motor Transport Workers Act, 1961 (27 of 1961)

16. Procedure Relating to Offences

1. Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.
2. Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.
3. No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

17. Appointment of Inspectors

The appropriate Government may appoint Inspectors for the purposes of securing compliance with the provisions of this Act and any Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860)

18. Power to Make Rules

1. The appropriate Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying into effect the provisions of this Act.
2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -
   a. the term of office of, the manner of filling casual vacancies of, and the allowances payable to the Chairman and members of the Child Labour Technical Advisory Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of Section 5;
   b. number of hours for which a child may be required or permitted to work under sub-section (1) of Section 7;
   c. grant of certificates of age in respect of young persons in employment or seeking employment, the medical authorities which may issue such certificate, the form of such certificate, the charges which may be made there under and the manner in which such certificate may be issued:

      Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned;
   d. the other particulars which a register maintained under Section 11 should contain.

19. Rules and Notifications to be Laid before Parliament or State Legislature

1. Every rule made under this Act by the Central Government and every notification issued under Section 4, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is session for a total period of thiry days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree that therule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.
2. Every rule made by a State Government under this Act shall be laid soon as may be after it is made, before the legislature of that State.

20. Certain Other Provisions of Law not Barred

Subject to the provisions contained in Section 15, the provisions of this Act and the rules made thereunder shall be in addition to, and not in derogation of, the provisions of the Factories Act, 1948 (63 of 1948), the Plantations Labour Act, 1951 (69 of 1951) and the Mines acct, 1952 (35 of 1952).

21. Power to Remove Difficulties

1. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it be necessary or expedient for removal of the difficulty:

   Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.
2. Every order made under this section shall, as soon as may be after it is made, be laid before the Houses of Parliament.

22. Repeal and Savings

1. The Employment of Children Act, 1938 (26 of 1938), is hereby repealed.
2. Now withstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

23. Amendment of Act 11 of 1948

In Section 2 of the Minimum Wages Act, 1948,

i. for clause (a), the following clauses shall be substituted, namely: -

   "a. ' adolescent' means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

   aa. 'adult' means a person who has completed his eighteenth year of age;"

ii. after clause (b), the following clause shall be inserted, namely:-

"bb. 'child' means a person who has not completed his fourteenth year of age;"

24. Amendment of Act 69 of 1951

In the Plantations Labour Act, 1951

a. in Section 2, in clauses (a) and (c), for the word "fifteenth", the word "fourteenth" shall be substituted;

b. Section 24 shall be omitted;

c. In Section 26, in the opening portion, the words "who has completed his twelfth year" shall be omitted.

25. Amendment of Act 44 of 1958.

In the Merchant Shipping Act, 1958, in Section 109, for the word "fifteen", the word "fourteen" shall be substituted.

26. Amendment of Act 27 of 1961.

In the Motor transport Workers Act, 1961, in Section 2, in clauses (a) and (c), for the word "fifteenth", the word "fourteenth" shall be substituted.

The Schedule

Part A

Occupations

Any occupation connected with

1. Transport of passengers, goods or mails by railway;
2. Cinder picking, clearing of an ash pit or building operation in the railway premises;
3. Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;
4. Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
5. A port authority within the limits of any port;
6. Work relating to selling of crackers and fireworks in shops with temporary licenses
7. Abattoirs/ Slaughter Houses;
8. Automobile workshops and garages;
9. Foundries;
10. Handling of toxic or inflammable substances or explosives;
11. Handloom and power loom industry;
12. Mines (underground and under water) and collieries;
13. Plastic units and fiberglass workshops.

Part B

Processes

1. Bidi – making.
2. Carpet weaving including preparatory and incidental process thereof
3. Cement manufacture, including bagging of cement.
4. Cloth printing, dyeing and weaving including processes preparatory and incidental thereto.
5. Manufacture of matches, explosives and fireworks.
6. Mica-cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture
9. Tanning
10. Wool cleaning.
11. Building and construction industry
12. Manufacture of products from agate
13. Manufacture of slate pencils (including packing)
14. Manufacture processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.
15. "Hazardous processes" as defined in Section 2(cb) and 'dangerous operations' as notified in rules made under Section 87 of the Factories Act, 1948 (63 of 1948)
16. Printing as defined in Section 2(k)(iv) of the Factories Act, 1948 (63 of 1948).
17. Cashew and Cashew nut descaling and processing
18. Soldering processes in electronic industries.
19. Aggarbatti manufacturing
20. Automobile repairs and maintenance including processes incidental thereto namely welding, lathe work, dent beating and painting.
21. Brick Kilns and Roof tiles units
22. Cotton ginning and processing and production af hosiery goods
23. Detergent manufacturing
24. Fabrication workshops (ferrous and non ferrous)
25. Gem cutting and polishing
26. Handling of chromite and manganese ores
27. Jute textile manufacture and coir making
28. Lime Kilns and Manufacture of lime
29. Lock making
30. Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scrapping of lead paint, burning of lead in enamelling workshops, lead mining, plumbing, cable making, wire patenting, lead casting, type founding in printing shops. Store type setting, assembling of cars, shot making and lead glass blowing.
31. Manufacture of cement pipes, cement products and other related work
32. Manufacture of glass, glassware including bangles, florescent tubes, bulbs and other similar glass products.
33. Manufacture or handling of pesticides and insecticides
34. Manufacture or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry
35. Manufacturing of burning coal and coal briquettes.
36. Manufacture of dyes and dye stuff

37. Manufacture of sports goods involving exposure to synthetic materials, chemicals and leather.
38. Moulding and processing of fiberglass and plastic
39. Oil expelling and refinery
40. Paper making
41. Potteries and ceramic industry
42. Polishing, moulding, cutting, welding and manufacture of brass goods in all forms
43. Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting
44. Saw mill all processes
45. Sericulture processing
46. Skinning dying and processes for manufacturing of leather and leather products.
47. Stone breaking and stone crushing
48. Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form
49. Tyre making, repairing, re treading and graphite benefication
50. Utensils making, polishing and metal buffing
51. Zari making (all processes)

The Child Labour

(Prohibition and Regulation)

Rules, 1988

1. Short Title and Commencement

1. These rules may be called the Child Labour (Prohibition and Regulation) Rules, 1988
2. They shall come into force on the date of their publication in the Official Gazette.

2. Definitions

In these rules, unless the context otherwise requires

a. "Act" means the Child Labour (Prohibition and Regulation) Act, 1986 (61 of 1986)

b. "Committee" means the Child Labour Technical Advisory Committee constituted under sub – section (1) of Section 5 of the Act;

c. "Chairman" means the Chairman of the Committee appointed under sub – section (2) of Section 5 of the Act;

d. 'Form" means a Form appended to these rules;

e. 'register' means the register required to be maintained under Section 11 of the Act;

f. "Schedule" means the Schedule appended to the Act;

g. "section" means a section of the Act.

3. Term of Office of the Members of the Committee

1. The term of office of the members of the Committee shall be one year from the date on which their appointment is notified in the Official Gazette:

   Provided that the Central Government extend the term of office of the member of the Committee for a maximum period of two years.

   Provided further that the member shall, not withstanding the expiration of his term continue to hold office until his successor enters upon his office.

2. The members appointed under sub – rule (1) shall be eligible for reappointment.

4. Secretary to the Committee

The Central Government may appoint an officer not below the rank of an Under Secretary to the Government of India as Secretary of the Committee.

5. Allowances to Non-official Members

The non-official members and Chairman of the Committee shall be paid such fees and allowances as may be admissible to the officers of the Central Government drawing a pay of rupees four thousand and five hundred or above.

6. Resignation

1. A member may resign his office by writing under his hand addressed to the Chairman.
2. The Chairman may resign his office by writing under his hand addressed to the Central Government.
3. The resignation referred to in sub – rule (1) and sub rule (2) shall take effect from the date of its acceptance or on the expiry of thirty days from the date of receipt of such resignation, whichever is earlier, by the Chairman or the Central Government, as the case may be.

7. Removal of Chairmanship or Member of the Committee

The Central Government may remove the Chairman or any member of the Committee at any time before the expiry of the term of office after giving him a reasonable opportunity of showing cause against the proposed removal.

8. Cessation of Membership

If a member:

a. is absent without leave of the Chairman for three or more consecutive meetings of the Committee; or

b. is declared to be of unsound mind by a competent court; or

c. is or has been convicted of any offence which, in the opinion of the Central Government, involve moral turpitude; or

d. is, or at any time, has been adjudicated insolvent or has suspended his debts or has compounded with his creditors, shall cease to be a member of the Committee.

9. Filling Up of Casual Vacancies

In case a member resigns his office under Rule 6 or ceased to be a member under Rule 8, the casual vacancy thus caused shall be filled up by the Central Government and the member so appointed shall hold office for the unexpired portion of the terms of his predecessor.

10. Time and Place of Meetings

The Committee shall meet at such times and places as the Chairman may fix in this behalf.

11. Notice of Meetings

The Secretary to the Committee shall give at least seven days notice to every member of the Committee of the time and

place fixed for each meeting along with the list of business to be transacted at the said meeting.

12. Presiding at Meetings

The Chairman shall preside at every meeting of the Committee at which he is present; if however, the Chairman is unable to attend a meeting, any member elected by the members present among themselves shall preside at the meeting.

13. Quorum

No business shall be transacted at a meeting of the Committee unless at least three members of the Committee other than the Chairman and the Secretary are present;

Provided that at any meeting in which less than three of the total members are present, the Chairman may adjourn the meeting to a date as he deems fit and inform the members present and notify other members, that the business of the scheduled meeting shall be lawful to dispose of the business at such adlourned meeting irrespective of the number of members attending the meeting.

14. Decision by Majority

All questions considered at a meeting of the Committee shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairman, or in the absence of Chairman, the member presiding at the meeting, as the case may be, shall have a second or casting vote.

15. Sub – Committees

The Committee may constitute one or more Sub-Committees, whether consisting only of members of the Committees or partly of members of the Committee and partly of the other persons as it thinks fit, for such purposes, as it may decide and any Sub-Committee so constituted shall discharge such functions as may be delegated to it by the Committee.

16. Register to be Maintained under Section 11 of the Act

1. Every occupier of an establishment shall maintain a register in respect of children employed or permitted to work, in Form A
2. The register shall be maintained on a yearly basis shall be retained by the employer for a period of three years after the date of the last entry made therein.

17. Certificate of Age

1. All young persons in employment in any of the occupations set-forth in Part A of the Schedule or in any workshop wherein any of the processes set-forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector.
2. The certificate of age referred to in sub-rule (1) shall be issued in Form 'B'
3. The charges payable to the medical authority for the issue of such certificate shall be the same as prescribed by the State Government or the Central Government, as the case may be for their respective Medical Boards.
4. The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question.

Explanation for the purposes of sub-rule (1) the appropriate "Medical Authority" shall be Government medical doctor not below the rank of an Assistant Surgeon of a District or a regular doctor of equivalent rank employed in Employees State Insurance dispensaries of hospitals.

Points to Remember

Definitions -The various definitions defined under this act are summarized as follows.-

1. **Appropriate Government**
2. **Child**
3. **Day**
4. **Establishment**
5. **Family**
6. **Occupier**
7. **Prescribed**
8. **Workshop**

PROHIBITION OF EMPLOYMENT OF CHILDREN IN CERTAIN OCCUPATIONS AND PROCESSES-

Power to amend the Schedule-

Child Labour Technical Advisory Committee –

This committee consist of the following personnel:-

1.Chairman and such other members not exceeding ten, as may be appointed by the Central Government

2.Committee may constitute one or more sub-committees for the consideration of any particular matter

3.The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee

4.As a member of any of its sub-committees shall be such as may be prescribed.

MISCELLANEOUS-

Penalties.

Modified application of certain laws in relation to penalties.

Procedure relating to offences.

Appointment of inspectors.

Power to make rules.

Rules and notifications to be laid before Parliament or State legislature

Certain other provisions of law not barred.

Power to remove difficulties

Repeal and savings.

Amendment of Act 11 of 1948.

Amendment of Act 69 of 1951.

Amendment of Act 44 of 1958.

Amendment of Act 27 of 1961.

REGULATION OF CONDITIONS OF WORK OF CHILDRENTO AN ESTABLISHMENT OR PART OF ESTABLISHMENT-

Hours and period of work.

Weekly holidays.

Notice to Inspector.

Disputes as to age.

Maintenance of register.

Display of notice containing abstract of Section 3 and 14.

Health and safety.

THE CHILD LABOUR (Prohibition and Regulation) Rules, 1988

Definitions

Act

Committee

Chairman

Form

register

Schedule

section

Term of office of the members of the Committee –

(continued)

Committee-
Secretary to the Committee.
Allowances to non-official members.
Resignation
Removal of Chairmanship or member of the Committee
Cessation of membership.
Filling up of casual vacancies.
Time and place of meetings
Notice of meetings.
Presiding at meetings.
Quorum
Decision by majority
Sub – Committees
Register to be maintained under Section 11 of the Act
Certificate of age

Questions For Test

1. Discuss the technical advisory committee under the child labour prohibition act?
2. Discuss regulations relating to conditions of work of children to an establishment under the child labour Act 1986?
3. Discuss rules regarding appointment of an inspector?
4. Discuss the various amendments that took place under the Child Labour Prohibition act, 1986?
5. Discuss the rules regarding the formation of committee under the child labour Prohibition Rules under this act?

LESSON 20:
THE EQUAL REMUNERATION ACT 1976

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the main provisions of the equal remuneration act?

A Sufficient Measure of Civilization is the Influence of Good Women

- R.W. Emerson

Through out history women has faced all those odds weather at home or at workplace. Despite this fact she has always proved herself in various fields and has made herself competent and acceptable. I can count on this that there is not a single field which is untouched by a women. I question thepatriarchal society to justify on what grounds is she should been discriminated?The word discrimination is defined in the Collins dictionary as- Unfairly or worse treatment given to a group or people. My only contention is where there is equality in work in efforts to do work then where is the scope of discrimation in remuneration. Law has always come as a rescue to people who are weak by throwing an extra clock of protection on them. Women has always received this protection in matters of justice be it share in property, contracts or remuneration. I view Equal remuneration act as an epitome ofan civilized society.So students let me began thechapter this way. Under article 39 of the Constitution of India, adumbrating certain principals policy to be followed by the State, it is stated that the State shall in particular, direct its policy towards securing

a. that the citizens, men and women equally, have the right to an adequate means of livelihood;
b. That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
c. That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
d. That there is equal pay for equal work for both men and women;
e. That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
f. That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. This article has been described as having the object of securing a welfare State by the Supreme Court in several decisions.

The Equal Remuneration Act, 1976 is an Act to provide for the payment of equal remuneration to female and male workers and for the prevention of discrimination on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. This is in consonance with article 39(d) of the Constitution. The statement of objects and reasons of the Bill replacing the Ordinance states:

"The State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the President promulgated on 26-9-1975, the Equal Remuneration Ordinance, 1975 so that the provisions of article 39 of the Constitution of India may be implemented in the year which is being celebrated as the International Women's Year. The Ordinance provides for payment of equal remuneration to men and women workers *for* the same work or work of a similar nature and for the prevention of discrimination on grounds of sex."

The Equal Remuneration Act, 1976, as originally enacted, while requiring equal payment to be made to men and women doing the same or similar work stipulating that no discrimination should be made between men and women in recruitment, did not specifically state that discrimination should not be made on the basis of sex while in employment, a lacuna which could enable an employer to discriminate against women in matters like promotions, training, transfers, etc. Therefore, section 5 of the Act was amended by the Equal Remuneration (Amendment) Act, 1987 prohibiting discrimination against women not only in recruitment but also in relation to conditions of service subsequent to employment such as promotions, training, transfers, etc. The Amendment Act also enhanced the penalties fixed under section 10 for contravention for the provisions of the Act and permitted voluntary organisations, in addition to the inspecting staff, to file complaints regarding violation of the provisions of the Act.

This chapter reproducing the Equal Remuneration Act, 1976 and the Equal Remuneration Rules, 1976 with short comments and relevant case law would serve the purpose of having a ready concise reference material on the subject for both the employers and employees.

Students an attempt has been made to make this chapter as simple as plausible so as to bring in front of you the flaws present in the society with respect to discrimination in wages amongst the sexes

This act is to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against Women in the matter of employment and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:-

Preliminary

1. Short Title, Extent and Commencement

1. This Act may be called the Equal Remuneration Act, 1976.
2. It extends to the whole of India.
3. It shall come into force on such date, not being later than three years from the passing of this Act, as the Central Government may, by notification, appoint and different dates may be appointed for different establishments or employments.

Comments

"Equal pay for equal work for both men and women" is one of the Directive Principles of State Policy laid down in article 39(d) of the Constitution of India. Article 37 makes it non-justiciable. Yet, it must be borne in mind by the Legislature while making laws. In Randhir Singh V. Union of India 1982 (44) FLR 299 (SC), the Supreme Court construed articles 14 and 16 in the light of the preamble to the Constitution to read into their scheme the principle of equal pay for equal work. The principle has since been applied in cases of irrational discrimination in the pay scales of workers doing the same or similar work in an organisation. It has been applied when there is no basis or an explanation for the difference. Historically, equal pay for work of equal value has been a slogan of the women's movement. Equal pay laws, therefore, usually deal with sex based discrimination in the pay scales of men and women doing the same or equal work in the same organisation. The Equal Remuneration Act, 1976 is enacted to provide for payment of equal remuneration to men and women workers for the same work or work of a similar nature and for prevention of discrimination in payment on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

The Equal Remuneration Act does not permit the management to pay to a section of its employees doing the same work or a work of similar nature lesser pay contrary to s. 4(1) of the Act only because it is not able to pay equal remuneration to all. The applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it.-M/s. Mackinnor Mackenzie & Co. Ltd. v. Audrey D'Costa AIR 1987 SC 1281

Personal pay given to employees in various grounds cannot furnish ground for invoking the doctrine of "equal pay for equal work. Personal pay is granted to employees on various grounds. In certain services where the matriculation is the minimum educational qualification for a particular post and a graduate joins that post, additional increments are given to him to start with. Increments are also given to male employees for undergoing family planning operation. Such personal pays cannot furnish a ground for invoking the doctrine of "equal pay for equal work'. Because it was mistake it was treated as personal pay for existing incumbents. And for future incumbents, the appropriate pay scale was *given.-Chandigalh Aaninistration v. Nautang Singh* 1997 (76) *FLR* 96 *(SC)*

2. Definitions

In this Act, unless the context otherwise requires-

a. "appropriate government" means-
   i. in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oil-field or major port or any corporation established by or under a Central Act, the Central Government, and
   ii. in relation to any other employment, the State Government;

b. "commencement of this Act" means, in relation to an establishment or employment, the date on which this Act comes into force in respect of that establishment or employment;

c. "employer" has the meaning assigned to it in clause (f) of section 2 of the Payment of Gratuity Act, 1972 (39 of 1972);

d. "man" and "woman" means male and female human beings, respectively, of any age;

e. "notification" means a notification published in the Official Gazette;

f. "prescribed" means prescribed by rules made under this Act;

g. "remuneration" means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;

h. "same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of woman are not of practical importance in relation to the terms and conditions of employment;
   i. "worker" means a worker in any establishment or employment in respect of which this Act has come into force;
   ii. words and expressions used in this Act and not defined but defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.

Comments

What is of paramount importance is that the applicant must show that the skill, effort and responsibility required to carry out the work done by the applicant are the same which are required to be carried out by a member of the opposite sex. Once that is established, then the provisions of the Act oblige an employer to pay the same salary or remuneration; meaning thereby same basic wages, or salary and additional emoluments payable either in cash or in kind to the applicant.

Obviously, number of years put in with the employment would make the total salary different even in cases of persons who are dong the same type of work due to increments or

grades.-lrene Fernandes v. New Phalma Pvt. Ltd. 1997 (76) *FLR* 723 *(Born)*

Whether a particular work is same or similar in nature as another work can be determined on three considerations. In deciding whether the work is the same or broadly similar, the authority should take a broad view; next, in ascertaining whether any differences are of practical importance, the authority should take an equally broad approach for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed and not those theoretically possible. In making comparison the authority should look at the duties generally performed by men and women. Where however, both men and women work at inconvenient times, there is no requirement that all those who work e.g. at night shall be paid the same basic rate as all those who work normal day shifts. Thus a woman who works during day time cannot claim equality with a man on higher basic rate for working nights. If in fact there are women working nights on that rate too, the applicant herself would be entitled to that rate if she changed shifts. Sex discrimination arises only where men and women doing the same or similar kind of work are paid differently. Wherever sex discrimination is alleged, there should be a proper job evaluation before any further enquiry is made.- Mackinnon Mackenzie & Co. Ltd. \'. Audrey O'Costa AIR 1987 SC 1281

3. Act to have Overriding Effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.

PAYMENT OF REMUNERATION AT EQUAL RATES TO MEN AND WOMEN WORKERS AND OTHER MATTERS

4. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature

1. No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.
2. No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.
3. Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers:

   Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

Comments

In Mis Mackinnon Mackenzie & Co. Ltd. v. Audrey O'Costa AIR 1987 SC 1281, a petition was filed by an erstwhile employee of a company who during the period of her employment was working as a confidential lady stenographer complaining that during the period of her employment, after the Act came into force, she was being paid remuneration at the rates less favourable than those at which remuneration was being paid by the company to the stenographers of the male sex in its establishment for performing the same or similar work. A claim for recovery from the company of the amount equivalent to the difference between the remuneration which she was being paid and the remuneration which was being paid to the male stenographer who had put in the same length of service during the period of operation of the Act was also put forth. The company opposed the said petition, on ground that the lady stenographer who had been doing the duty as confidential stenographers attached to the senior executives of the company were not doing the same or similar work which the male stenographers were discharging; and that there was no discrimination in salary; on account of sex. It was also contended that the difference in salary was due to the settlement that has been reached between the union and the company. On these facts, it was held that the confidential lady stenographers were doing the same work or work of a similar nature as defined by s. 2(h) which the male stenographers in the company were performing. The lady stenographers working in the company were called 'Confidential Lady Stenographers since they were attached to the senior executives working in the company. In addition to the work of stenographers they were also attending to the persons who came to interview the senior executives and to the work of filing, correspondence etc. there was practically no difference between the work which the confidential lady stenographers were doing and the work of their male counter parts.

The discrimination between the male stenographers and the confidential lady stenographers was only on the ground of sex. The suggestion that the lady stenographers were found by the company to be proper persons to be confidential lady stenographers cannot hold good. It may be that the company was not employing any male as a confidential stenographer attached to the senior executives in its establishment and that there was no transfer of confidential lady stenographers to the general pool of stenographers where males were working. It, however, ought not to make any difference for purposes of the application of that Act when once it is established that the lady stenographers were doing practically the same kind of work which the male stenographers were discharging. The employer is bound to pay the same remuneration to both of them irrespective of the place where they were working unless it is shown that the women are not fit to do the work of the male stenographers. Nor can the management deliberately create such conditions of work only with the object of driving away women from a particular type of work which they can otherwise perform with

the object of paying them less remuneration elsewhere in its establishment.

Held further, that the fact that the difference between the remuneration of the male stenographers and the remuneration of the confidential lady stenographers was no account of the settlement which was arrived at after proper negotiation between the company and the union is of no assistance. The settlement has to yield in favour of the provisions of the Act in view of s. 3.

Officers of subsidiary bank are not deemed to be officers of the principal is designed to correct irrational pay differences. If the principle is extended to compare pay scales in one organisation with those in another, it has to be done with caution lest it snaps. State Bank of India and its subsidiary banks are not in a comparable position enabling employees of latter to claim parity in terminal and other benefits with those of former.- Associate Banks Officers' Association v. State Bank of India 1998-I-LLJ-1137 (SC)

Before applying the principle of "equal pay for equal work", the nature, sphere, duration of work, and other special circumstances attaching to the performance of duties have to be considered. Where there was a clear distinction in the terms and conditions of service between combatised and non-combatised personnel, claim based on the above principle was held unsustainable-Union of India v. Ram Gopal AgalWaI1998-I-LLJ 1233 (SC)

5. No Discrimination to be Made While Recruiting Men and Women Workers

On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, [1][or in any condition of service subsequent to recruitment such as promotions, training or transfer,] make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

PROVIDED that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

Comments

The Equal Remuneration Act, while requiring equal payment to be made to men and women doing the same or similar work and stipulating that no discrimination should be made between men and women in recruitment did not specifically state that discrimination should not be made between men and women while in employment. This was a lacuna which could enable an *employer* to discriminate against women in matters like promotions, training, transfers, *etc*. Therefore, section 5 of the Act Was amended by the Equal Remuneration (Amendment) Act (49 of 1987) to prohibit discrimination against women not only in recruitment but also in relation to conditions of service Subsequent to employment such as promotions, training, transfers, *etc*. The Amendment Act enhanced the penalties fixed under section 10 for contravention of the provisions of the Act and permitted voluntary organisations, in addition to the inspecting staff to file complaints regarding violation of this Act.

6. Advisory Committee

1. For the purpose of providing increasing employment opportunities for women, the appropriate government shall constitute one or more advisory committees to advise it with regard to the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf,
2. Every advisory committee shall consist of not less than ten persons, to be nominated by the appropriate government, of which one-half shall be Women.
3. In tendering its advice, the advisory committee *shall* have regard to the number of women *employed* in the concerned establishment or employment, the nature of work, hours of work, suitability of women for *employment*, as the case may be, the need for providing increasing *employment* opportunities for women, including part-time *employment* and such other *relevant* factors as the committee may think fit.
4. The advisory committee *shall* regulate its own procedure.
5. The appropriate government may, after considering the advice tendered to it by the advisory committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of *employment* of women workers, as the appropriate government may think fit.

7. Power of Appropriate Government to Appoint Authorities for Hearing and Deciding Claims and Complaints

1. The appropriate government may, by notification, appoint such officers, not *below* the rank of a labour officer, as it thinks fit to be the authorities for the purpose of hearing and deciding-
   a. complaints with regard to the contravention of any provision of this Act;
   b. claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature; and may, by the same or subsequent notification, define the local limits within which each such authority shall exercise its jurisdiction.
2. Every complaint or claim referred to in sub-section (1) shall be made in such manner as may be prescribed.
3. If any question arises as to whether two or more works are of the same nature orof a similar nature, it shall be decided by the authority appointed under sub-section (1).
4. Where a complaint or claim is made to the authority appointed under sub-section (1) it may, after giving the applicant and the employer an opportunity of being heard, and after such inquiry as it may consider necessary, direct-
   i. in the case of a claim arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid;

ii. in the case of complaint, that adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.

5. Every authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
6. Any employer or worker aggrieved by any order may be an authority appointed under sub-section (1), on a complaint or claim may, within thirty days from the date of the order, prefer an appeal to such authority as the appropriate government may, by notification, specify in this behalf, and that authority may, after hearing the appeal, conform, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority.
7. The authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in sub-section (6), allow the appeal to be preferred within a further period of thirty days not thereafter.
8. The provisions of sub-section (1) of section 33C of the Industrial Disputes Act, 1947 (14 ('Of 1947), shall apply for the recovery of monies due from an employer arising out of the decision of an authority appointed under this section.

Comments

The proceedings before the authority are quasi judicial in nature. He has to record evidence, hear the parties and give final directions, which are executable. The authority is expressly given all powers of a civil court. As such wherever any application is made under the provisions of the Act or a complaint is lodged, the authority will have to record evidence of witnesses and for that purpose administer oath. The other side will have to be given an opportunity to cross-examine the witnesses. Documentary evidence will have to be taken on record and appropriately exhibited and after hearing both parties, the authority will have to give reasoned order in support of his directions, which ultimately it may give. As a regular appeal is provided to the appellate authority against the order of the first authority, the authority will have to maintain roznama as also properly maintain record of notes of evidence and properly exhibited documents by both sides. lrene Fernandes v. New Pharma Pvt. Ltd. 1997 (76) FLR 723 (Born)

Chapter III

Miscellaneous

8. Duty of Employers to Maintain Registers

On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed.

9. Inspectors

1. The appropriate government may, by notification, appoint such persons as it may think fit to be inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an inspector may make such investigation.
2. Every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).
3. An inspector may, at any place within the local limits of his jurisdiction-
   a. enter, at any reasonable time, with such assistance as he thinks fit, any building, factory, premises or vessel;
   b. require any employer to produce any register, muster-roll or other documents relating to the employment of workers, and examine such documents;
   c. take, on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with;
   d. examine the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the inspector has reasonable cause to believe to be, or to have been a worker in the establishment;
   e. make copies, or take extracts from, any register or other document maintained in relation to the establishment under this Act.
4. Any person required by an inspector to produce any register or other document or to give any information shall comply with such requisition.

10. Penalties

1. If after the commencement of this Act, any employer, being required by or under the Act, so to do—
   a. omits or fails to maintain any register or other document in relation to workers employed by him, or
   b. omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or
   c. omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or
   d. omits or refuses to give any information, he shall be punishable [1][with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both].
2. If, after the commencement of this Act, any employer-
   a. makes any recruitment in contravention of the provisions of this Act, or
   b. makes any payment of remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, or
   c. makes any discrimination between men and women workers in contravention of the provisions of this Act, or

d. omits or fails to carry out any direction made by the appropriate government under sub-section (5) of section 6, he shall be punishable [with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for; the first offence, and with imprisonment which may extend to two years for the second and subsequent offences].

3. If any person being required so to do, omits or refuses to produce to an inspector any register or other document or to give any information, he shall be punishable with fine, which may extend to five hundred rupees.

Comments

Sec. 13 of the Act empowers the Central Government to make rules which includes making rules regarding registers and other documents which an employer is required to maintain under s. 88 of the Act in relation to the workers employed by him. Rule 6 of the Rules also provides that every employer shall maintain up to date a register in relation to the workers employed by him in form 'D' at the place where the workers are employed.

The concept of employment involves three ingredients: (1) employer, (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the I. contract of service between the employer and the employee where under the employee agrees to serve the employer subject to his control and supervision.-See in Chintaman Rao v. State of M.P.AIR 1958 SC 388

Where appointment of the employees of the bank is made by the Head Office and contract of employment is issued by the Head Office, it was held that only.

Due to the reason that it is stated in r. 6 of the Rules that every employer shall maintain up to date a register in relation to the workers employed by him in Form 'D' at the place where the workers are employed, it cannot be said that registers are to be maintained in each branch of the bank. The words "the place where the workers are employed" cannot be independently read divorced from the words "employer" and the "workers employed by him". Employer is the bank and not the branch manager. Workers are not employed by the branch manager, but by the bank.

At the branch level, there is no employer. So, if a harmonious construction is given to the words contained in r. 6 of the Rules bearing in mind the provisions in the Act and also the aims and reasons for enacting such provisions, the only conclusion that can be arrived at is that the registers are to be maintained at the head office and not at each branch of the bank. It is not a case where such registers are not maintained at the head office of the bank. In the circumstances, the insistence that such registers are to be maintained at the branch level cannot be upheld.-Lord Krishna Bank Ltd. v. Labour Enforcement Officer 1998 (80) FLR 330 (Ker)

11. Offences by Companies

1. Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed, to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

2. Notwithstanding anything contained in sub-section (I), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

   Explanation: For the purposes of this section-

   a. "company" means any body corporate and includes a firm or other association of individuals; and

   b. "director", in relation to a firm, means a partner in the firm.

12 Cognizance and Trial of Offences

1. No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of first class shall try any offence punishable under this Act.

2. No court shall take cognizance of an offence punishable under this Act except upon-

   a. its own knowledge or upon a complaint made by the appropriate government or an officer authorised by it in this behalf, or

   b. a complaint made by the person aggrieved by the offence or by any recognised welfare institution or organisation.

Explanation: For the purposes of this sub-section "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.]

13. Power to make rules

1. The Central Government may, by notification, make rules for carrying out the provisions of this Act.

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

   a. the manner in which complaint or claim referred to in sub-section (1) of section 7 shall be made;

   b. registers and other documents which an employer is required under section 8 to maintain in relation to the workers employed by him;

c. any other matter which is required to be, or may be, prescribed.

3. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

14. Power of Central Government to Give Directions

The Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.

15. Act not to Apply in Certain Special Cases

Nothing in this Act shall apply-

a. to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or

b. to any special treatment accorded to women in connection with-

   i. the birth or expected birth of a child, or

   ii. the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.]

16. Power to make declaration

Where the appropriate government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration, of men and women workers in any establishment or employment is based on a factor other than sex, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be contravention of any provision of this Act.

17. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by notification, make any order, not inconsistent with the provisions

PROVIDED that every such order shall, as soon as may be after it is made, be laid before each House of Parliament.

18. Repeal and saving

1. The Equal Remuneration Ordinance, 1975 (12 of 1975), is hereby repealed.
2. Notwithstanding such repeal, anything done or any action taken under the Ordinance, so repealed (including any notification, nomination, appointment, order or direction made there under) shall be deemed to have been done or taken under the corresponding provision of this Act, as if this Act were in force when such thing was done or action was taken.

Points To Remember

PAYMENT OF REMUNERATION AT EQUAL RATES TO MEN AND WOMEN WORKERS AND OTHER MATTERS-

•Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.

•No employer shall discriminate on remuneration amongst his workforce where there is equal work.

• No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

NO DISCRIMINATION TO BE MADE WHILE RECRUTING MEN AND WOMEN WOKFORCE.

Advisory committee

For the purpose of providing increasing employment opportunities for women, the appropriate government shall constitute one or more advisory committees –

•Every advisory committee shall consist of not less than ten persons, to be nominated by the appropriate government, of which one-half shall be Women.

•the advisory committee *shall* have regard to the number of women *employed* in the concerned establishment or employment, the nature of work, hours of work, suitability of women for *employment*, as the case may be, the need for providing increasing *employment* opportunities for women, including part-time *employment* and such other *relevant* factors as the committee may think fit.

•The advisory committee *shall* regulate its own procedure.

The appropriate government may, by notification, appoint such officers for the purpose of hearing and deciding-

(a) complaints with regard to the contravention of any provision of this Act;

(b) claims arising out of non-payment of wages at *equal* rates to men *and* women

DUTY OF EMPLOYERS TO MAINTAIN REGISTER-

On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed

Act not to apply in certain special cases
Nothing in this Act shall apply-
(a) to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or
(b) to any special treatment accorded to women in connection with-
(i) the birth or expected birth of a child, or
(ii) the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.

Penalties
If after the commencement of this Act, any employer, being required by or under the Act, so to do—
omits or fails to maintain any register or other document in relation to workers employed by him, or

omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or

(omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or

omits or refuses to give any information, he shall be punishable

S

Question for Test

1. Discuss the objective ofEqual remuneration act 1976?
2. Define the following- a) Appropriate government b) worker c) Employer d) Remuneration?
3. Duty of employer to pay equal remuneration to men and women workers for samework or for work of similar nature- Discuss?
4. Role of an inspector under the Equal Remuneration Act 1976?
5. What are the penalties provided under Equal Remuneration Act 1976?
6. Write short note on (a) Offences by companies (b) Advisory committee ?

LESSON 21:
THE WEEKLY HOLIDAYS ACT, 1942

Let me tell you this, the working conditions of persons employed in shops, restaurants and theatres were far from satisfactory. The persons employed therein had to work all the thirty days in a month. They were not given any holiday for rest. Due to over burden of work health of such persons was under jeopardy. To ameliorate their working conditions it was found necessary to enact a law to provide for the grant of weekly holidays. Accordingly the Weekly Holidays Bill was introduced in the Legislature. The Bill was assigned to Select Committee for looking into all aspects of the matter. Recommendations of the Select Committee were incorporated in the Bill for the consideration of the Legislature.

Act 18 of 1942

The Weekly Holidays Bill having been passed by the Legislature received its assent on 3rd April, 1942. It came on the Statute Book as the WEEKLY HOLIDAS ACT, 1942 (18 of 1942).

List of Adaptation Order and Amending Acts

1. The Adaptation of Laws Order, 1950.
2. The Part B States (Laws) Act, 1951 (3 of 1951).
3. 3. The Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970).

The Weekly Holidays Act, 1942 (18 Of 1942)

[3rd April, 1942]

An Act to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatre.

WHEREAS it is expedient to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres;

It is hereby enacted as follows:-

1. Short title, extent and commencement -(l) This Act may be called the Weekly Holidays Act, 1942. (2) It extends to the whole of India (3) It shall come into force in a 3 [State] or in a specified area within a 3 [State] only if the 4[State] Government by notification in the Official Gazette so directs.

2. Definitions - In this Act, unless there is anything repugnant in the subject or context,-

a. "establishment" means a shop, restaurant or theatre;

b. "day" means a period of twenty-four hours beginning at midnight;

c. "restaurant" means any premises in which is carried on principally or wholly the business of supplying meals or refreshments to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre;

d. "shop" includes any premises where any retail trade or business is carried on, including the business of a barber or hair dresser, and retail sales by auction, but excluding the sale of programmes, catalogues, and other similar sales at theatres;

e. "theatre" includes any premises intended principally or wholly for the presentation of moving pictures, dramatic performances or stage entertainments;

f. "week" means a period of seven days beginning at midnight on Saturday.

3. Closing of shops - (1) Every shop shall remain entirely closed on one day of the week, which day shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop.

2. The day so specified shall" not be altered by the shopkeeper more often than once in three months.

1 For statement of Objects and Reasons. see Gazette of India, 1941, Pt. V, p. 142 and for Report of Select Committee, see Gazette of India, 1942, Pt. V, p. 55..

2. The words "except the State of Jammu & Kashmir" subs. for "except Part B States;' by Act 3 of 195 I, sec. 3 and Sch. which were subsequently omitted by Act 5 I of 1970, sec. 2 and Sch.

3. Subs. by the Adaptation of Laws Order, 1950, for "Provinces".

4. Subs, by the Adaptation of Laws Order, 1950 for "Provincial"

4. Weekly holidays in shops, restaurants and theatres - Every person employed otherwise than in a confidential capacity or in a position of management in any shop, restaurant or theatre shall be allowed in each week a holiday of one whole day:

Provided that nothing in this section shall apply to any person whose total period of employment in the week including any days spent on authorised leave is less than six days or entitle to an additional holiday a person employed in a shop who has been allowed a whole holiday on the day on which the shop has remained closed in pursuance of section 3.

Comments

Every employee other than the one employed in a confidential capacity or managerial position is entitled to a holiday of OIIC whole day in each week.

5. Additional half day closing of holiday.- (1) The ‘[State] Government may, by notification in the Official Gazette, require in respect of shops or any specified class of shops that they shall be closed at such hour in the afternoon of one week-day in every week in addition to the day provided for by section 3 as may be fixed by the [1][State] Government, and in respect of theatres and restaurants or any specified class of either or both that every person employed therein otherwise than in the confidential capacity or in a position of

management shall be allowed in each week an additional holiday of one-half day commencing at such hour in the afternoon as may be fixed by the [1][State] Government.

2. The [State] Government may, for the purposes of this section, fix different hours for different Shops or different classes of shops or for different areas or for different times of the year.
3. The weekly day on which a shop is closed in pursuance of a requirement under sub-section (1) shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop and shall not be altered by the shop-keeper more than once in three months.

Comments

The weekly day off has to be specified by the shop-keeper by a notice permanently exhibited in a conspicuous place in the shop, which is not to be changed by the shop-keeper more than once in three months.

6. No deduction or abatement to be made from wages.-No deduction or abatement of the wages of any person employed in an establishment to which this Act applies shall be made on account of any day or part of a day on which the establishment has remained closed or a holiday has been allowed in accordance with sections 3, 4 and 5, and if such person is employed on the basis that he would not ordinarily receive wages for such day or a part of a day he shall nonetheless be paidfor such day or, part of a day the wages he would have drawn had till establishment not remained closed or the holiday not been allowed on that day or part of day.

7. Inspector - (1) The [State] Government may, by notification in the Official Gazette, appoint persons to be inspectors for the purposes of this Act within such local limits as it may assign to each such person.

2. Every inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Comments

Section 21 of the Indian Penal Code is given below for ready reference:

21. "Public servant"-The words "public servant"' denote a person falling under any of the description hereinafter following, namely-

Second.-Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.-Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth.-Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact or to make, authenticate, or keep any document or to take charge or dispose of any property or to execute any judicial process, or to administer any oath, or to interpret or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.-Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.-Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.-Every person who holds any office by virtue of which he is empowered I to place or keep any person in confinement;

Eighth.-Every officer of the Government whose duty it is, as such officer to prevent offences, to give information of offences. To bring offenders to justice, or to protect the public health. Safety or conveyance;

Ninth.-Every officer whose duty it is, as such officer, to take receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government. or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interest of the Government or to make, authenticate or keep any document relating to the pecuniary interest of the Government, or to prevent the infraction of any law of the protection of the pecuniary interests of the Government;

Tenth.-Every officer whose duty it is, as such officer, to take, receive, keep or expand any property, to make any surveyor assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make authenticate or keep any document for the ascertaining of the rights of the people of any village" town or district;

Eleventh.-Every parson who holds any office by virtue of which he is empowered prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth - every person -

a. in the service or pay of the Government or remunerated by fees or commission forthe performance of any public duty by the Government;
b. in the service or pay of local authority, a corporation established by or under a Central, provincial or State Act or & Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956)

Illustration

A Municipal Commissioner is a public servant.

Explanation 1- Persons tailing under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.-Whatever the words "public servants" occur, they shall be understood of every person who is in actual possession of the situation, of public servant, whether legal detect there may be ill his right to hold that situation.

Explanation 3.- The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character the method of selection to which is by or under, any law prescribed as by election.

8. Powers of Inspectors.-(1) Subject to any rules made in this behalf by the [1][State] Government. an inspector may, within the local limits for which he is appointed,-

a. enter and remain in any establishment to which this Act applies with such assistants, if any, being servants of the [2][Government] as he thinks fit;

b. make such examination of any such establishment and of any record, register or notice maintained therein in pursuance of rules made under clause (c) of sub-section (2) of section 10, and the on the spot or otherwise such evidence of any person as he may deem necessary for carrying out the purposes of this Act;

c. exercise such other powers as may be necessary for carrying out the purposes of this Act. .

2. Any person having the custody of any record, register or notice maintained in pursuance of rules made under clause (c) of sub-section (2) of section 10 shall be bound to produce it when so required by the inspector, but no person shall be compellable to answer any question if the answer may tend directly or indirectly to criminate himself.

9. Penalties.- In the event of any contravention of the provisions of section 3, of section 4, of a requirement imposed by notification under sub-section (1) of section 5, of section 6, or of the rules made under clause (c) of sub-section (2) of section 10, the proprietor or other person responsible for the management of the establishment in which such contravention takes place shall be punishable with fine which may extend, in the case of the first offence, to twenty-five rupees, and, in the case of a second or subsequent offence, to two hundred and fifty rupees.

1. Subs. by the Adaptation of Laws Order, 1950 for "Provincial"
2. Subs. by the Adaptation of Law Order, 1950 for "Crown".

Comments

Contravention of the relevant provisions of the Act is punishable with fine up to twenty- five rupees in the case of first offence and up to two hundred rupees in the case of second or subsequent offence.

10. Rules.-(1) The [1][State] Government may, subject to the condition of previous publication by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

2. In particular and without prejudice to the generality of the foregoing power, such rules may,-

a. define the persons who shall be deemed to be employed in a confidential capacity or in a position of management for the purpose of sections 4 and 5;

b. regular late the exercise of their powers and the discharge of their duties by inspectors;

c. require registers and records to be maintained and notices to be displayed in establishments to which this Act applies and prescribe the form and contents thereof.

11. Power of exemption and suspension.- The Central Government in respect of establishments under its control and the '[State] Government in respect of all other establishments within the 2[State] may subject to such conditions, if any, as it thinks fit to impose, exempt any establishment to which this Act applies from all or any specified provisions of this Act, and may, on any special occasion in connection with a fair or festival or a succession of public holidays, suspend for a specified period the operation of this Act

1. Subs. by the Adaptation of Laws Order. 1950, for "provincial".
2. Subs. by the Adaptation of Laws Order, 1950 for "Provinces".

1. Short title, extent and commencement:- (1) This Act may be called the Weekly Holidays Act, 1942.(2) It extends to the whole of India.(3) It shall come into force in a State or in a specified area within a State only if the State Government by notification in the Official Gazette so directs.

2. Definition-

3. Closing of shops. - (1) Every shop shall remain entirely closed on one day of the week, which day shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop.(2) The day so specified shall not be altered by the shop-keeper more often than once in three months.

4. Weekly holidays in shops, restaurants and theatres. - Every person employed otherwise than in a confidential capacity or in a position of management in any shop, restaurant or theatre shall be allowed in each week a holiday of one whole day;

Questions for Test

1. Explain the object of weekly holiday act 1961?
2. Explain the role of an inspector under the Weekly Holiday Act 1961?
3. Who is called as a public servant under this act?
4. What are the punishments for non observance of the weekly Holiday Act 1961?

LESSON 22:
MINIMUM WAGES ACT, 1948

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the rules for fixing minimum rates of wages?

Ok student today we will be doing the minimum wages act. Can any one tell me the purpose of this act. Well let me correct you here. Any person who directly or through another person, whether for himself or for any other person employs one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act. An Act to provide for fixing minimum rates of wages in certain employments

Whereas it is expedient to provide for fixing minimum rates of wages in certain employments;

It is hereby enacted as follows: -

1. Short Title and Extent

1. This Act may be called the Minimum Wages Act, 1948.
2. It extends to the whole of India.

2. Definition

In this Act, unless there is anything repugnant in the subject or context,-

[a. "adolescent" means a person who has completed his fourteenth years of age but has not completed his eighteenth year;

aa. "adult" means a person who has completed his eighteenth years of age;]

b. "appropriate government" means-

i. in relation to any scheduled employment carried on by or under the authority of the [Central Government or a railway administration], or in relation to a mine, oilfield or major port, or any corporation established by [a Central Act], the Central Government, and

ii. in relation to any other scheduled employment, the State Government;

[bb. "child" means a person who has not completed his fourteenth year of age;]

I "competent authority" means the authority appointed by the appropriate government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;

d. "cost of living index number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment;

e. "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26,-

i. in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under [clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;

ii. in any scheduled employment under the control of any government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such government for the supervision and control of employees or where no person or authority is so appointed the head of the department;

iii. in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

iv. in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

f. "prescribed" means prescribed by rules made under this Act;

g. "scheduled employment" means an employment specified in the Schedule, or any process or branch of work forming part of such employment;

h. "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment [7][and includes house rent allowance], but does not include-

the value of-

i. any house, accommodation, supply of light, water, medical attendance, or

b. any other amenity or any service excluded by general or special order of the appropriate government;

ii. any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance;

iii. any traveling allowance or the value of any traveling concession;

iv. any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

v. any gratuity payable on discharge;

i. "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government; but does not include any member of the Armed Forces of the,[8][Union].

3. Fixing of Minimum Rates of Wages

[(1) The appropriate government shall, in the manner hereinafter provided,-

[a. fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

PROVIDED that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;]

b. review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary:

[PROVIDED that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.]

(1A) Notwithstanding anything contained in sub-section (1), the appropriate government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, the appropriate government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment [as soon as may be after such finding.]

2. The appropriate government may fix-

a. a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");

b. a minimum rate of wages for piece work (hereinafter referred to as "a minimum piece rate");

I a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");

d. a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as "overtime rate").

[(2A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947) or before any like authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.]

3. In fixing or revising minimum rates of wages under this section,-

1. different minimum rates of wages may be fixed for-

i. different scheduled employments;

ii. different classes of work in the same scheduled employment;

iii. adults, adolescents, children and apprentices;

iv. different localities;

[b. minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

i. by the hour,

ii. by the day,

iii. by the month, or

iv. by such other larger wage-period as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated:]

PROVIDED that where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936 (4 of 1936), minimum wages shall be fixed in accordance therewith.

4. Minimum Rate of Wages

1. Any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employments under section 3 may consist of-
   i. a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or
   ii. a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorised; or
   iii. an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.
2. The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

[14][5. Procedure for Fixing and Revising Minimum Wages

1. In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall either-
   a. appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or
   b. by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.
2. After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate government shall, by notification in the Official Gazette fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

Provided that where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate government shall consult the Advisory Board also.]

6. Advisory Committees and Sub-committees

[Repealed by the Minimum Wages (Amendment) Act, 1957 (30 of 1957)]

7. Advisory Board

For the purpose of co-ordinating work of [15][committees and sub-committees appointed under section 5] and advising the appropriate government generally in the matter of fixing and revising minimum rates of wages, the appropriate government shall appoint an Advisory Board.

8. Central Advisory Board

1. For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-ordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.
2. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

9. Composition of Committees, etc.

Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate government.

[10.Correction of Errors

1. The appropriate government may, at any time, by notification in the Official Gazette, correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under this Act, or errors arising therein from any accidental slip or omission.
2. Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information,]

11. Wages in Kind

1. Minimum wages payable under this Act shall be paid in cash.
2. Where it has been the custom to pay wages wholly or partly in kind, the appropriate government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorise the payment of minimum wages either wholly or partly in kind.
3. If appropriate government is of the opinion that provision should be made for the supply of essential commodities at concessional rates, the appropriate government may, by

notification in the Official Gazette, authorise the provision of such supplies at concessional rates.

4. The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

12. Payment of Minimum Rates of Wages

1. Where in respect of any scheduled employment a notification under section 5 [17][***] is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorised within such time and subject to such conditions as may be prescribed.
2. Nothing contained in this section shall affect the provisions of the Payment of Wages Act, 1936 (4 of 1936).

13. Fixing Hours for a Normal Working Day, etc.

[(1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate government may-

1. fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;

b. provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;

I provide for payment for work on a day of rest at a rate not less than the overtime rate.]

[(2) The provisions of sub-section (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed:-

1. employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented;

b. employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

I employees whose employment is essentially intermittent;

d. employees engaged in any work which for technical reasons has to be completed before the duty is over;

e. employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause I of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.]

14. Overtime

1. Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force, whichever is higher.
2. Nothing in this Act shall prejudice the operation of the provisions of [section 59 of the Factories Act, 1948 (63 of 1948)] in any case where those provisions are applicable.

15. Wages of Worker who Works for Less than Normal Working Day

If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:

PROVIDED, however, that he shall not be entitled to receive wages for a full normal working day-

i. in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and

ii. in such other cases and circumstances as may be prescribed.

16. Wages for Two or More Classes of Work

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

17. Minimum Time Rate Wages for Piece Work

Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time rate.

18. Maintenance of Registers and Records

1. Every employer shall maintain such registers and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such form as may be prescribed.
2. Every employer shall keep exhibited, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of out-workers, in such factory, workshop or place as may be used for giving out work to them, notices in the prescribed form containing prescribed particulars.
3. The appropriate government may, by rules made under this Act, provide for the issue of wage books or wage slips to employees employed in any scheduled employment in

respect of which minimum rates of wages have been fixed and prescribed in the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

19. Inspectors

1. The appropriate government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act and define the local limits within which they shall exercise their functions.
2. Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed-
   1. enter, at all reasonable hours, with such assistants (if any), being persons in the service of the government or any local or other public authority, as he thinks fit, any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under this Act or rules made there under, and require the production thereof for inspection;
   b. examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein;

      I require any person giving out-work and any out-workers, to give any information, which is in his power to give, with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;

   [d. seize or take copies of such register, record or wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer]; and

   e. exercise such other powers as may be prescribed.
3. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

[4. Any person required to produce any document or thing or to give any information by an Inspector under sub-section (2) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code (45 of 1860).]

20. Claim

1. The appropriate government may, by notification in the Official Gazette, appoint [21][any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any] other officer with experience as a judge of a civil court or as a Stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages [or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14], to employees employed or paid in that area.
   1. [Where an employee has any claim of the nature referred to in sub-section (1)], the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the authority appointed under sub-section (1) may apply to such authority for a direction under sub-section (3):

      PROVIDED that every such application shall be presented within six months from the date on which the minimum wages [7][or other amount] became payable:

      PROVIDED FURTHER that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

[3. When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct-
   1. in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount of such excess;
   ii. in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the authority may think fit, not exceeding ten rupees;

and the authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.]

4. If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.
5. Any amount directed to be paid under this section may be recovered-
   1. if the authority is a Magistrate, by the authority as if it were a fine imposed by the authority as a Magistrate, or
   b. if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.
6. Every direction of the authority under this section shall be final.
7. Every authority appointed under sub-section (1) shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and

compelling the production of documents, and every such authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

21. Single Application in Respect of a Number of Employees

1. [Subject to such rules as may be prescribed, a single application] may be presented under section 20 on behalf or in respect of any number of employees employed in the scheduled employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (3) of section 20 shall not exceed ten times the aggregate amount of such excess [or ten rupees per head, as the case may be].
2. The authority may deal with any number of separate pending applications presented, under section 20 in respect of employees in the scheduled employments in respect of which minimum rates of wages have been fixed, as a single application presented under sub-section (1) of this section and the provisions of that sub-section shall apply accordingly.

LESSON 23:
MINIMUM WAGES ACT, 1948 (Continued)

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the penalties in case of offences related to minimum wages?

Penalties for Certain Offences

Any employer who

1. pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or

b. contravenes any rule or order made under section 13;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

PROVIDED that in imposing any fine for an offence under this section, the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

22A. General Provision for Punishment of Other Offences

Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

22B. Cognizance of Offences

1. No court shall take cognizance of a complaint against any person for an offence-
   1. under clause (a) of section 22 unless an application in respect of the facts constituting such offence has been presented under section 20 and has been granted wholly or in part, and the appropriate government or an officer authorised by it in this behalf has sanctioned the making of the complaint;
   b. under clause (b) of section 22 or under section 22A, except on a complaint made by, or with the section of, an Inspector.
2. No court shall take cognizance of an offence-
   1. under clause (a) or clause (b) of section 22, unless complaint thereof is made within one month of the grant of sanction under this section;
   b. under section 22A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

22C. Offences by Companies

1. If the person committing any offence under this Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

   PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
2. Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

   Explanation : For the purposes of this section-
   1. "company" means any body corporate and includes a firm or other association of individuals, and
   b. "director" in relation to a firm means a partner in the firm.

22D. Payment of Undisbursed Amounts Due to Employees

All amounts payable by an employer to an employee as the amount of minimum wages of the employee under this Act or otherwise due to the employee under this Act or any rule or order made thereunder shall, if such amounts could not or cannot be paid to the employee on account of his death before payment or on account of his whereabouts not being known, be deposited with the prescribed authority who shall deal with the money so deposited in such manner as may be prescribed.

22e. Protection Against Attachment of Assets of Employer with Government

Any amount deposited with the appropriate government by an employer to secure the due performance of a contract with that government and any other amount due to such employer from that government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

22F. Application of Payment of Wages Act, 1936 to Scheduled Employments

1. Notwithstanding anything contained in the Payment of Wages Act, 1936 (4 of 1936), the appropriate government may, by notification in the Official Gazette, direct that,

subject to the provisions of sub-section (2), all or any of the provisions of the said Act shall, with such modifications, if any, as may be specified in the notification, apply to wages payable to employees in such scheduled employments as may be specified in the notification.

2. Where all or any of the provisions of the said Act are applied to wages payable to employees in any scheduled employment under sub-section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of the provisions so applied within the local limits of his jurisdiction.]

23. Exemption of Employer from Liability in Certain Cases

Where an employer is charged with an offence against this Act, he shall be entitled, upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved the employer proves to the satisfaction of the court-

1. that he has used due diligence to enforce the execution of this Act, and

b. that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged:

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

24. Bar of suits

No court shall entertain any suit for the recovery of wages in so far as the sum so claimed-

1. forms the subject of an application under section 20 which has been presented by or on behalf of the plaintiff, or

b. has formed the subject of a direction under that section in favour of the plaintiff, or

c I has been adjudged in any proceeding under that section not to be due to the plaintiff, or

d. could have been recovered by an application under that section.

25. Contracting Out

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

26. Exemptions and Exceptions

1. The appropriate government may, subject to such conditions, if any as it may think fit to impose, direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees.

2. The appropriate government, if for special reasons it think so fit, by notification in the Official Gazette, direct that [7][subject to such conditions and] for such period as it may specify the provisions of this Act or any of them shall not apply to all or any class of employees employed in any scheduled employment or to any locality where there is carried on a scheduled employment.

[2A. The appropriate government may, if it is of opinion that having regard to the terms and conditions of service applicable to any class of employees in a scheduled employment generally or in a scheduled employment in a local area, [7][or to any establishment or a part of any establishment in a scheduled employment], it is not necessary to fix minimum wages in respect of such employees of that class [7][or in respect of employees in such establishment or such part of any establishment] as are in receipt of wages exceeding such limit as may be prescribed in this behalf, direct, by notification in the Official Gazette,and subject to such conditions, if any as it may think fit to impose, that the provisions of this Act or any of them shall not apply in relation to such employees.]

3. Nothing in this Act shall apply to the wages payable by an employer to a member of his family who is living with him and is dependent on him.

Explanation: In this sub-section, a member of the employer's family shall be deemed to include his or her spouse or child or parent or brother or sister.

27. Power of State Government to Add to Schedule

The appropriate government, after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may, by like notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly.

28. Power of Central Government to Give Directions

The Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.

29. Power of Central Government to Make Rules

The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules prescribing the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the Central Advisory Board.

30. Power of Appropriate Government to Make Rules

1. The appropriate government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

2. Without prejudice to the generality of the foregoing power, such rules may-

1. prescribe the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the committees, sub-committees,[16][***] and the Advisory Board;
b. prescribe the method of summoning witnesses, production of documents relevant to the subject-matter of the enquiry before the committees, sub-committees, [16][***] and the Advisory Board;
c. prescribe the mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates;
d. prescribe the time and conditions of payment of, and the deductions permissible from, wages;
e. provide for giving adequate publicity to the minimum rates of wages fixed under this Act;
f. provide for a day of rest in every period of seven days and for the payment of remuneration in respect of such day;
g. prescribe the number of hours of work which shall constitute a normal working day;
h. prescribe the cases and circumstance in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day;
i. prescribe the form of registers and records to be maintained and the particulars to be entered in such registers and records;
j. provide for the issue of wage book and wage slips and prescribe the manner of making and authenticating entries in wage books and wage slips;
k. prescribe the powers of Inspectors for purposes of this Act;
l. regulate the scale of costs that may be allowed in proceedings under section 20; and
m. prescribe the amount of court-fees payable in respect of proceedings under section 20; and
n. provide for any other matter which is to be or may be prescribed.

[30a. Rules Made by Central Government to be Laid before Parliament

Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

[31. Validation of Fixation of Certain Minimum Rates of Wages

Where during the period-

1. commencing on the lst day of April, 1952, and ending with the date of the commencement of the Minimum Wages (Amendment) Act, 1954 (26 of 1954); or
b. commencing on the 31st day of December, 1954, and ending with the date of the commencement of the Minimum Wages (Amendment) Act, 1957 (30 of 1957); or

I commencing on the 31st day of December, 1959, and ending with the date of the commencement of the minimum Wages (Amendment) Act , 1961 (31 of 1961), minimum rates of wages have been fixed by an appropriate government as being payable to employees employed in any employment specified in the Schedule in the belief or purported belief that such rates were being fixed under clause (a) of sub-section (1) of section 3, as in force immediately before the commencement of the Minimum Wages (Amendment) Act, 1954 (26 of 1954), or the Minimum Wages (Amendment) Act, 1957 (30 of 1957), or the Minimum Wages (Amendment) Act, 1961 (31 of 1961), as the case may be, such rates shall be deemed to have been fixed in accordance with law and shall not be called in question in any court on the ground merely that the relevant date specified for the purpose in that clause had expired at the time the rates were fixed :

PROVIDED that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the payment by him by way of wages to any of his employees during any period specified in this section of an amount which is less than the minimum rates of wages referred to in this section or by reason of non-compliance during the period aforesaid with any order or the rule issued under section 13.]

The Schedule

[See section 2(g) and 27]

Part I

1. Employment in any eldsp carpet making or shawl weaving establishment.
2. Employment in any rice mill, flour mill or dal mill.
3. Employment in any tobacco (including bidi making) manufactory.
4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.

[7. Employment on the construction or maintenance of roads or in building operations.]

8. Employment in stone breaking or stone crushing.
9. Employment in any lac manufactory.
10. Employment in any mica works.
11. Employment in public motor transport.
12. Employment in tanneries and leather manufactory.

[Employment in gypsum mines.

Employment in eldspa mines.

Employment in bauxite mines.]

[Employment in manganese mines.]

[Employment in the maintenance of buildings and employment in the construction and maintenance of runways]

[Employment in china clay mines.

Employment in kyanite mines.]

[Employment in copper mines.]

[Employment in clay mines.]

[Employment in magnesite mines covered under the Mines Act, 1952]

[Employment in white clay mines.]

[Employment in stone mines.]

[Employment in steatite (including mines producing soapstone & tale)]

[Employment in ochre mines.]

[Employment in asbestos mines.]

[Employment in fire clay mines.]

[Employment in chromite mines.]

[Employment in quartizite mines.

Employment in quartz mines.

Employment in silica mines.]

[Employment in graphite mines.

[Employment in eldspar mines.]

[Employment in laterite mines.]

[Employment in dolomite mines.

Employment in red oxide mines.]

[Employment in wolfram mines.]

[Employment in iron-ore mines.]

[Employment in granite mines.]

[Employment in rock phosphate mines.]

[Employment in haemetite mines.]

[Employment in loading and unloading in railways, goods sheds.

Employment in docks and ports.]

[Employment in ashpit cleaning on railways.]

[Employment in marble and calcite mines.]

[52][Employment in uranium mines.]

[53][Employment in mica mines.]

[54][Employment in lignite mines;

Employment in gravel mines.

Employment in state mines.

Employment in laying of underground cables, electric lines, water supply lines and sewerage pipe line.]

Part II

1. Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry, and any practice performed by a farmer or on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce).

Points To Remember

Short title and extent
Interpretation
Fixing of minimum rates of wages
Minimum rate of wages
Procedure for fixing and revising minimum wages
Advisory committees and sub-committees
Advisory Board
Central Advisory Board
Composition of committees, etc.
Correction of errors
Wages in kind
Payment of minimum rates of wages
Fixing hours for a normal working day, etc.
Overtime
Wages of worker who works for less than normal working day

Wages for two or more classes of work
Minimum time rate Wages for piece work
Maintenance of registers and records
Inspectors
Claim
Single application in respect of a number of employees
Penalties for certain offences
General provision for punishment of other offences
Cognizance of offences
Offences by companies
Payment of undisbursed amounts due to employees
Protection against attachment of assets of employer with government
Application of Payment of Wages Act, 1936 to scheduled employments

Exemption of employer from liability in certain cases
Bar of suits
Contracting out
Exemptions and exceptions
Power of State Government to add to Schedule
Power of Central Government to give directions
Power of Central Government to make rules
Power of appropriate government to make rules
Rules made by Central Government to be laid before Parliament
Validation of fixation of certain minimum rates of wages

Question for Test

1. Define the following-

   (a) competent authority (b) cost of living index number (c) employer (d) wages?

2. Discuss the procedure for Fixing of minimum rates of wages?
3. Discuss the objective and purpose of Minimum wage act 1948?
4. Discuss the Procedure for fixing and revising minimum wages?
5. Write short notes on- (a) Central Advisory Board (b)Fixing hours for a normal working day, etc. (c) Maintenance of registers and records (d) Inspectors (e) Claims (f) offences by companies?
6. Discuss the role of inspector and his functions under minimum wage act 1948?

LESSON 24:
PAYMENT OF WAGES ACT, 1936

My dear students, the main purpose of the Payment of Wages Act, 1936, is to ensure regular and timely payment of wages to the employed persons, to prevent unauthorized deductions being made from wages and arbitrary fines being imposed on the employed persons. The Act extends to the whole of India.

2. Application of the Act

The Act applied in the first instance to the payment of wages to person employed in any factory, to person employed (Otherwise that in a factory) upon any railway by a railway administration, or either directly or through a sub-contractory by a person fulfilling a contract with the railway administration.

The Act also applied to persons employed in an "industrial or other establishment' specified in sub-clauses (a) to (g) of clause (ii) of Section 2.

3. Industrial or Other Establishment Covered by the Act

According to Section 2(ii), the term 'Industrial and other establishments' means any:

a. tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or rewards;

b. Air transport service other than such service belonging to or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;

c. doc, wharf or jetty;

d. inland vessel mechanically propelled;

e. mine, quarry or oil-field;

f. plantation;

g. workshop or other establishment in which articles are produced adapted or manufactured, with a view to their use, transport or sale;

h. establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operation connected with navigation, irrigation development or maintenance of buildings, roads, bridges or mission and distribution of electricity or any other form of power is being carried on;

i. any other establishment or class of establishments which the Central, Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette.

4. Who are Governed by the Act?

According to Section (6), nothing in the Act shall apply to wages payable in respect of wage period which, over such wage period, average one thousand and six hundred rupees a month or more. This means that only those employed persons who are normally drawing less than one thousand six hundred rupees a month or more. This means that only those employed persons who are normally drawing less than one thousand and six hundred rupees a month are covered by the Act.

5. Important Definition

Employed Person [Section 2(I)]

'"Employed person" includes the legal representative of deceased employed person. (This definition makes it possible for the legal representatives of a deceased employed person to prefer a claim relating to non-payment of wages or any unauthorised deductions there from).

Employer [Section 2 (ia)]

"Employer" includes the legal representative of a deceased employer. After the death of employer his legal representative can be held liable for payment of wages due to employed persons. The liability of the legal representative is limited to the extend of the value of the estate inherited by him.

Factory [Section 2(ib)]

"Factory" means a Factory as defined in clause (m) of Section 2 of the Factories Act, 1948 and includes any place to which the provision of that Act have been applied under Sub-section (1) of Section 85 thereof.

Wages [Section 2(vi)]

"Wages" means all remuneration (whether by way of salary, allowance or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or work done in such employment, and includes:

a. any remuneration payable under any award or settlement between the parties or order of a Court;

b. any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

c. any additional remuneration payable under the terms of employment (whether called a bonus or by any other name;)

d. any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the timer within which the payment is to the made;

e. any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

But does not include

1. any bonus whether under a scheme of profit sharing or otherwise which does not form part of the remuneration payable under the terms of employment or which is the payable under any award or settlement between the parties or order of a Court;

2. the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
3. any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
4. any traveling allowance or the value of any traveling concession;
5. any sum paid to the employed person to defray special expenses entailed on him by the nature of this employment; or
6. any gratuity payable on the termination of employment in cases other than those specified in Sub-Clause (d)

Remuneration in Terms of Money or Capable of Being So Expressed

The remuneration payable as above may be in the nature of salary, allowance or otherwise. It means the terms the term 'remuneration' may not only include salary but at other allowances payable to an employed person in terms of his employment. Therefore D.A. granted in cash at particular rate becomes a part of wages payable to an employee under the contract of his employment.

D.A. (Dearness allowance) is included in the word 'all remuneration' in the definition of wages and is not specifically excluded by it; 1979-II Labour Law Journal 340 (Mad).

Remuneration Payable under the Terms of Employment, Express or Implied

The remuneration payable becomes wages only if the terms of employment express or implied, were fulfilled. If the employed person has fulfilled his part of the contract, whatever he is entitled to receive from the employer in respect of work done, amounts to 'wages' under Section 2(iv). This expression has no reference to the terms of contract to be fulfilled by the employer. Further, wages payable need not necessarily be in terms of an express contract of employment, but may be implied as well. A claim payable to an employee by reason of the termination of his employment must be deemed to be an implied term of contract. Whether house rent is wage, depends upon the terms of the contract, It is so if its payment is compulsory otherwise not; Div. Engineer G.I,P, RLY v. Mahadeo A.I.R. 1955, S.C. 295.

On the question whether in case a worker's contractual wages along with the claim for overtime exceeded the statutory limit; will the Act cases to apply to him in that event the Gujarat H.C. held that;

Having regard to the context, the expression 'wages' employed in Section 2(vi) of Act would relate to the contractual wages and not to overtime allowance claimable by a worker. The amount claimable by a worker by way of overtime would depend on the additional work put in and the beyond specified hours of work. That can have no relation to the wage period. The scheme of section 2(vi) is pretty clear. It only relates to the contractual wages claimable by a workman on an average per month having regard to the fact that wages may be payable daily or weekly or by some other wage period not exceeding one month. The overtime wages claimed do have not have to be taken into account in determining the question as regards the applicability of the Payment of Wages act in the context of Section 2(vi); Husain v. N.P. Nopany 1979-1 labour law Journal 1 03 (Gujl.

Remuneration under Award or Settlement

Wages is defined by Section 2 (vi) as any remuneration payable under any ward or settlement between the parties or order of a Court. It does not say that remuneration should-be payable under an award, as defined in the industrial Disputes Act. There is no reason to interpret the word "award" in any other manner East Coast Commercial Company limited v. A Prakasa Rao,1967, labo IC 929.

Sums payable on termination of employment under any law, contract or instrument where any Act provides for certain payments by an employer to an employee on the termination of his services, the employer must honour his obligation.

A retrenchment compensation payable under section 25F of the industrial Dispute Act, 1947, being a compulsory payment under the Act, is treated as an implied term of the contract of employment and hence it is not remuneration and it is not payable to a worker in respect of his employment or work doen in such employment and hence it is not wage Veiyra v. Fernades. However, with regard to compensation payable under Section 25FFF due to the closure of the undertaking, the M.P. High Court has held that it is not wages. Fajale Hussain v. P.W.A.; and Radhakrishnan Somnath v. Distt. Judge, Nagpur. Similar damages for wrongful termination of service under the contract of employment do not amount to wages.

Bonus-when wages

The payment of bonus under the terms of employment is treated as 'wages' for the purposes of this Act. The amount of bonus payable under the Bonus Act would be covered within the definition of wages as defined under Section 2(vi) of Act; 1976-I Labour Law Journal 511 (FB) (M.P.). The definition of wages also includes Production Bonus which depends upon the quantum of production. But Puja Bonus or Fagua Bonus, paid in the past, cannot be treated as wages, because it is neither a payment under a contract nor under any customary right.

Gratuity

According to Section 2(vi) 6, any gratuity payable on the termination of employment is not included in their term 'wages'. But by virtue of Section 2(vi) (d), if the gratuity becomes payable under any (i) law, (ii) contract, or (iii) instrument it falls within the definition of the term 'Wages'.

Gratuity Payable under Award Whether Wages

The question, whether gratuity payable under the award of industrial adjudication falls within the definition of the term 'Wages' came up for judicial interpretation in number of cases. It has been held that gratuity payable under any award is neither a sum payable under any law nor under a contract. In Purshottam H. Jadav v. Poddar V.R. it was that where an award made by industrial adjudication framing a scheme of gratuity, becomes enforceable under Section 89 and 90 of the industrial Disputes Act, 1947, it is a scheme which is enforceable by virtue of the operation of law. It does not mean gratuity is payable

under any law is in fact payable under any law. It is in fact payable under an award which is made enforceable by the provision of the Industrial Dispute Act, 1947. Therefore gratuity payable under an award is not payable under any law.

Similarly, it has been held that the gratuity payable under an industrial award does not become payable under a contract. Though and industrial award partakes the character of a statutory contract, it is merely intended to emphasis the fact that the terms prescribed by the award are enforceable as though they were terns of employment evolved by industrial adjudication for the parties.

Though gratuity payable under award is neither payable under law nor under any contract, it is held that it is payable under an 'Instrument' as referred red in Section 2(vi) (d), the word 'Instrument' includes award made by the industrial adjudication authority. Therefore, it can be safely concluded that the gratuity payable under the terms of any industrial award, will fall within the definition of the term "Wages".

6. Responsibility for Payment of Wages (section 3)

According to Section 3 of the Act, every employer is responsible for the payment to persons employed by him of all wages required to be paid under the Act:

i. In a factory, if a person has been named as manager of a factory under Section 7(1) (f) of the Factories Act, 1948.
ii. In industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment; and
iii. Upon railways (other wise than in factories), if the employer is the railway administrative and the railway administration has nominated a person in this behalf for the local area concerned.

7. Fixation of Wage-period

It is obligatory under Section 4, on every person responsible for the payment of wages under section 3, to fix periods (referred to in the Act as wage-periods) in respect of which such wages shall be payable. No wage- period shall exceed one month. In other words, payment of wages can be made daily, weekly, fortnight or monthly.

8. Times of Payment of wages (section 5)

Section 5 of the Act lays down that the wages of every person employed upon or in:

a. any railway, factory or other establishment upon or in which less that one thousand persons are employed, shall be paid before the expiry of the seventh day.
b. any other railway, factory or industrial or other establishment, shall be paid before the expiry of the tenth day after the last day of the wage period in respect of which the wages are payable.
c. Provided that in the case of persons employed on a dock, what or jetty in a mine, the balance of wages found due on completion of a final tonnage aunt of the ship or wagons loaded or unloaded, as the case may be, shall paid before the expiry of the seventh day from the day of such completion.

9. Payment of Wages to Persons Whose Employment Is Terminated

Section 5(2)lays down that where the employment of any person is terminated by or on behalf of the employer of wages earned by him shall be paid before expiry of the second working day from the date on which his employment is terminated. However, where the employment of any per person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the second day from the date on which his employment is so terminated.

10. Exemption from Compliance with Time Limit for Payment of Wages

Section 5(3) empowers the State Government by general or special order to exempt, to such extent and subject to such condition as may be specified in the order, the person responsible for the payment of wages to persons employed upon in railways (Otherwise than in a factory), or to persons employed as daily-rated workers in the Public Works Department of the Central Government or the State Government from the operation of this section in respect of the wages of any such persons or class of such persons. In the case of persons employed as daily-rated worker as aforesaid, no such order shall be made except in consultation with me Central Government.

11. Wages to be Paid on a Working Day

Section 5(4) lays down that save as otherwise provided in Section 5(2), payments of wages shall be made on a working day.

12. Wages to be Paid in Current Coin or Currency Notes

According to section 6, all wages shall be paid in current coin or currency notes or in both.

13. Payment by Cheque

According to the proviso under Section 6, an employer may, after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

14. Deductions from Wages

What is a 'deduction' and what is not?

According to Explanation I under Section 7(1), every payment made by the employed person to the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Explanation : It clarified that may loss of waves resulting from the imposition, for good and sufficient cause, upon a person employed, of any of the following penalties, namely-

i. the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);
ii. the reduction to a lower post or time scale or to a lower stage in a time scale; or
iii. Suspension; shall not be deemed to be deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with requirements. If any, which may be specified in this behalf

by the State Government by notification in the official Gazette.

Deduction Which May be Made from Wages

Dedication authorized under the Act are enumerated in Section 7(2) Any other deduction is a unauthorized. Further; the authorized deduction can be made only in accordance with the provision of the Act.

c. fines.

d. deductions for absence from duty;

e. deductions for damage to or less of good expressly entrusted to the employed person for customary, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

f. deduction for house-accommodation supplied by the employer or by Government of any housing board set up under any law for the time being in force (whether the Government or the board is the employer, or not) or any other authority engaged in the business of subsidizing house. Accommodation which may be specified in this behalf by the, State Government by notification in the Official Gazette;

g. Deductions for such amenities and service supplied by the employer as the State Government or any officer specified by it in this behalf may, by general or special order, authorize;

Explanation: The word 'services' in this clause does not include the of tools and raw material required for the purposes of employment;

h. Deduction for recovery of, advances of whatever nature (including Advances for traveling allowance or conveyance traveling allowance) and the interest due in respect thereof, or for adjustment of over- payment of wages;

i. Deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof.

j. Deduction for recovery of loans granted for house-building or other purposes approved by the State Government and the interest due in respect thereof;

k. Deductions of Income-tax payable by the employment person;

l. Deduction required to be made by order of a Court or other authority competent to make such order;

m. Deductions fro subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925, applies or any recognized provident fund as defined in Section 58A of the Indian Income-tax Act, or any provident fund approved in this behalf by the State Government, during the continuance of such approval;

n. Deduction for payment to co-operative societies approved by the state Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the India Post Office:

o. Deduction made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation Act, 1956, or for the purchase of securities of the Government of India or of any Sate Government or any officer specified by it in this behalf, during the continuance of such approval;

p. Deduction made, with the written authorization of the employed person, for payment of this contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act, 1926 for the welfare of the employed person or the members of their families, or bot, and approved by the State Government or any officer specified by it in this behalf, during the continuance of such approval;

q. Deduction made, with the written authorization of the employed person for payment of the fees payable by him for the membership of any trade union registered under the Trade unions Act, 1926.

r. Deduction for payment of insurance premium on Fidelity Guarantee Bonds;

s. Deduction for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or Base coins or mutilated or forged currency notes;

t. Deduction for recovery of losses sustained by a railway on account of the failure of the employed person to invoice, to bill, to collect or to a account of the appropriate charges due to that administration; whether in respect of fares, freight, demurrage, wharfage and change or in respect of sale of food in catering establishment or in respect of sale of commodities in grain shops or otherwise;

u. Deductions of recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;

v. Deduction made with written authorization of the employed person for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, Specify;

w. Deduction for contribution to any insurance scheme framed by the Central Government for the benefit of its employees.

Limit on the Total Amount of Deductions

Section 7(3) lay down that notwithstanding anything contained in the Act, the total amount of deduction which may be made under Section 7(2) in any wage period from the wages of any employed person shall not exceed -

i. In case where such deductions are wholly or partly made for payments to Co-operative Societies under clause (i) of Sub-section, (2) Seventy five per cent of such wages, and

ii. In any other case, fifty per cent of such wages

Provided that where the total deductions authorized under Sub-Section (2) exceed seventy-five per cent or, as the case may be, fifty per cent of the wages, the excess may be recovered in such manner as may be prescribed.

a. Fines (Section 7(2)(0) and 8)

Section 7(2) (a) authorizes the deduction by way of fines from the wages of an employed person. The fines can, however, be imposed subject to the provisions in Section 8 of the Act. The provision are as follows:

1. No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the 'State Government or of the prescribed authority, may have specified by notice under Sub-section(2).
2. A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises which employment is carried on or in the case of person employed upon a railway (otherwise than in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.
3. No fine shall be imposed on nay employed person until he has been given an opportunity of showing cause against the fine, or otherwise that in accordance with such procedure as may be prescribed for the imposition of fines.
4. The total amount of fine which may be imposed in nay one wage period on any employed person shall not exceed an amount equal to three percent of the wages payable to him in respect of that wage-period.
5. No fine shall be imposed on any employed person who is under the age of fifteen years.
6. No fine imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.
7. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
8. All fines and all realization thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under Section 3 in such form as may be prescribed ; and all such realizations shall be applied only to such purposes beneficial the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation : When the persons employed upon or in any railway, factory or industrial or other establishment are part only of a staff employed under the same management, all such realization may be credited to a common fund maintained for the staff as a whole, provided that the fund maintained for the staff as a whole, provided that the fund shall be applied to such purposes as are approved by the prescribed authority.

b. Deduction for Absence from Duty (Sections 7(2) (b) and 9)

Where any employed persons remains absent from duty, deduction from wages on account of such absence is authorized Section 7(1) (b). The employed person is treated absent from his duty when he remains absent form any place or places where by terms of his employment, he is required to work. This absence may be for the whole day or any part of the period during which he is required to work (Section 9(1))

Where an employed person is present at work place during his working hours but refuses to carry out his work due to stay-in-strike or for any other cause which is not reasonable in the circumstances, he shall be deemed to be absent from his place of work.

Suspension - Whether Absence from Duty

An employed person may remain absent from his duty due to suspension of his services. If a worker is suspended under standing order, pending enquiry into allegation of misconduct, he remains absent from his place of work and hence deduction can be made for period of his absence. In fact during suspension period a person is not under an obligation to be present at place of duty and as such for his absence. Deduction in wages can be made. However, if during the period of suspension, he is not at liberty to be absent from place of duty and hence required to report everyday. Deduction from wages is not justified.

Amount of Deductions

According to Section 9(2), the amount of deduction for absence from i duty shall not exceed a sum which bears the same relationship to the wages-payable in respect of the wage-period as the period of absence does to such wage-period.
Provided that if 10 or more employed persons, acting in concert, absent them selves without due notice which is required under the terms of their contracts of employment,' and without reasonable cause, such deduction, from such persons, may include such amount, not exceeding his wages for 8 days, as may by any such term be due to the employer in lieu bf due notice.

C. Deduction for Damage to or Loss of Goods or for Loss of Money [Sections 7(2) (C) And 10]

According to section 7 (2) (c) deduction from the wages can be made (i) for damage to or loss of goods expressly entrusted to the employed person for custody, or (ii) for loss of money for which an employed person is required to account, where such damage or losses directly attributable to his neglect or default.

Before making any deduction under this head, such employed person is to be given an opportunity to show cause against the deduction of if any other prescribed procedure has been laid down in this respect the some must be followed. However, such deduction are subject to the following provision laid down in Section 10:

1. the total amount of deduction under this head should not exceed the actual amount of damage or loss caused to the employer due to the negligence or default of the employed person [Section 1 O(1)].
2. The person responsible for payment of wages under Section 3 should record all such deductions and realization thereof, in a register, in such form and containing such particular as may be prescribed (Section 10(2))

d. Deduction for House-accommodation (Section 7(2) (d) and 11)

According to section 7(2)(d) deduction is allowed in respect of house accommodation provided by any of the following:

1. Employer 2. Government 3. Housing Board set up under any law for the time being in force 4. Any other authority engaged in the business of subsidizing house

accommodation which may be specified by the Sate Government by a notification in the Official Gazette.

It may be noted that deduction can be made even where the Government or the Board is not employer of such employed person.

Condition of Deduction

The deduction in respect of house—accommodation are subject to following conditions prescribed under Section 11;

1. The facility of house-accommodation has been accepted by the employed person as a term of his employment or otherwise. However, no deduction can be allowed if it is the duty of the employer to supply the same.

   House rent allowance is not the same as value of house-accommodation. The value of house accommodation in the definition of wages in Section 2(vi) denotes something which can be deducted from wages. In fact, value of house accommodation and such other amenities is not included in calculating the wages payable under the Act.
2. The amount of deduction in respect of such accommodation should not, exceed the value of such facility.

e. Deduction for Other Amenities and Services (Sections 7(2) (e) and (12)

The employed person may be provided with various amenities and services like transport, supply of electricity, water, etc the deduction can be made for such facilities subject to the provisions of Section s 7(2) (e) and 11;

1. the amenity or service has been accepted by the employed person as a term of his employment or otherwise.
2. The state Government or any officer specified by it in this behalf, has authorized the supply of such facilities.
3. All such deductions are made subject top such conditions as the State Government may impose.
4. The amount of deduction should not exceed an amount equivalent to the value of such amenities or services supplied.

According to explanation to Section 7(2) (e), the work 'service' does not include the supply of tools and raw materials required for the purpose of employment.

f. Deduction for Recovery of Advance [Sections 7(2) and 12)

It is very often that money may be advanced to the employed person to meet out various types of expenses in respect of marriage, death, religious functions, traveling or conveyance, etc., Section 7(2) (f) authorizes the deductions for;

i. the recovery for advance of whatever nature,

ii. the interest due on such advance, or

iii. For adjustment of over-payment of wages

Condition The deduction under section 7(2) (f) are subject to the following conditions contained in Section 12:

1. Where the money was advanced before the employment begun the deduction for the recovery of the advance should be mode from the first payment of wages is respect of complete wage period. But where the advance is given for travelling expenses no deduction as aforesaid can be mode for its recovery [Section 12(0)]
2. Where the money was advanced after the employment began, the deduction, to recover such advances should be in conformity with the rules laid drown by the State Government.
3. Sometimes, the wages not already earned may be paid in advance to the employed person. Deductions for the recovery of such advances should be subject to the rules mode by the State Government in this respect. Such rules may provide (i) the extent to which such advances may be given, and (ii) the installments by which they may be recovered (Section 12(b)]

Deductions for the Recovery of Loans

Loans Granted from Welfare Fund [Section 7(2)]

If a loon is mode from any fund constituted for the welfare of the labour / the deduction from wages can be mode for the recovery of such loan together with the interest due in respect thereof. For the application of this provision, the Fund from which loons have been mode, must be constituted in accordance with the rules approved by the State Government, and the interest due in respect thereof.

Loans for House Building or Other Purposes [Section 7(2)(fff) and 12A]

Where the loons have been granted (i) for house/building or (ii) other purposes approved by the state Government, deductions can be mode for the recovery of such loon together with interest due thereon.

Section 12A empowered the State Government to make rules with regard to (i) the extent to which such loon maybe granted, and (ii) the rate of interest payable thereon. Therefore, all such deductions should be according to the rules framed by the State Government.

h. Deduction for Income Tax (Section 7(2) (g)]

According to Income-tax Act, payable, if any, by any salary earner, should be deducted at source i.e. at the time of wages. In other words, it is the responsibility of the employer to see that deductions on account of income-tax are mode before the wages are paid to any employed person. Section 7(2) (g) accordingly authorizes such deductions from the wages of an employed person.

i. Deduction under the Order of a Court of Authority [Section 7(2) (h)]

According to Section 7(2) (h), deduction from wages can be made under the Order of a court or other Authority competent to make such Order

Who is an Authority Competent to make order?

The Authority referred here is the Statutory Authority, authorized by some statutory provisions. Thus, a Private Roadways Co. is not competent authority to make order for the deduction of wages. Every employer is not authority within the meaning of section 7(2) (h). Even where an employee agrees to the deductions to be made by the employer, the employer does not become an Authority and therefore would not get benefit of Section 7(2) (h).

j. Deduction in Respect of Provident Fund (Section 7(2) (j))

An employed person may contribute to a scheme of provident fund. He may also be granted advances from such provident fund. Section 7(2) (I) authorizes all such deductions:

1. For contribution of such provident, and
2. For repayments of advances from such fund. However, deductions are allowed in respect of following types of provident fund schemes:

1. Schemes under the Provident Fund Act, 1925
2. Recognised Provident Fund under Section 58A of the Indian Income-tax Act, 1992 (Now Income-tax Act, 1961)
3. Any Scheme approved by the State Government

k. Deductions for Payment to Co-operative Societies is Allowed under Following Conditions Given in Section 7(2) (j) Read with Section 13:

1. The Co-operative Society is approved by the State Government or nay official specified by it in this behalf.
2. The deduction are in conformity with rules laid down by the State Government in this respect (Section 13)

i) Deductions for payments to a scheme of insurance of a Post Office [Section & (2) (i)]

Deductions for payments to a scheme of insurance of a post Office [Section 7 (2) (j)]

Deduction for payment to a scheme of insurance maintained by the Indian Post Office, is allowed under Section 7(2) (j), provided deductions are made subject to such conditions as the Sate Government may impose under Section 13.

m. Deductions for Payment of Life Insurance Premium Section 712)(k))

Deduction can be made for payment of any premium to the Life Insurance Corporation of India, on the life insurance policy of the employed person. But he deduction is subject to following conditions:

i. Deductions should be made with written authorisation of the employed person.
ii. If the State Government has imposed any conditions are complied with (Section 13)

n. Deduction for the Purchase of Government Securities [Section 7(2) (k)]

Deduction are allowed for the purchase of securities of ;

j. the Government of India, or

k. ii. any State Government.

Such deductions are subject to similar condition specified in case of deduction for payment of life insurance premium.

o. Deductions for Payment to Post Office Saving Bank

Section 7(2)(k) authorizes deduction for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of Central or any

State Government. But these deduction are subject to:

i. The written authorization of the employed person, and
ii. Such conditions as may be imposed by the State Government

p. Deduction for Payment of Contribution to Certain Funds[Section 7(2)(k)(k)

Deduction can be made with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families or both and approved by the State Government or any officer specified by it in this behalf, during the continuance of such approval;

q. Deduction for Payment of Certain Fees [Section 7(2)(kkk)

Deduction can be made, with the written authorization of the employed person, for payment of the fees payable by him for membership of nay trade union registered under the trade Union Act, 1926.

r. Deductions in Respect of Fidelity Guarantee Bond

Any payment of insurance premium on Fidelity Guarantee Bond can be deducted from the wages of an employed person.

s. Deductions for Certain Losses in Case of Railway Administration

Deduction can be made from the wage of a person employed in railway administration for the recovery of losses sustained by a railway administration, due to following reasons:

i. Acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes [Section 7(2)(m)];
ii. Failure of the employed person to invoice, to bill, to collect, to account for the appropriate charges due in respect of; (a) fares, freight, demurrage, wharfage and carnage, or (b) sale of commodities in grain shops or otherwise [Section 7(2) (n)];
iii. Any rebates or refund incorrectly granted by the employed person in this respect shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person [Section 10 (1)]

Opportunity to show cause against deduction

Before making any deduction in respect of aforesaid losses, an opportunity should be given to such employed person to show cause against the deduction. If any other procedure has been prescribe in this respect, the same should be strictly observed before making any such deduction [Section 10 (1-A)]

t. Deduction for Payment to Prime Minister's National Relief Fund or Any Other Fund

Deduction can be made with the written authorization o the employed person, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification in the official Gazette, specify.

u. Deductions for Contributions to Insurance Scheme

Deduction can be made for contributions to any insurance scheme framed by the Central Government by the benefit of its employees.

15. Extent of Total Deductions

The total amount of all categories of deductions from the wages of any employed person, in any wage-period, should not exceed the following limits prescribed by Section 7(3):

1. 75% of wages payable incase where such deductions are wholly or partly made for payments to Co-operative Societies under Section 7(2) (j) of the Act.
3. 50% of the wages payable in any other case.

Provided that where the total deductions authorized exceed seventy-five per cent, as the case may be, fifty per cent of wages, the excess may be recovered in such manner as may be prescribed.

Section 7 doesn't not bar recovery under any other law

The provisions of section 7 do not deprive the employer of his right to recover for the wages of employed person or otherwise, any amount payable by such person under any amount payable by such person under any law for the time being in force, other that the Indian Railways Act, 1890 Section 7(4)]

1.6. Contracting Out (Section 23)

Any contract or agreement, whether made before or after the commencement of this act, whereby an employed person relinquishes any right conferred by this Act, shall be null and void in so far as it purports to derive him of such rights. Thus, if deduction is unauthorized no agreement could give an employer to make such deduction Bhara: Airways v. M.R. :Charabarti 1955 -ILU 89.

Points to Remember-

Continued-
Deduction which may be made from wages
Limit on the total amount of deductions
Fines (Section 7(2)(0) and 8)
Deduction for absence from duty (Sections 7(2) (b) and 9)
Suspension—whether absence from duty
Amount of Deductions
Deduction for damage to or loss of goods or for loss of money
Deduction for house-accommodation (Section 7(2) (d) and 11)
Condition of deduction
Deductions for the recovery of loans
Loans granted from welfare fund [Section 7(2)]
Loans for house building or other purposes [Section 7(2)(fff) and 12A]

Salient features of the act-
Objective
Application of the Act
Industrial or other establishment covered by the Act.
Who are governed by the Act?
Important Definition
Remuneration under award or settlement
Gratuity
Gratuity payable under award whether wages
Responsibility for Payment of Wages (section 3)
Fixation of Wage-period
Times of Payment of wages (section 5)
Payment of Wages to persons whose employment is terminated
Exemption from compliance with time limit for Payment of Wages
Wages to be paid on a working day
Wages to be paid in current coin or currency notes
Payment by cheque

Continued…..
Deduction for Income Tax (Section 7(2) (g)]
Deduction under the order of a court of authority [Section 7(2) (h)]
Deductions for payment of Life Insurance premium Section 712)(k))
Deduction for the purchase of government securities [Section 7(2) (k)]
Deductions for payment to Post Office Saving Bank
Deduction for payment of contribution to certain funds [Section 7(2)(k)(k)
Deduction for payment of certain fees [Section 7(2)(kkk)
Deductions in respect of Fidelity Guarantee Bond
Deductions for certain losses in case of Railway Administration-
Deductions for contributions to insurance scheme
Extent of total deductions
Contracting Out (Section 23)

Questions for Test-

1. What is the object of the Minimum Wages Act, 1948?
2. Write note on the importance of the Minimum Wages oct, 1948?
3. Define the following terms as used in the Minimum Wages Act, 1948, a) employer, (b) employee (c) cost of living index number, (d) Scheduled employment and (e) wages.
4. Elucidate briefly the procedure for fixing minimum wages. What is the composition of such minimum rate of wages?
5. Give the procedure for fixing on revising minimum wage
6. Under the Minimum Wages Act, 1948 what is mean by 'Scheduled Employments? Define and enumerate some of them with your own comments.
7. What are the function of Advisory Board and Central Advisory Board constituted under the Minimum Wages, Act, 1948? Describe their composition also.
8. Discuss the main provision of the Minimum Wages Act, 1948.
9. State the provisions of the Minimum Wages Act, 1948 in connection with protection against attachment of assets of employer with Government.
10. State How the Inspectors are appointed for the purpose for the minimum wages act, 1948. What are their powers?
11. Under the Minimum Wages Act, 1948, state what constitutes the minimum rate of wages

LESSON 25:
PAYMENT OF BONUS ACT, 1965

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the provisions of the payment of bonus act?
- How is the calculation of bonus done?

So, students we have now reached to the topic of Bonus. Bonus as we all know is that part of a man's income which builds in hopes for more food clothing and better shelter and households for his family. Bonuses are paid out of profits of a company. Employees in organizations rely on such bonus as a share in the profits earned by the employer from the hard work done by them. Bonus is also a symbol of commitment towards the organizations. What is bonus? When did this system of bonus started when was it legalized is something we will be dealing in this chapter.

1. Introduction

The term bonus is not defined in the payment of bonus act, 1965. Webster's international Dictionary, defines bonus as something given in addition to what is ordinarily received by or strictly due to the recipient. The Oxford concise Dictionary defines it as "something to the good into the bargain (and as an example) gratuity to workmen beyond their wages."

For a long time, bonus was regarded as an ex-gratis payment made by the employer to his workers to provide a stimulus for extra effort by them in the production process; on occasions it also represented the desire of the employer to share with workers the surplus generated by common endeavor and enterprise.

Payment of "bonus" in the proper sense of the term, should be regarded as having started in the cotton mills of Bombay during the closing period of the first world war. Bonus payments were, however, discontinued in most cases when the war was over, profits went down and many mills showed losses in their working. There was a change in the position when the second world was started in 1939 and industrial units, including, cotton textile, again started making profits, Wartime bonus came to be regarded as a payment made to the workers out of the extraordinary profits earned during the war. Though several employers paid bonus voluntarily, many disputes on the issue were referred to adjudication under the defence of India rules. The adjudication took the view that profits were made possible by the co-operation, both of labour and capital. Labour, therefore had a right to share in increased profits in any particular period. The claim to bonus was still not a legal right, but was accepted chiefly on grounds of broad principles of justice, equity and good conscience with a view to keeping labour contented. This position continued until the Bombay High Court laid down that payment of bonus could be demanded by workers as a right, that is to say, a payment which should be made by the employer as extra-remuneration for work done by the employee under a contract, express or implied.

L.A.T (Labor Appellate Formula)Formula

A dispute relating to payment of bonus by the cotton ,Mills of Bombay was decided by the Industrial court, Bombay. An appeal against the award of the Industrial court was considered by the full bench of the then labour Appellate Tribunal (Mills owners' associations, Bombay v. Rashtriya Mill mazdur sangh, Bombay, 1950 -ll-LLI-1247)

In its decision, the LAT laid down the main principles involved in the grant of bonus to workers. These principles are known as the L.A. T formula. According to the formula the following prior charges were to be deducted gross profits:

i. Provisions for depreciation
ii. Reserve for rehabilitation
iii. Return of 6 per cent on the paid-up capital and
iv. Return on the working capital at a lower rate than the return on paid-up capital.

The balance if any was called 'available surplus' and the workmen were awarded a reasonable share out of it by way of bonus for the year.

Appointment of Bonus Commission

The formula laid down by the LA T Was followed all over the country by industrial tribunals in awarding bonus, though demands for its revision continued to be made from time to time. The main point on which this revision was sought centered round the provisions for rehabilitation accepted, by the LAT as a prior charge. This issue came up for consideration by the supreme court in an appeal from the associated cement companies in 1959. The Court while upholding the principles underlying the LAT formula, observed inter alia:

The legislature fells that the claims for social and economic justice made by labour should be redefined on a clearer, basis, it can step in and legislate in that behalf. It may also be possible to have the question Comprehensively considered by a high-powered Commission which may be asked to examine the pros and cons of the problem in all its aspects by taking evidence from all industries and bodies of workmen"

The matter was considered by the standing labour committee in 1960. The committee recommended that a bonus commission should be set up to go into the question of profit bonus in a comprehensive manner. Accordingly, the government of India, by a resolution dated the 6th December, 1961. Constituted a commission (Known as the bonus commission) under the chairmanship of Shri M.R. Meher. The commission included, besides the chairman, two independent members, two members representing workers and to members representing employers (one from the private sector and public sector).

The commission's report was received by Government on the 24th January, 1964. The recommendations were unanimous on several maters. However, on some issues a note of dissent was recorded by the one of the two members representing employers on the commission. After considering the matter carefully, Government announced, wide a resolution issued on the 2nd September, 1964 their acceptance of the commissions recommendations subject to certain modifications. To give effect to the recommendations as accepted, an ordinance, namely, the payment of Bonus ordinance was promulgated on the 29th May, 1965. It was later replaced by the payment of Bonus Act, 1965.

2. Object, Scope and Application of the Act

The object of the act as stated in its preamble is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith. Shah J. observed in Jalan Trading Co. (Pvt) Ltd. V. Mill Mazdoor, Sabha AIR 1967 S.C. 691 that the object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the scheme of "set off" and "set-on" not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity."

On the question whether the Act deals only with profit bonus, it was observed by the supreme court in Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai 1976-II LLI 186 (S.C.) that 'bonus' is a word of many generous connotations and, In the Lord's Mansion, they are many houses. There is profit based bonus which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from long, continued usage leading to a promissory and expectancy situation materializing in a right. There are attendance bonus and what no. The Bonus act speak and speaks as a whole code on the sole subject of profit based bonus but is silent and cannot, therefore, annihilate by implication, other distinct and different kinds of bonuses, such as the one oriented on custom. The Bonus act, 1965 as it then stood does not bar claims to customary bonus or those based on conditions of service, Held a discerning and concrete analysis of the scheme of the Bonus Act and reasoning of the court leaves no doubt that the Act leaves untouched customary bonus.

The provision of the Act have no say on customary bonus and cannot, therefore, be inconsistent therewith. Conceptually, statutory bonus an customary bonus operate in two fields and do not clash with each other; Hukumchand Jute mills limited v. Second Industrial Tribunal, west Bengal, 1979-I labour law journal 461 (S.C.).

Section 1 of the Act does not bar claims to bonus outside the act which deals with only profit bonus and matters connected therewith.

Application of Act

According to Section 1 (2), the Act extends to the whole of India, and as per section 1 (3) the Act shall apply to-

a. every factory; and

b. every other establishment in which twenty or more persons are employed on any day during an accounting year.

Provided that the appropriate Government may, after giving not less then two months notice of its intention so to do, by notification in the official Gazette apply the provisions of this act with effect from such accounting year as may be specified in the notification to any establishment being a factory within the meaning of sub-clause (ii) of clause (m) of section 2 of the factories act, 1948 employing such number of persons less than twenty as may be specified in the notification; so, however that the number of persons so specified shall in no case be less than ten.

Save as otherwise provided in this Act, shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year.

Providing that in relation to the state of Jammu and Kashmir, the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year shall be construed as reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year.

Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every sequent accounting year as the case may be, (the reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year, shall, in relation to such establishment or class establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year [section 1(4)]

A establishment to which this act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty, or as the case may be, the number specified in the notification issued under the proviso to sub-section (3),

Act not to Apply to Certain Classes of Employees (Section 32)

Section 32 of this Act provides that the Act shall not apply to the following classes of employees:

i. employees employed in the life Insurance Corporation of India;

ii. Seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;

iii. Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;

iv. Employees employed by an establishment engaged in any industry called on by or under the authority of any department of central Government or State Government or a local Authority;

v. Employees employed by

a. Indian Red Cross Society or any other institution of like nature including its branches;
b. Universities and other educational institutions;
c. Institutions (including hospitals, chambers of commence and Social welfare institutions) established not for the purpose of profit;

vi. Employees employed through contracts on building operations;

vii. Employees employed by Reserve Bank of India;

viii. Employees employed by

a. the industrial finance corporation of India;
b. any financial corporation established under state financial corporations act, 1951;
c. the deposit insurance corporation;
d. the agriculture refinance corporation;
e. the unit trust of India;
f. the industrial development bank of India;
g. any other financial institution (other than banking company) being an establishment in public sector which the central Government may by notification specify having regard to (1) its capital structure; (2) its objective and the nature of its activities; (3) the nature and extent of financial assistance or any concession given to it by government; and (4) any other relevant factor;

ix. employees employed by inland water transport establishment operating on routes passing through any other country;

Apart from the above, the appropriate government has necessary powers under section 36 to exempt to its financial position and other relevant circumstances and if it is of the opinion that it will not be in the public interest to apply all or any o the provisions of this act thereto, from all or any of the provisions of the act. It may impose such conditions while according such exemptions as it may consider fit.

3. Important Definitions

Accounting Year Means

i. in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;

ii. in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is mode up, whether that period is a year or not;

iii. in any other case

a. the year commencing on the 1st day of April; or
c. if the account of an establishment maintained by the employer thereof are closed and balanced on any day, other than the 31st day of march, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced;

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the pre-scribed authority and upon such conditions as that authority may think fit.

"Allocable Surplus" [Section 2(4)]

It Means

a. in relation to an employer being a company (other than a banking company) which has not made the arrangements prescribed under the income-tax act for the declaration and payment within India of the dividends out of its profits in accordance with the provisions of section 194 of that act, Sixty-seven per cent of the available surplus in an accounting year;
b. in any other case sixty percent of such available surplus. "available surplus" [section 2(6)] means an interim or a final determination of any industrial dispute or of any question relating thereto by any labour court, industrial tribunal or national tribunal constituted under the industrial disputes act, 1947 or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a state and includes an arbitration award made under Section 10-A or under that law.

Corporation [Section 2(11)]

Corporation means any body corporate established by or under any central provincial or state act but does not include a company or a co-operative society.

Employee [Section 2(13)]

Employee means any person (other than an apprentice) employed on a salary or wages not exceeding Rs. 3500 per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

Employer [Section 2(14)

i. In relation to an establishment which is a factory, the owner or occupier of the factor, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under clause (f) of sub-section 7(1) of the factories act, 1948, the person so named; and

ii. In relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

"establishment in private sector" [section 2(15)] means any establishment other than an establishment in public sector;

"establishment in public sector" [Section 2(16) means an establishment owned, controlled or managed by

a. a government company as defined in section 617 of the companies Act, 1956;

b. a corporation in which not less than forty percent of its capital is held (whether singly o taken together) by
   i. the government or
   ii. the reserve bank of India; or
   iii. a corporation owned by the government or the reserve bank of India.

Salary or Wage [section 2(21)]

The 'salary or wage' means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, by payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living) but does not include;

i. any other allowance which the employee is for the time being entitled to;
ii. the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or any concessional supply of foodgrains or other articles;
iii. any traveling concession;
iv. any bonus (including incentive, production and attendance bonus);
v. any contribution paid or payable by the employer to any pension Fund or provident Fund or for the benefit of the employee under any law for the time being in Force;
vi. any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
vii. any commission payable to the employee.

Explanation: Where an employee is given in lieu of the whole or part of the salary or wages payable to him, free food allowance or free food by his employer, such Food allowance or the value of such food shall, for the purpose of this clause, be deemed to Form part of the salary or wage of such employee.

The definition is wide enough to cover the payment of retaining allowance and also dearness allowance paid to the workmen. It is nothing but remuneration Chalthan Vibhag Sahakari Khand Udyog v. Government labour Officer AIR 1981 S.C. 905.

Whatever is agreed to be paid as bonus is part of the earnings or wages of workmen and as such would fall within the exemption of section 60 (1)(h)C.P.C. 1908. 1977 I lU 284 (D.B.)(Ker.).

Establishment Meaning of

Section 3 of the Act provides that the word "establishment" shall include all its departments, undertakings and branches wherever it has so whether situated in the same place or in different places and the same shall be treated as part of the same establishment For the purpose of computation of bonus under this Act:

Provided that where for any accounting year, separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch then such department, in undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this act for that year unless such If a department, undertaking or branch was, immediately for the purpose of computation of bonus. (proviso to section 3)

Calculation of Amount of Payable as Bonus

The act has laid down a detailed procedure for calculating the amount of bonus payable to employees. First of all Gross profit is calculated as per first or second schedule. From this gross profit, the sums deductible under section 6 are deducted. To this figure, we add the sums equal to the difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. The figure so arrived will be the "available surplus". Of this surplus, 67% in case of company (other than a banking company) and 60% in other cases, shall be the "allocable surplus" which is the amount available for the payment of bonus to employees. The details of such calculations are given below.

i. computation of Gross profits (section 4)

   The gross profits derived by an employer from an establishment in respect of any accounting year shall:

   a. in the case of banking company be calculated in the manner specified in the first schedule;

ii. Deductions from Gross profits (section 6)

   a. any amount by way of depreciation admissible in accordance with the provisions of section 32 (1) of the income-tax Act, or in accordance with the provisions of the Agricultural income-tax law, as the case may be:

   Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that data after deducting from the gross profits national normal depreciation, then the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from the date) continue to be such national normal depreciation.

   What is deductible under section 6(a), "depreciation admissible in accordance with the provisions of section 32(1) of the income-tax act and not depreciation allowed by the income tax-office in making assessment on the employer.

   b. Any amount by way of development rebate, investment allowance, or development allowance which the employer is entitled to deduct from his income under the Income Tax Act.
   c. Subject to the provisions of section 7 and direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year.
   d. Such further sums as are specified in respect of the employer in the third schedule.

The expression "development rebate" occurs at two places in the Act, viz., in clause (d) of item 2 of the second Schedule and section 6(b), the former provision requires the development rebate or development allowance reserve to be added back to the net profit for arriving at the figure of gross profit while the latter provision makes the development rebate or allowance a permissible deduction for arriving at available surplus. However, though development rebate permissible under the Income Tax Act is referred to in section 6(b), only that portion of the development rebate which can be called reserve is referred to in clause (d) of item 2 of the Second Schedule. In other words, unless the development rebate or a portion of it is set apart as, reserve in consequence of the statutory requirement or otherwise, it cannot be added back to the net profit under the second schedule. This interpretation is supported by the language used in clause (e) in the second schedule, which uses the words "any other reserves". The entries in clause (d) must be held to be limited to "reserves" only, and not merely to "development rebate". In the management Sijua Electric supply Co. case, the court held that under clause 6(b), a company is entitled, however, to deduct out of the gross profits arrived at under section 4, the whole of the development rebate admissible under the act. Similar views were expressed by supreme court in Metal Box Co. case and the Indian link Chain Manufacturers ltd. case.

Further, the liability for direct tax under section 6(C) must be the one which would have to be computed according to the principles followed in the income Tax Act. In other words, the liability under section 6(c) must be the national liability of an establishment of which the gross profits are known and the prior charges by way of depreciation and development rebate and development allowances have been computed: D.C.M. v. Workmen, (1971)ll L.L.J.539 (S.C.) In metal box co. case the Supreme court laid down that in calculating income-tax deductible in working out the gross profit, the bonus which would be payable under the act is not to be taken into account and that tax must be worked out ignoring the bonus at the rates applicable in the relevant years. It was further observed: "If parliament intended to make a departure from the rule laid down by courts and tribunals that the bonus amount should be calculated after provisions for tax was made and not before we would have expected an express provisions to that effect either or in the Act or in the schedule ". The rule laid down was reiterated in number of other cases, e.g William Jacks and Co. case; DCM case and Indian oxygen ltd. case.

Deduction Specified in the Third Schedule

The following is the extract of third Schedule specifying further deductions under sections 6(d) of the act from gross profits for arriving at surplus:

1. If the employer is a company, further sums to be deducted are:

i. Dividend payable on its preference share capital for the accounting year calculated at the actual rate at which such dividends are payable;

ii. 8.5% of its paid-up equity share capital as the commencement of the accounting year;

iii. 6% of its reserves shown in its balance sheet at the commencement of the accounting year including any profits carried forward from the previous accounting year, including any profits carried forward from the previous accounting year, provided where the employer is a foreign company within the meaning of section 591 of the companies act, 1956 the total amount to be deducted from this item shall be 8.5% on the aggregate of the value of the net fixed assests and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its head office whether towards any advance made by head office or otherwise or any interest paid by the company to its head office in India.)

2. If the employer is a corporation, further sums to be deducted are:
   i. 8.5% of its paid-up as the commencement of the accounting year;
   ii. 6% of its reserves, if any shown in its balance sheet as at the commencement of the accounting year.
3. If the employer is a co-operative is a co-operative society, further sums to be deducted are.
   i. 8.5% of the capital invested by such society in its establishment as evidenced from its books of account at the commencement of the accounting year;
   ii. such sum as has been carried forward in respect of the accounting year to a reserve fund under any law relating to do-operative societies for the time being in force.
4. If it is any other employer not falling under any of aforesaid categories, further sums to be deducted would be 8.5% of the capital invested by him in his establishment as evidenced from his books of accounts at the commencement of the accounting year: provided
   i. if the employer is an individual, the annuity deposit payable by him under chapter XXII-A of income tax act during the accounting year shall also be deducted.
   ii. If the employer is a firm, an amount equal to 25% of the gross profits derives by it from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 6 by way of remuneration to all partners taking part in the conduct of business of the establishment shall also be deducted, but where the partnership agreement whether oral or written provides for payment of remuneration to any such parties and (a) the total remuneration payable to all such parties is less than the said 25%, the amount payable, subject to a maximum of Rs. 48,000 to each such partner, or (b) the total remuneration payable to all such partners is higher than 25% such percentage or a sum calculated at the rate of Rs. 48,000 to each such partner whichever is less, shall be deducted from this proviso.
   iii. If it is individual or hindu undivided family (a) the amount equal to 25% of gross profit after deducting depreciation in accordance with section 6(a) or (b) Rs.

48,000 whichever is less by way of remuneration to such employer, also be deducted.

5. Any employer falling under item No.1 or item No.2 or item No.30or item no. 4 and being a licensee within the meaning of Electricity supply Act, 1948 then further sum would be deductible in addition to the sums deductible under any of the aforesaid items.

The reserve used in the case of company and corporation shall not include any amount set part for the purpose of payment of direct tax, meeting any depreciation or divided which has been declared and shall include the amount of specific reserve set apart for payment of direct tax and meeting depreciation in excess of the amount admissible in accordance with section 6(a) of the act.

In metal Box Co.'s case, the company had revalued its fixed assets in 1956 and credited the difference of Rs. 57 lakhs between its costs and the value fixed on such revaluation, to the capital reserves. The tribunal accepted the valuation as bonafide and allowed interest in the said reserve at the rate of 6% in terms of section 6(d) read with clause (1) (iii) of the third schedule. In appeal by special leave, on behalf of the workmen, a contention was urged before the supreme court that the revaluation of the assets was mere book adjustment fictitious and was done with the oblique motive of defeating the labour's claim for bonus and therefore, no interest should have been allowed on the capital reserve. The Court refected the contention holding that the tribunal was right in accepting the figure of Rs. 57 laksh and deducting interest therean form the gross profits. In considering the calim for return on working capital two questions should be kept in view: (1) whether reserves were available; and if they were (2) whether they were used as working capital and if so what is that amount Binny ltd. v. Workmen (1974)'3 S.C.C. 27.

Calculation of Direct Tax Payable by the Employer (Section 7)

Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to income of the employer for that year, namely:

a. in calculating such tax no account shall be taken of -

2. any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating at direct taxes;

ii. any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under Sub-section (2) of Section 32 of the Income-tax Act;

iii. any exemption conferred on the employer under Section 84 of the Income-tax Act of any deduction to which he is entitled under Sub-section (1) of Section 101 of the Act, as in force immediately before the commencement of the Finance Acto 1965;

b. where the employer is a religious or a charitable institution to which the provision of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to he income so exempted such institution shall be treated as if it were a company in which the public are substantially interested with the meaning of the act.

c. Where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his on income.

IV. Computation of Available Surplus (Section 5)

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in Section 6.

Provided that the available surplus in respect of the accounting year commencing on nay day in the year 1968 and in respect of every subsequent accounting year shall be aggregate of-

a. the gross profit for that accounting year after deducting therefrom the sums referred to in Section 6; and

b. an amount equal to the different between-

   i. the direct tax calculated in accordance with the provisions of Section 7 in-respect of an amount equal to the gross profit of the employer for the immediately preceding accounting year; and

   ii. the direct tax calculated in accordance with the provisions of Section 7 in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting there from the amount of bonus which the employer has paid or is liable to pay to his employee in accordance with the provisions of this Act for that year.

V. Allocable Surplus [Section 2(4)]

It Means

In relation to an employer being a company (other than a banking company, which has not made the arrangements prescribed under the Income Tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act -67% of he available surplus in an accounting year, (b) in any other case, allocable surplus shall be 60% of such available surplus.

5. Eligibility for Bonus and its Payment

i. Eligibility for Bonus (Section 8)

Every employee shall be entitled to be paid by his 'employer in an accounting year, bonus, in accordance with the provisons of this Act, provided he has worked in the establishment for not less that thirty working days in but according year.

ii. Disqualification for Bonsu (Section 9)

   a. Fraud; or

   b. Riotous or violent behaviors while on the premises or the establishment; or

   c. Theft, misappropriate or sabotage of any property of the establishment. This provision is based on the recommendation of the bonus Commission which observed -"After all bonus can only be shared by those workers who promote the stability and well being of

he industry and those who positively display disruptive etendenceis. Bonus certainly carries with the obligation for good behaviour"

ii. Minimum Bonus (Section 10)

Payment of minimum Bonus (Section 10J Subject to the other provision of this Act, ever employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 percent of the salary or wage earned by the employee during the accounting or one hundred rupees whichever is higher, whether are not the employer has any allocable surplus in the accounting year; provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provision of this section shall have effect in relation to such employee as if for the words "one hundred rupees" the words "Sixty Rupees" were substituted.

Section 10 of the Act is not vilative of Article 19 and 301 of the constitution. Even if employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 : State v.Sardar Singh Majitia 1979 Lab. I.C. (913J (AII).

Maximum Bonus (Section 11)

1. Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonuse which shall be an amount in proportion to the salary of wage earned by the employee during the accounting year subject to a maximum of twenty percent of salary or wage
2. In computing the allocable surplus under this section, the amount set on our the amount set off under the provisions of Section 15 shall be taken into account in with the provisions of that section.

iv. Calculation of Bonus with Respect to Certain Employee (Section 12)

Where the salary or wage of an employee exceeds one thousand and six hundred rupees per mensem, the bonus payable under Section 10 or 11 shall be calculated as if his salary or wage were one thousand and six hundred rupees per mensem.

v. Proportionate Reduction in Bonus in Certain Cases (Section 13)

Where an employee ahs not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he had worked in that accounting year, shall be proportionately reduced.

vi.Computation of Number of Working Days (Section 14)

For the purposes of section 13, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which-

a. he has laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) act, 1946 or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment:
b. he has been on leave with salary or wage;
c. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
d. the employee has been on maternity leave with salary or wage; during the accounting year.

vii. Set on and Set Off of Allocable Surplus (Section 15)

1. Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employee employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrate in the Fourth Schedule.
2. where for any according year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10 and there is no amount or sufficient amount carried forward and set on under Sub-section (1) which could be utilized for the purpose of payment of the minimum bonus, then such minimum amount or the defieniency, as the case may be, shall be carried forward for being set off in the succeeding : accounting year and so on up to and inclusive of the fourth ; accounting year in the manner illustrated in the fourth schedule.
3. The principles of section and set off as illustrated in the fourth schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this act.
4. Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Section 15(1) provides for carry forward and set on its plain terms, it comes into operation only when, in a given accounting year, the allocable surplus exceeds the maximum bonus under the act so that after payment of maximum bonus, there is surplus left which can be carried forward and set on, subject, of course, to the limit of 20% of total salary or wages; 1976-l, labour low journal 463(SC).

Apart from the provisions contained in section 15(1), there is no statuary obligation on an employer to set apart any part of the profits of, the previous years for payment of bonus for subsequent years.

Viii) Special Provisions with Respect to Certain Newly Set up Establishments (Section 16)

In case of newly set up establishments following provisions have been made for the payment of bonus:

1. Where an establishment is newly set up, the employees of such establishment shall be entitled to be paid bonus under this act in accordance provisions with the provisions of sub-sections (IA), (IB), and (IC),

A. In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders , services the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit and such bonus shall be calculated in accordance with the provisions of this act in relation to that year, but without applying the provisions of section 15.

B. for the sixth and seventh accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishments the provisions of section 15 shall apply subject to the following modifications.

i. For the sixth accounting year.

Set on or set off, as the year may be, shall be made in the manner illustrated in the fourth schedule taking into account the excess or deficiency, if any as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting year.

ii. for the seventh accounting year.

Set on or set off, as the case may be, shall be made in the manner illustrated in the fourth schedule taking into account the excess or deficiency, if any as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth and seventh accounting years;

(IC)From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be from such establishment, the provisions of sections 15 shall apply in relation to such establishment as the apply in relation to any other establishment.

Explanation I—For the purpose of sub-section (1) an establishment shall not be deemed to be newly set up merely by reasons of a change in its location, management, name or ownership.

Explanation II—For the purpose of sub-section (IA), an employer shall not be deemed to have derived profit in accounting year unless-

a. he has made provision for that years depreciation to which he is entitled under the income-tax act or, as the case may be, under the Agriculture income-tax law; and

b. the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years been fully set off against his profits.

Explanation III—For the purpose of sub-section (IA), (IB) and (IC), sale of the goods produced or manufactured during the course of the trial running of any factory or of he prospecting stage of any mine or an oil field shall not be taken into consideration and where any question with regard to such production or manufacture, the decision of the appropriate government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority .

2. The provisions of sub-section (1), (IA), (IB) and (IC) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments:

Provided that if an employer in relation to an existing establishment consisting of different departments or undertakings or branches (whether or not in the same industry) set up at different periods has, before the 29th May, 1965, been paying bonus to the employees of all such departments or undertakings or branches irrespective of the date on which such departments or undertakings or branches were set up, on the basis of the consolidated profits computed in respect of all such departments or undertakings or branches then such employer shall be liable to pay bonus in accordance with provisions of this Act to the employee of all such departments or undertakings or branches (whether set up before or after that date) on the basis of the consolidated profits computed as aforesaid.

Within the meaning of section 16(1-A) the word “profit” must obviously be construed according to its ordinary sense. A sense which is understood in ‘trade and industry because the rationable behind section 16(1-A) is that it is only when the employer starts making profits in the commercial sense that he should become liable to pay bonus under the act.

Profit in the commercial sense can be ascertained only after deducting depreciation and since there are several methods of computing depreciation, the one adopted by the employer, in the absence of any statutory provision the contrary, would govern the calculation. Explanation ll to section 16(1-A) says that the employer shall not be deemed to have derived profits unless he has made provision for that years depreciation to which he is entitled to under the income-tax act. This explanation embodies a clear legislative mandate that in determining for the purpose of sub-section (I-A) of section 16 whether the employer has made profit from the establishment in accounting year, depreciation should be provided in accordance with the provisions of the income-tax Act.

Clearly, therefore, if depreciation is as prescribed in the Income-tax Act, there is no profit for the year in question and there is no liability on the part of the employer to pay bonus under the Act; The management of central coal washery v. Workmen. 1978-11 labour law journal 350 (SC).

ix. Adjustment of Customary of Interim Bonus (Section 17)

Where in any accounting year -(a) an employer has paid any puja bonus there customary bonus to an employee; or (b) an employer has paid a part of bonus payable under this act to an employee before the date on which such bonus becomes payable; then, the employer shall be entitled to deduct at the amount of bonus so paid from the amount of bonus payable by him to the employees under this act in respect of that accounting year and the employee shall be entitled to receive only the balance.

In Hukam chand Jute mills ltd. v. second Industrial tribunal, west Bengal A.I.R. 1979 S.C. 876, the supreme court held that the claim for customary bonus is not affected by 1976 amendment act. Infact, it has left section 17 intact which refers to puja bonus or other customary bonus. Section 31A (see later) speaks about productivity bonus but says nothing about other kinds of bonuses. The contention that all agreements inconsistent with the provision of the act become inoperative, has not substance vis-à-vis customary bonus. Conceptually statutory bonus and customary bonus operate in two fields and do not clash with each other.

x. Deductions of Certain Amounts from Bonus (Section 18)

Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct and amount of loss from the amount of bonus payable by him to the employee under this act, in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

xi. Time Limit for Payment of Bonus (Section 19)

a. where there is a dispute regarding payment of bonus pending before any authority under section 22, all amounts payable to an employee by way of bonus under this act shall be paid in cash by his employer within a month from the date from which the award becomes enforceable or the settlement comes into operation in respect of such dispute.

b. In any other case, the bonus should be paid within a period of eight months from the close of the accounting year. However, the appropriate government or such authority as the appropriate government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit; so however, that the total period so extended shall not in any case exceed two years.

xii. Recovery of Bonus from an Employer (Section 21)

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorized by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate government for the recovery of the money due to him, and if the appropriate government or such authority as the appropriate government may be specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrear of land revenue: Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that any such application may be enter obtained after the expiry of the said period of one year, if the appropriate government is satisfied that the applicant had sufficient cause for not making the application within the said period. Explanation: In this section an in sections 22, 23, 24, and 24 “employee” included a person who is entitled to the payment of bonus under this act but who is no longer in employment.

Mode of recovery prescribed n section 2] would be available only if bonus sought to be recovered is under “settlement or an award or an agreement”. Bonus payable under Bonus act is not covered by section 21:1976/abour law Journal 511 (FB) (MP).

xiii. Application of Act of Establishment in Public Sector in Certain Cases: (Section 20)

If in any accounting year an establishment in public sector sells any goods produced or manufactured by its or renders any services, in competition with an establishment in private sector, and the income From such sale or services or both its not less than 20% of the gross income of the, establishment in public sector for that year, then. The provisions of this act ‘shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

xiv) Reference of Disputes under the Ad (Section 22)

Where any dispute arises between an employer and his employee with respect to the bonus payable under this act or with respect to the application of this act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial dispute act, 1947, or any corresponding law relating to investigation and settlement of industrial disputes in force in a state and provisions of that act or as the case may be, such law shall save as otherwise provided apply accordingly.

Accuracy of Accounts, Audits and Returns

I. Presumption Amount Accuracy of Balance Sheet and Profits and Loss Account of Corporation and Companies (Section 23)

1 Where during the course of proceedings before any arbitrator or tribunal under the industrial disputes act, 1947, or under any corresponding law relating to investigation and settlement of industrial disputes in force in a state (hereinafter in this section and sections 24 and 25 referred to as the “said authority”) to which any dispute of the nature specified in section 22 has been referred, the balance-sheet and the profit and loss account of any employer, being a corporation or a company (other than a banking company), duly audited by the comptroller and auditor general of India or by auditors duly qualified to act as auditors of companies under section 226(1) of the companies act, 1956. are produced before it, then, the said authority may presume the statements and particulars contained ins such balance sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by filing of an affidavit or by any other mode.

But where the said authority is satisfied that the statements and particulars contained in the balance-sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

2. When an application is made to the said authority by any trade union being a party to the dispute or where there in no trade union, by the employees being a party to the dispute, requiring any clarification relating to any item in the balance sheet or as the profit and loss account, it may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the trade union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall company, with such direction.

In the case of metal box co. of India Ltd. v. their workmen, (1969) I I.L.J. 785 (S.C.) the supreme court observed that though there is presumption about accuracy of balance-sheet and profit and loss account, but the presumption is rebuttable. In this case, there was disputes as to deduction by way of depreciation of Rs. 23 lakhs. Later on company claimed depreciation of Rs. 28.64 lakhs and which was further revised to Rs. 28.82 Lakhs. The company produced Auditors certificate which it contended should be sufficient proof of accuracy and any further equity would be time consuming and harassing. The supreme court observed: Under section 23 the presumption of accuracy is allowed only to the balance sheet and the profit and loss account of companies. No such presumption is provided for by the act to auditors certificate. Mere production of auditors certificate especially when it is not admitted by labour, not by the auditors but by the employees of the company who admitted not to have been concerned with its preparation or the calculations on which it was based would not be conclusive. Though the Tribunal need not insist on some reasonable proof of the correctness of the figure of depreciation claimed by the employer either by examining the auditors who calculated and certified it or by some other proper proof. Depreciation in some cases would be of large amount affecting materially the available surplus. Fairness, thereof, requires that an opportunity must be given to the employees to verify such figures by cross-examination of the employer or his witnesses who have calculated depreciation.

Similarly in Workmen of William Jacks & Co. Ltd. v. Management of William Jacks & Co. (1971)I.L.L.J. 503 (S.C.), the Supreme Court observed: "The presumption under Section 23 is confined to the accuracy of the balance-sheet and profit and loss account. If any item in the accounts is wrongly shown 'as expenditure' when on the face of it is not so, the Court is not bound to hold the method adopted in preparing the accounts is correct simply because the auditors' raised no objection. While the interest was paid on advance not made by the creditor to the debtor, but by the company's one office to another, money purported to be transferred as interest cannot be held to be an expenditure incurred by the Branch paying it to the other.

ii. Audited Accounts of Banking Companies not to be Questioned (Section 24)

1. Where any dispute of the nature specified in Section 22 between an employer, being a banking company, and its employees has been referred to the said authority under that section and during the course of proceedings the accounts of the banking company only audited are produced before it, the said authority shall not permit any trade union or employees to question the correctness of such accounts but the trade union or the employees to question the correctness of such accounts, but the trade union or the employees may be permitted to obtain from the banking company such information as is necessary for verifying the amount of bonus due under this Act.
2. Nothing contained as above shall enable the trade union or the employees to obtain any information which the banking company is not compelled to furnish under the provisions of Sections 34-A of the Banking Regulation Act, 1949.

iii. Audit of Accounts of Employers, not being Corporation or Companies (Section 25)

a. Where any dispute of the nature specified in Section 22 between an employer, not being a corporation or a company and his employees has been referred to the said authority under that section and the accounts of such employer audited by any auditor duly qualified to act as auditor of companies under Sub-section (1) of Section 225 of the Companies Act, 1956, are produced before the said authority, the provisions of Section 23, shall so far as may be apply to the accounts so audited.
    1. When said authority finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the amounts of such employer is necessary for deciding the question referred to it, then, it may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.
    2. Where an employer fails to get the accounts audited under Sub-section (2) the said authority may, without prejudice to the provision of Section 28, get the accounts audited by such auditor or, auditors as it thinks fit.
    3. When the accounts are audited under Sub-section (2) or Sub-section (3) the provisions of Section 23 shall, so far as may be apply to the accounts so audited.
    4. The expenses of, and incidental to any audit under sub-section (3) (including the remuneration of the auditor or auditors) shall be determined by the said authority (which determination shall be final) and paid by the employer and in default of such payment shall be recoverable from the employer in the manner provided in Section 21

7. Bonus Linked with Production or Productivity (Section 31A)

Section 31 A enables the employees and employers to evolve and operate a scheme of bonus payment linked to production or productivity in lieu of bonus based on profits under the general formula enshrined in the act. However, bonus

Points to Remember

Webster's international Dictionary, defines bonus as something given in addition to what is ordinarily received by or strictly due to the recipient.

The Oxford concise Dictionary defines it as "something to the good into the bargain (and as an example) gratuity to workmen beyond their wages."

The principles known as the L.A. T formula. According to the formula the following prior charges were to be deducted gross profits:

Provisions for depreciation

Reserve for rehabilitation

Return of 6 per cent on the paid-up capital and

Return on the working capital at a lower rate than the return on paid-up capital.

The object of the act as stated in its preamble is to provide for the payment of bonus to persons employed in certain establishments and for matters connected therewith.

that the object of the Act being to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment and prescribing the maximum and minimum rates of bonus together with the scheme of "set off" and "set-on" not only secures the right of labour to share in the profits but also ensures a reasonable degree of uniformity."

Application of Act

According to Section 1 (2), the Act extends to the whole of India, and as per section 1 (3) the Act shall apply to-

every factory; and

every other establishment in which twenty or more persons are employed on any day during an accounting year.

Questions for Tests

1. Define the following terms as used in the Payment of Bonus Act, 1965;

   (a) Allocable surplus, (b)available surplus, (c) direct tax, (d) employer and employee, and (e) Salary or wage.

2. Explain the following under the Payment of Bonus Act, 1965;

a) Sums deductible form gross profits as prior charges (sec 6)

b) Set on and set off provision and their applicability to new establishment.

3. What are the conditions for the eligibility of bonus? When is an employee disqualified from receiving bonus?
4. Explain and illustrate the rule of 'Set on' and 'set off' of all allocable surplus.
5. What are the rules for determination and distribution of bonus? How can bonus be recovered by the employees?
6. What are the special provisions of the payment of Bonus Act, 1965 in respect of new establishment?
7. How does the payment of Bonus Act, 1965 become applicable to public sector

undertaking?

8. How are disputes regarding 'bonus' payable under Act settled?
9. What is the maximum amount of surplus that can be "set up"?
10. Is adjustment of customary or interim bonus paid permissible against bonus payable under the payment of Bonus Act, 1965?
11. Can audited accounts of banking companies be questioned as regards computations of bonus?

LESSON 26:
INTRODUCTION TO THE FACTORIES ACT

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is the objective and scope of the Factories Act?
- What are the requisites of employment and who is the employed person?

Objective and Scope of the Act

My dear students to tell you about factories Act, 1948 I need to take you to a journey a journey of miseries suffered by employees in India in factories. In India there are millions of industrial workers engaged in work in industrial units of various sizes and trades. These workers are exposed to various kinds of risks and health hazards in their work places. Even though there are stringent measures to enforce safety, a large number of industrial accidents occur every year resulting in loss of life or disablement of the workmen. Any loss of life or disablement has an adverse effect on the earnings of the workmen and their dependents. The Factories Act, 1948 was, therefore, enacted and came into force with the objective to provide adequate compensation to the affected persons. The Act extends to the whole of India and persons employed in factories, mines, plantation, construction, mechanically propelled vehicles and in some hazardous occupations are covered under the provisions of the Act. It is an Act to consolidate and amend the law regulating labour in factories (preamble of the act). The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.

The Act extends to whole of India including Jammu and Kashmir and covers all manufacturing processes and establishments falling within this definition of 'factor' as defined under Section 2(m) of the Act.

2. Important Definitions

Adult : means a person who has completed his eighteen year of age [Section 2(a)];

Adolescent: means a person who has completed his fifteenth year of age but has not completed his eighteenth year [Section 2(b)];

Calendar year: means the period of twelve months beginning with the first day of January in any year [Sector 2(bb)];

Child : means a person who has not completed his fifteenth year of age [Section 2(c)];

"Competent person" : in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purpose of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this act having regard to –

I The qualifications and experience of the person and facilities available at his disposal; or

II The qualifications and experience of the persons employed in such institution and facilities available therein.

With regard to the conduct of such tests, examinations and inspections and more than one person or institution can be recognized as a competent person in relation to a factory [Sector 2 (ca)].

"Hazardous process: means any process or activity in relation to an industry specified in the first schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would-

I Cause material impairment to the health of the persons engaged in or connected therewith, or

II Result in the pollution of the general environment:

Provided that the State Government may, by notification in the official Gazette amend the first Schedule by way of addition, omission or variation of any industry specified in the said Schedule [Sector 2 (cb)].

Young person: means a person who is either a child or an adolescent [Section 2 (d)];

Day : mans under Section 2 (e), a period of twenty four hours beginning at midnight [Section 2 (e)];

Week : means a period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the chief inspector of Factories [Section 2 (f)];

Power: means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency [Section 2 (g)];

Prime mover : means any engine, motor or other appliance which generates or otherwise provides power [Section 2 (h)];

Transmission machinery : means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime-mover is transmitted to or received by any machinery or appliance [Section 2 (I)];

Machinery : the term includes prime-movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied [Section 2 (j)];

Factory : [Section 2 (m)]; factory includes any premises including the precincts thereof-

I. Whereon ten on more workers are working, or wee working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or

II. Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

But does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the union or a railway running shed, or a hotel, restaurant or eating place.

Explanation I : For computing the number of workers for the purposes of this clause, all the workers in different groups and relays in a day shall be taken into account.

Explanation II : For the purposes of this clause the mere fact that an Electronic Data Processing Unit or a computer unit is installed in any premises or part thereof, shall not be constructed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

I. Essentials elements of a factory

1. There must be a premises.
2. There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of. such premises.
3. There must be ten or more workers who are/were working in such premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.

The following are not covered by the definition of 'factory':

i. Railway running sheds,

ii. Mines,

iii. Mobile units of armed forces,

iv. Hotels, eating places or restaurants.

I. Meaning of Words 'Premises and Precincts'

The word premises is a generic term meaning open land or land with, building or building alone. The term 'precincts' is usually understood as a space enclosed by walls. Expression 'premises including precincts' does not , necessarily mean that the premises must always ,have precincts. It merely shows that there may be some premises with precincts and some premises without precincts. The word 'including' is not a term restricting the meaning of the word 'premises', but is a term which enlarges its scope.

The supreme court in Ardeshir H. Bhiwandiwala v. State of Bombay, AIR 1962 S.C. 29, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that n the salt works, in which the work done is of conversion of sea water into a crystals of salt, come within the meaning of the word 'premises'.

II. Manufacturing Process is Being Carried on or Ordinarily so Carried On

The word 'ordinarily' came up for interpretation in the case of Employer's Association of Northern India V. Secretary for Labour U.P. Govt. The question was whether a sugar factory ceases to be a factory when no manufacturing process is carried on during the off-season. It was observed that the word 'ordinarily' used in the definition of factory cannot be interpreted with reference to the intention and purposes of the Act. Therefore, seasonal factories or Factories carrying on intermittent manufacturing process, do not cease to be factories within the meaning of the Act.

III. Ten or Twenty Workers

The third essential content of 'factory' is that ten or more workers are employed in the premises using power and twenty o more workers are employed in the premises not using power.

Where seven workers were employed in a premises where the process of converting paddy into rice by mechanical power was carried on and in the same premises, three persons were temporarily employed for repairs of part of the machinery which had gone out of order but the manufacturing was going on, it was held that since three temporary persons were workers consequently, there were ten workers working in the 'premises' and the premises is a factory : AIR 1959, All. 794.

According to explanation to section 2(m), all the workers in different relays in a day shall be taken into account while computing the number of workers.

Bombay high court held that the fact that manufacturing activity is carried on in one part of the premises and the rest of the work is carried on in the other part of the premises cannot take the case out of the definition of the word 'factory' which says that manufacturing process can be carried on in any part. The cutting of the woods or converting the wood into planks is essentially a part of the manufacturing activity : M/s Bharti Udyog v. Regional Director ESI Corp. 1982 Lab. I.C. 1644

A workshop of a polytechnic institution registered under the Factories Act imparting technical education and having power generating machines and was carrying on a trade in a systematic and organized manner – it will come under the definition of Factory as defined under Section 2(m) read with section 2(k) : 1981 Lab I. C. NOC 117 (pat.).

Manufacturing process : [Section 2(k)] : It means any process for

i. making, altering, repairing, ornamenting, finishing , packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

ii. pumping oil , water or sewage or any other substance; or

iii. generating, transforming, transmitting power; or

iv. composing types for printing, printing by letter press, lithography, photography or other similar process, or book binding; or

v. constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

vi. Preserving or storing any article in cold storage.

The definition is quite important and it has been the subject of judicial interpretation in large number of cases:

What is a Manufacturing Process

The definition of manufacturing process is exhaustive. Under the present definition even transporting, washing, cleaning, oiling and packing which do not involve any transformation as such which is necessary to constitute manufacturing process in its generic sense, are nonetheless treated as manufacturing process. The definition is artificially projected beyond the scope of natural meaning what the words might convey thus covering very wide range of activities. Madras high court in the case of 'Seshadrinatha Sharma 1966 (2) LU 238 held that to constitute a .manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable.

Division Bench of A.P. high court held that to determine whether 'certain premises is factory, it is necessary that it should carry on manufacturing process and it does not require that the process should end in a substance being manufactured;

Alkali Metals (p) Ltd v. ESI Corp. 1976 Lab I.C. 186 (A.P.). In another case it was observed that manufacturing process merely refers to particular business carried on and does not necessarily refer to the production of some article. The works of laundry and carpet beating were held to involve manufacturing process. A process employed for purpose of pumping water is manufacturing process. Each of the words in the definition has got independent meaning which itself constitutes manufacturing process. If none of the activities are covered by these words and the legislature has in its wisdom intending to cover any such other activities by extending the "definition or otherwise treating or adapting any article or substance with a view to its use, sale treating and adapting any article has to be independently read: Gateway Auto Services v. Regional Director ESI Corp. 1981Iob.I.C.49.

Following processes have been held to be manufacturing processes:

1. Sun-cured tabacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to company's main factory for their use in manufacturing cigarette – V.P. Gopala Rao v. Public Prosecutor AIR 1970 S.C. 66.
2. The operation of peeling, washing etc. of prawns for putting them in cold storage is a process with a view to the sale or use or disposal of the prawns: R.E.D.'s Sauza v. Krishnan Nair 1968 F.J.R. 469.
3. Stitching old gunny bags and making them fit for use.
4. In paper factory, banks grass packed into bundles manually and dispatched to the factory.
5. Work of garbling of pepper or curing ginger.
6. Process carried out in salt works in converting sea water into salt.
7. Conversion of latex into sheet rubber.
8. A process employed for the purpose of pumping water.
9. The work done on the bangles of cutting grooves in them which later would be field with colouring, is clearly a stage in ornamentation of the bangle with a view to its subsequent use for sale.
10. Preparation of soap in soap works.
11. The making of bidies.
12. The raw film used in the preparation of movies is an article or a substance and when by the process of treating and adapting, after the sound are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term 'treating or adapting any article or substance with a view to its use'.
13. Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impression on the paper to be printed. Everything that is necessary before or after the complete process would be included within the definition of the word 'manufacturing process'. The definition takes in all acts which bring it not ony some change in the article or substance but also the act done for the protection and maintenance of such article by packing, oiling, washing, cleaning, etc. : P. Natrajan v. ESI Corp. (1973) 26 FLR 19.

What is not a Manufacturing Process

No define or precise test can be prescribed for determining the question whether a particular process is a manufacturing process. Each case must be judged on its own facts regard being had to the nature of the process employed, the eventual result achieved and the prevailing business and commercial notions of the people.

Following process are not manufacturing processes:

1. Exhibition of film process.
2. Industrial school or institute imparting training, producing cloth, not with a view to its sale.
3. Receiving of news from various sources on a reel in a Teleprinter of a newspaper office, is not a manufacturing process in as much as "news" is not the article or substance to which section 2(k)(I) has referred.
4. A. Any preliminary packing of raw material for delivering it to the factory (AIR 1969 Mad. 155).
5. Finished goods and packing ther90f: F.Hare v. State; AIR 1955, 2710. Supreme court has held that the process undertaken in zonal and substations and electricity generating stations, transforming and transmitting electricity generated at the station does not fall within the definition of manufacturing process and could not be said to be factories Workmen of Delhi Electric Supply Undertaking v. The Management of D.E.S.U. -AIR 1973 S.C. 365.

Worker [section 2(1)] : worker means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in

cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work identical to, or connected with the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the union.

The definition contains following ingredients:

There should be an employed person :

a. Meaning of Ward "Employed Person"

The concept of employment involves three ingredients, viz., employer, employee, and contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between employer and employee whereunder the employee agrees to serve the employer subject to his control and supervision. The prima facie test for determination of the relationship between the employer and the employee is the existence of the right in the employer to supervise and control the work done by the employee not only in the matter of directing what work the employee is to do but also the manner in which he shall do his work, Chintaman Roo v. State of M.P. AIR 1958 S.C. 388. Therefore, 'supervision and control' is the natural outcome when a person is employed by another person. Moreover, the 'employment' referred to in the section is in connection with a manufacturing process that is carried on in the factory which process normally calls for a large measure of coordination between various sections inside a factory and between various individuals even inside the same section. The persons will have to be guided by those placed in supervisory capacity. A certain amount of control is thus necessarily present.

In Shankar Balaji Waje v. Stateof Maharashtra, the question arose whether 'bidi roller' is a worker or not. The management simply says that the labourer is to produce bidies rolled in a certain form. How the labourer carried out the work is his own concern and is not controlled by the management, which is concerned only with getting bidies rolled in a particular style with certain contents. The Supreme Court held that the bidi roller is not a worker. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Where the employer did retain direction and control over he workers both in manner of the nature of the work as 'also its details' they will be held as workers (AIR 1963, bom 263).

A day labourer, where there was no evidence to show that he was free to work for such period as he likes, free to come and go whenever he chose and free to absent himself at his own sweet will, was held to be a worker. Similarly, women and girls employed in peeling, washing, etc., of consignment of prawns brought on the premises at nay time of the day or night, without any specified hours of work and without any control over their attendance or the nature, manner or quantum of their work and who after finishing their work go to other premises in the locality where similar consignment of prawns are received, are not "workers" (State of Kerala v. R.E.D. Souza).

b. Whether Relationship of Master and Servant Necessary

The expression 'employed' does not necessarily involve the relationship of master and servant. There are conceivable cases in which where no such relationship exists and yet such persons would be workers. The expression a person employed according to justice Vyas, means a person who is actually engaged or occupied in a manufacturing process, a person whose work is actually utilized in that process. The definition of worker is clearly enacted in terms of a person who is employed in and not in terms of person who is employed by. It is immaterial how or by whom he is employed so long as he is actually employed in a manufacturing process.

c. Piece Rate Workers – Whether Workers

Piece rate workers can be workers within the definition of 'worker' in the Act, but they must be regular workers and not workers who come and work according to their sweet will (Shankar Balaji Waje v. State of Maharashtra AIR 1962 S.C. 517). In another case workmen had to work at bidi factory during factory hours and could not leave the factory VI hen they liked. The payment was made on piece-rate accordin9 to ,he amount of work done. Within the factory they were free to work. But the control of the manner in which the work was done was exercised at the end of the day when biddies were ready, by the method of rejecting those which did not come up to the proper standards. In such a case it was the right to supervise and not so much the mode in which it was exercised which was important. Birdhi chand Sharma v. First Civil Judge, Nagpur, AIR, 1961 S.C 64

Therefore, whatever method may be adopted for the payment of wages, the important thing to see is whether the workers work under the supervision and control of the employer.

d. The partners of a concern, even though they work on premises in the factory cannot be considered to be workers within section 2(1) : 1958, (2) LU (S.C).

e. An independent contractor: he is a person who is charged with work

and has to produce a particular result but the manner in which the result is to be achieve is left to him and as there is no control or supervision as to the manner in which he has to achieve the work, he is not a worker.

ii. Employment Should be Direct or Through Some Agency

The words" directly or by or through any agency" in the definition indicate that the employment is by the management or by or through some kind of employment agency. In either case there is a contract of employment between the management and the person employed. There should be a privity of contract between them and the management. Only such person can be classified as worker who works either directly or indirectly or through some agency employed for doir'9 the works of any manufacturing process or cleaning, etc., with which the factory is concerned. It doe$ not contemplate the case of a person who comes and that too without his intervention either directly, or indirectly, and does some work on the premises of a factory.

iii. Employment Should be in Any Manufacturing Process etc

The definition of 'worker' is fairly wide. It takes within its sweep not only persons employed in manufacturing process but also in cleaning any part of the machinery and premises used for manufacturing process. It goes far beyond the direct connection with the manufacturing process by extending it to other kinds of work which may either be incidental to or connected with only the manufacturing process itself but also the subject of the manufacturing process; Works Manager, Central Rly. Workshop Jhansi v. Vishwol1oth and others. The concept of manufacturing process has already been discussed. The meaning of the expression "employed in cleaning any part of the machinery, etc." and 'employed in work incidental to……. Process", are discussed below:

a. Employed in cleaning any part of the machinery etc. : If a person is employed in cleaning any part of the machinery or premises which is used for manufacturing process, he will be held as worker.

b. Employed in work incidental to process: This clause is very important because it enlarges the scope of the term," manufacturing process".

Following illustrative cases will clarify the meaning of this clause:

1. In Shinde v. Bombay telephones 1968 (11) LLJ 74, it was held that whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, he is really employed in the factory and in connection with the factory.
2. In works Manager, central Rly. Workshop Jhansi v. Vishwanath and others, it was held that the definition of 'worker' does not exclude those employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of 'worker'. Time-keepers employed to maintain attendance of the various jobs under operation, and time sheets of the staff engaged in production of spare parts, repairs, etc.; and head time keeper who supervise the work of the time keepers, perform work which is incidental to or connected with the manufacturing process carried on in the factory and would therefore, fall within the definition of worker in the act.
3. Munim in a factory is a worker.
4. Workmen in canteen attached to a factory are employees.
5. A person employed by a gas manufacturing works as a coolie for excavating and digging trenches outside the factory for laying pipes for transporting gas to consumers, cannot be held to be a worker (AIR 1961 Bomb. 184).
6. Person employed to supply material to a mason engaged in construction of a furnace will be deemed to be employed by the factory to a worker incidental to or connected with manufacturing process.
7. In a soap-works, a carpenter preparing the packing cases is a worker because he might legitimately be considered to be engaged in a kind of work incidental to or connected with the subject of the manufacturing process, viz., packaging of soap for being sent out for sale.
8. In a recent case of Rohtas Industries Ltd. V. Ramlakhan Singh and others; A.I.R. (1971) S.C. 849, a person was employed in a paper factory. He was engaged in supervising and checking quality and weighment of waste papers and rags which are the basic raw material for the manufacture of paper. He used to deal with receipts and maintain records of stock and pass the bill of the supplier of waste paper and rags. He used to work in the precincts of the factory and in case of necessities had to work inside the factory. The supreme court held that he was working in the factory premises or its precincts in connection with the work of the "subject of the manufacturing process", namely the raw material.

iv. Employment may be for Remuneration or not

A person who receives wages as remuneration for his services, a person who receives remuneration on piece work basis, a person who may be working as an apprentice, and a person who is a honorary worker, all come within the definition of a worker. Therefore to be worker, it is immaterial whether a person is employed for wages or for no wages.

v. Any Number of the Armed Forces of the Union is Excluded from the Definition of Worker

Once it is established primo facie that premises in question is a factory within the meaning of the act, the provisions of section 103 as to the presumption of employment are immediately attracted and onus to prove the contrary shifts to the accused: Profulbhai Patodia v. the State 1976 (12) E.L.R 329.

Since the word 'employee' has not been defined in the Act it follows that all the workers within the ambit of the definition under the act would be employees, while all employees would not be workers: Horbanslol v. State of Karnataka (1976) 1 Karnt. J. 111. All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act: Union of India v. G.M. Kokil [1984 SSC (L&SJ 631].

Occupier [section 2(n)] : section 2(n) defines the term occupier as a person who has ultimate control over the affairs of the factory :

Provided that -

i. in the case of a firm or other association of individuals, anyone of the individual partners or members thereof shall be deemed to be the occupier;

ii. in the case of a company, anyone of the directors, shall be deemed to be the occupier;

iii. in the case of a factory owned or controlled by the central government or any state government, or any local authority, the person or persons appointed to manage the affairs of the factory by the central government, the state government or the local authority, as the case may be, shall be deemed to be the occupier.

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire—

1. the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided fro by or under (a) sections 6,7,7A. 7B, 11, or 12; (b) section 17 I so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock; (c) sections 18, 19, 42, 46, 47 or 49 in relation to the workers employed on such repair or maintenance;
2. the owner of the ship or his agent or master or other office-in-charge of the ship or any person who contracts with such owner, agent or master or other office-in-charge to carry out the repair or maintenance work shall be deemed to be occupier for the purposes of any matter provided for by or under section 13,14, 16 or 17 (save as otherwise provided in this provision) or chapter iv (except section 27) or sections 43, 44 or 45, chapters vi, vii, viii or ix or sections 108, 109 or 110, in relation to (a) the workers employed directly by him, or through any agency, and (b) the machinery, plant and premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

The important test whether a person is an occupier or not is the possession or vesting in of the ultimate control of the factory. The control should be an ultimate one, though it may be remote. There is a lot of controversy regarding 'occupier' in case of a company, as the section 2 (n) (ii), provides that any one of the directors of the company shall be deemed to be occupier of the factory. There are views expressed in this regard that the board of directors of a company could appoint a person to be occupier of the factory, so that if any proceedings were to be taken against the factory, he would be in a better position to answer rather than the board of directors. (see chartered secretary 1988. A-281 and A-393).

Exemption of occupier or manager from liability in certain cases (section 101)

Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with a offence punishable under the Act to bring into the court any other person whom he charges actual offender and also proves to the satisfaction of the court that:

a. he has used due diligence to enforce the execution of this act; and
b. that the offence in question was committed without his knowledge, consent or connivance, by the said other person.

The other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory. In such a case occupier or manager of the factory is discharged from liability.

3. Statutory Agencies and their Powers far Enforcement of the Ad

The state government assume the main responsibility for administration of the act and its various provisions by utilising the powers vested in them. Section 3 empowers the state government to make rules for references to time of day where Indian standard time, being 5-1/2 hours ahead of Greenwich mean time is not ordinarily observed. These rules may specify the area, define the local mean time ordinarily observed therein, and permit such time to be observed in all or any of the factories situated in the area.

The state government assumes power under section 4 of the act to declare different departments to be separate factories or two or more factories to be single factory for the purposes of this Act. This power will be utilised by the state government either on its own or an application made to it by the occupier. But no order could be made on its own motion unless & occupier is heard in this regard.

In case of public emergency, section 5 further empowers the state government to exempt by notification any factory or class or description of factories from all or any of the provisions of this Act except section 67 for such period and subject to such conditions as it may think fit: provided no such notification shall be made exceeding a period of three months at a time. Explanation to section 5 defines public emergency as a situation whereby the , security of India or of any part of the territory thereof is threatened '.7" whether by war or external aggression or internal disturbance.

The state government carry out the administration of the Act through:

i. Inspecting staff
ii. Certifying surgeons
iii. Welfare officers
iv. Safety officers

i. The inspecting staff :

Appointment: Section 8 empowers the state government to appoint inspectors, additional inspectors and chief inspectors such persons who posses prescribed qualifications.

Section 8(2) empowers the state government to appoint any person to be a chief inspector. To assist him, the government may appoint additional, joint or deputy chief inspectors and such other officers as it thinks fit [section 8(2A)].

Every district magistrate shall be an inspector for his district.

The state government may appoint certain public officers, to be the additional inspectors fro certain areas assigned to them [section 8(5)].

The appointment of inspectors, additional inspectors ad chief inspector can be made only by issuing a notification in the official gazette.

When in any area, there are more inspectors than one, the state government may be notification in the official gazette, declare the powers which such inspectors shall respectively exercise and the inspector o whom the prescribed notices are to be sent.

Inspector appointed under the act is an inspector for all purposes of this act. Assignment of local area to an inspector is within the discretion of the state government.

A chief inspector is appointed for the whole state. He shall in addition to the powers conferred on a chief inspector under this act, exercise the powers of an inspector throughout the state. Therefore, if a chief inspector files a complaint, the court can legally take cognizance of an offense. Even assignment of areas under section 8 (6) does not militate in any ways against the view that the chief inspector can file a complaint enabling the

court to take cognizance. The additional, joint or deputy chief inspectors or any other officer so appointed shall in addition to the powers of a chief inspector, exercise the powers of an inspector throughout the state.

Person Ceases to be Inspectors

Under section 8(3), no person can hold office of inspector, additional inspector or chief inspector, (including additional, or joint or deputy chief inspector) or having been so appointed, can continue to hold office, who is of becomes directly interested (I) in a factory; or (ii) in any process or business carried on therein; or (iii) in any plant or machinery connected therewith.

Powers of Inspectors

Section 9 describes the powers of the inspectors subject to any rules made in this behalf for the purpose of the Act. An inspector may exercise any of the following powers within the local limits for which he is appointed:

1. He can enter any place which is used or which he has reasons to believe is and as a factory. For this purpose he can take the as assistance of any person (I) in the service of the government, or (ii) any local or public authority, e.g., municipal committee, etc., or (iii) of an expert.
2. He can make examination of the premises, plant, machinery, article or substance.
3. Inquire into any accident or dangerous occurrence whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry.
4. Require the production of any prescribed register or any other document relating to the factory.
5. Seize, or take copies of any register, record of other document or any portion thereof as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed.
6. Direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular respects) for so long as is necessary for the purpose of any examination under clause (b).
7. Take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination under clause (2), taking with him any necessary instrument or equipment.
8. In case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is in the circumstances necessary, for carrying out the purposes of this Act) and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination.
9. He may exercise such other powers as may be prescribed.

It may be pointed out that these powers are subject to any rules made in this behalf and the inspector can exercise such powers within such local limits assigned to him. Further, powers conferred by section 9 are of general nature. The power to file a complaint is impliedly conferred on inspector by section 105.

Production of Documents

The Factories Act requires the maintenance of certain registers and records. Inspectors have been empowered to ask for the production of any such documents maintained under law, and the non-compliance of this has been made an offence.

Whether the order could be challenged on the ground that production of documents in his possession may reasonably be used against him and as such it contravenes the provisions of clause 3 of art. 20 of the constitution whereby protection is provided against compulsory testimony. It was held that protection does not relate to production of "public documents" in the possession of the accused. The registers and other records maintained under the act are public documents because such records are maintained on behalf of the government.

Therefore, the authorities can demand the production of such documents.

Can Inspector call for Records in his Office

The powers contained in section 9 are to be exercised when the inspector visits any factory and its does not contemplate an exercise of the powers outside the factory premises. The power to call for production of the register may include the power to inspect them, it only means that the production is to be made on the premises and his inference is supported by the context. Therefore, the factory inspector has no power to call upon the proprietor to produce the register and other documents at his office, and the proprietor's failure to comply with the order does not expose him to any penalty under section 9(2).

Compelled to Give Answer or Evidence Tending to Incriminate Himself.

Provision to section 9 states that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself. Art. 20(3) of the constitution affords this protection to the accused. It states "no person accused of any offence shall be compelled to be a witness against himself". Thus, no person can be compelled to answer any question or asked to produce any documents which is likely to support a prosecution against him.

It is to be noted that the prohibition is against compulsion. Man is competent to prove his own crime though not compellable. But this privilege has to be claimed or otherwise a person will not be considered to be compelled.

ii. Certifying Surgeons

Section 10 provides for the appointment of the certifying surgeons by the state government for the purposes of this Act to perform such duties as given below within such local limits or for such factory or class or description of factories as may be assigned to certifying surgeon:

a. The examination and certification of young persons under this Act;
b. The examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;

c. The exercising of such medical supervision as may be prescribed for any factory or class or description of factories where:

   i. Classes of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on or other conditions of work prevailing therein;

   ii. By reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing processes or of any new substance for use in the manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

   iii. Young persons are, or are to be, employed in any work which is likely to cause injury to their health;

   iv. Any certifying surgeon may in terms of section 1012) of the act with the approval of state government authorise any qualified medical practitioner (as recognised under Indian medical degrees Act, 1916 or Indian medical council Act, 1933) to exercise any of his powers under this act on such conditions and for such a period the state government may prescribe.

In this connection, the only disqualification as contained in sub-section 131 of section 10 is that no person who is or becomes the occupier of a factory directly or indirectly interested therein or a*ny* process or business carried on therein or in *any* patent or machinery connected therewith or is ' otherwise in the employment of the factory shall be qualified to remain a certifying surgeon or hold *any* authority as qualified medical practitioner. However, state government can exempt any person or class of persons from the exercise of this sub-section.

i. Welfare Officer

Section 49 of the act imposes statutory obligation upon the occupier of the factory of the appointment of welfare officer/s wherein 500 or more workers are ordinarily employed. Duties, qualifications and conditions of service may be prescribed by the state government.

iv. Safety Officer

Section 40-B empowers the state government for directing a occupier, of factory to employ such number of safety officers as specialised by it where more than 1,000 workers are employed or where manufacturing c"; process involves risk of bodily injury, poisoning or disease or *any* other hazard to health of the persons employed therein. The duties, qualifications and working conditioning *may* be prescribed by the state government.

4. Approval, Licensing and Registration of Factories

Section 6 empowers the state government to make rules with regard to licensing and registration of Factories under the Act on following matters:

1. Submission of plans of any class or description of factories to the chief inspector or the state government
2. Obtaining previous permission of the state government of the chief or Inspector, for the site on which factory is to be situated and for construction or extension of any factory or class or description of factories. However, replacement or addition of any plant or machinery within prescribed limits, shall not amount to extension of the factory, if it does not reduce the minimum safe working space or adversely affect the environmental conditions which is injurious to health;
3. Considering applications for permission for the submission of plans and specifications:
4. Nature of plans and specifications and the authority certifying them;
5. Registration and licensing of factories;
6. Fees payable for registration and licensing and for the renewal of licenses;
7. License not to be granted or renewed unless notice specified under section has been given.

Automatic Approval

If an application is made for the approval of site for construction or extension of the factory and required plans and specifications have been submitted by registered post to the state government or the chief inspector and if no reply is received within three months from the date on which it is sent the application stands automatically approved [section 6(2)]. Where the rules require the licensing authority to issue a license on satisfaction of all legal requirements/record seasons for refusal. License could not be refused only on a direction from government. S. Kunju v. kerala (1985 2LLI 106.)

Appeal Against Refusal to Grant Permission

If the state government or chief inspector do not grant permission to the site, construction or extension of a factory, or to the registration and licensing of a factory, the applicant may within 30 days of the date of such refusal appeal to:

i. The central government against the order of the state government

ii. The state government against the order of any other authority.

License Fee : Whether Fee or Tax

As stated earlier, the state government can prescribe fees for registration and licensing and for renewal of licenses. The right of the state government to levy such fees was challenged in the case of Maharaj Shri Umed Mills Ltd. V. State of Rajasthan. The major contention was that the fees levied is in the nature of tax and as such the state government has no authority to levy such fees. It was held that fees levied under section 6 is not in the nature of tax for the purpose of raising revenue and as such the levy ahs the authority of law behind it. The payment of fees is justified as the state has to maintain an establishment for the purpose of supervisions and the expenses of that establishment have to be met, and this is the only method of meeting these expenses.

In another case D.C.M. v. Chief Commissioner Delhi & other ARI 1971 S.C. 344, the Supreme Court was confronted with the similar problem. It was held that the amount which the company had to pay as license fee is not in the nature of a tax but is a fee which could be properly levied. The functions and duties of the inspectors appointed under the Act, on whom a

major part of the fees are spent, are not confined to the limited task of inspection of factories but also to give proper advice and guidance to factories from which the factory owners are bound to receive a good deal of benefit.

Restriction of Trade

Lastly levy of license fee is not an unreasonable restriction on the trade and hence does not offend art. 19(1)(g) read with clause (6) of the constitution. The rules as to registration and taking out of licenses, impose a reasonable restriction on the right of carrying on the trade of manufacturing and as such is necessary in the interest of the general public.

LESSON 27:
SAFETY AND DUTIES OF THE MANUFACTURER

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the duties of the occupier and manufacturer?
- What are the provisions regarding safety under The Factories Act?

Notice by Occupier (Section 7)

This section imposes an obligation on the occupier of a factory to send a written notice, containing prescribed particulars, to the chief inspector at least 15 days before an occupier begins to occupy or use a premises as a factory and at least 30 days before the date of resumption of work in case of seasonal factories, i.e. factories working for less than 180 days in a year.

Contents of Notice

A notice must contain following particulars:

1. The name and situation of the factory.
2. The name and address of the occupier.
3. The name and address of the owner of the premises or building (including the precincts, etc., thereof) referred to in section 93.
4. The address at which communication relating to the factory should be sent.
5. The nature of manufacturing process to be carried on in the factory during next 12 months.
6. The total rated horse power installed or to be installed in the factory which shall not include the rated horse power of any separate standby plant.
7. The name of the manager of the factory for the purpose of this Act.
8. The number of workers likely to be employed in the factory.
9. Such other particulars as may be prescribed.

Notice Where New Manager is Appointed

Whenever a new manager is appointed, the occupier shall send to the inspector a written notice and to the chief inspector a copy thereof, within seven days from the date on which such person takes over charge.

When there is no Manager-occupier Deemed as Manager

During a period for which no person has been designated as manager of a factory or during which the person designated does not manager the factory any person found acting as manger, will be the manager for the purpose of the Act. Where no such person is found the occupied should be deemed to be the manger of the factory.

General Duties of the Occupier (Section 7A)

Section 7A is inserted by the factories (Amendment) Act, 1987 as under:

1. Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
2. Without prejudice to the generality of the provisions of sub-section (1) the matters to which such duty extend shall include:
   a. The provisions and maintenance of plant and systems of work in the factory that are safe and without risks to health;
   b. The arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
   c. The provisions of such information, instruction, training and supervisions as are necessary to ensure the health and safety of all workers at work;
   d. The maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and agrees from, such places as are safe and without such risks;
   e. The provisions, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
3. Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revisions there of to the notice of all the workers in such manner as may be prescribed.

General Duties of Manufacturers etc. (Section 7B)

The factories (Amendment) Act, 1987 has inserted a new Section 7B providing duties of manufacturers etc. Regarding articles (it shall include plant and machinery) and substance for use in the factories. It provides that every person who designs, manufactures, imports or supplies any article (including plant & machinery) for use in any factory, shall observe the following:

a. Ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;
b. Carry out or arrange for the carrying out of such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);

c. Take such steps as may be necessary to ensure that adequate information will be available-

   i. In connection with the use of the article in any factory;

   ii. About the use for which it is designed and tested; and

   iii. About any condition necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers.

Section further provides that where on article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see:

a. That the article (including plant and machinery) conforms to the same standards if such article is manufactured in India, or

b. If the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India, that the article conforms to such standards.

For the above purposes, the concerned person may carry out or arrange for the carrying out of necessary research with a view to the discovery and so far as is reasonably practicable, the elimination or minimisation of any risk to the health or safety of workers to which design or article (including plant and machinery) may give rise.

The section further provides that if research, testing, etc. has already been exercised or carried out, then no such research is required again.

The above duties relate only to things done in the course of the business carried out by him, and to matters within his control.

However I the person may get relief from the exercise of above duties If he gets an undertaking In writing by the user of such article to take necessary steps that the article will be safe and without risk to the health of the workers.

Measures to be taken by Factories for health, safety and welfare of workers

i. Cleanliness (Section 11)

Section 11 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance. The Act has laid down following provisions in the respect-

1. All the accumulated dirt and refuse on floors, stair cases and passages in the factory shall be removed daily by sweeping or by any other effective method. Suitable arrangements should also be made for the disposal of such dirt or refuse.
2. Once in every week, the floor should be thoroughly cleaned by washing with disinfectant or by some other effective method: Section 11(1) (b).
3. Effective method of drainage shall be made and maintained for removing water, to the extent possible, which may collect on the floor due to some manufacturing process.
4. To ensure that interior walls and roofs, etc. are kept clean, it is laid down that:

   i. White was or colour wash should be carried at least once in every period of 14 months;

   ii. Where surface has been painted or varnished, repaint or revarnish should be carried out once in every five years, if washable then once in every period of six months;

   iii. Where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such methods as may be prescribed.

   All doors, windows and other frame work which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years.

2. The dates on which such processes are carried out shall be entered in the prescribed register.

If the state government finds that a particular factory cannot comply with the above requirements due to its nature of manufacturing process, it may exempt the factory from the compliance of these provisions and suggest some alternative method for keeping the factory clean; Section 11(2).

i. Disposal of Waste and Effluents (Section 12)

Every occupier of a factory shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal. Such arrangements should be in accordance with the rules, if any, laid down by the state government. If the state government has not laid down any rules in this respect, arrangements made by the occupier should be approved by the prescribed authority if required by the state government.

ii. Ventilation and Temperature (Section 13)

Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining (1) adequate ventilation by the circulation of fresh air; and (2! such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health. What is reasonable temperature depends upon the circumstances of each case. The state government has been empowered to lay down the standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof. It may ture for any factory or class or description of factories or parts thereof. It may direct that proper measuring instruments at such places & in such position as may be specified shall be provided and prescribed records shall be maintained.

Measures to Reduce Excessively High Temperature

To prevent excessive heating of any workroom following measures shall be adopted :

i. Walls and roofs shall be of such materials and designed that reasonable temperature does not exceed but kept as low as possible.

ii. Where the nature of work carried on in the factory generates excessively high temperature, following measures should be adopted to protect the workers:

   a. By separating such process from the workroom; or

   b. Insulating the hot parts; or

   c. Adopting any other effective method which will protect the workers.

The chief inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature. Specifying the measures which in his opinion should be adopted.

iv. Dust and Fume (Section 14)

There are certain manufacturing processes like chemical, textile or jute etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process.

Following measures should be adopted in this respect :

i. Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms.

ii. Wherever necessary, on exhaust appliances should be fitted as far as possible, to the point of origin of dust, fumes or other impurities. Such point shall also be enclosed so far as possible.

iii. In stationery internal combustion engine the exhausted should be connected into the open air.

iv. In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes therefrom.

It may be pointed that the evidences of actual injury to health is not necessary. If the dust or fumes exists in such quantity that is injurious or offensive to the health of the workers employed therein, the offence is committed under this section.

Lastly the offence committed is a continuing offence. If it is an offence on a particular date it does not cease to be an offence on the next day and so on until the deficiency is rectified.

v. Artificial Humidification (Section 15)

Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc. higher degree of humidity is required for carrying out the manufacturing process.

For this purpose, humidity of the air is artificially increased. This increase or decrease in humidity adversely affects the health of workers.

Section 15(1) empower the State Government to make rules (i) prescribing the standards of humidification, (ii) regulating the methods to be adopted for artificially increasing the humidity of the air, (iii) directing prescribed tests for determining the humidity of the air to be correctly carried out, and recorded, and (iv) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the work-rooms.

Section 15(2) lays down that water used for artificial humidification should be either purified before use or obtained from a public supply or other drinking water.

Where water is not purified as stated as above. Section 15(3) empowers the Inspector to order, in writing, the manger of the factory to carry out specified measures, before a specified date, for purification of the water.

vi. Overcrowding (Section 16)

Overcrowding in the work-room not only affect the workers in their efficient discharge of duties but their health also.

Section 16 has been enacted with a view to provide sufficient air space to the workers.

i. Section 16(1) prohibits the overcrowding in the work rooms to the extent it is injurious to the health of the workers.

ii. Apart from this general prohibition Section 16(2) lays down minimum working space for each worker as 14.2 cubic meters of space per worker in every workroom.

For calculating the work area, the space more than 4.2

Meters above the level of the floor, will not be taken into Consideration. Posting of notice: section 16(3) empowers the chief inspector who may direct in writing the display of a notice in the work-room, specifying the maximum number of a notice in the employed in that room. According to section 108, notice should be workers. It should be displayed at some conspicuous and convenient place at or near, the entrance. It should be maintained in clean and ligible conditions.

Exemptions: The chief inspector may be order in writing exempt any work-room from the provisions of this section, subject to such conditions as he may think fit to impose, if he is satisfied that non-compliance of such provision will have no adverse effect on the health of the workers employed in such work-room.

vii. Lighting (Section 17)

Section 17 of the Factories act makes following provisions in this respect:

a. every factory must provide and maintain sufficient and suitable lighting, natural, artificial or both in every of the factory workers or passing;

b. all the glazed windows and sky light" should be kept clean on both sides;effective provisions should be made for the prevention of glare from a sources of light or by reflection from a smooth or polished surface;

c. formation' of shadows to such an extent causing eyestrain or the risk of accident to any worker, should be prevented; and

d. the State Government is empowered to lay down standard of sufficient and suitable lighting for factories for factories or for any manufacturing process.

viii. Drinking Water (section 18)

Section 18 makes following provisions with regard to drinking water;

a. every factory should make effective arrangements for sufficient supply of drinking water for all workers in the factory;

b. water should be wholesome, i.e., free from impurities;

c. water should be supplied at suitable points convenient for all workers;

d. no such points should be situated within six meters of any washing place, urinals, latrine, spittoon, open drain carrying sullage or effluent or any other sources or contamination, unless otherwise approved in writing be the chief inspector;

e. all such points should be legible marked "Drinking Water" in language understood by majority of the workers;

f. in case where more than 250 workers are ordinarily employed, effective arrangement should be made for cooling drinking water during hot weather. In such cases,

arrangements should also be made for the distribution of water to the workers; and

g. the state government is empowered to make rules for the compliance of above state provisions and for the examination, by prescribed authorities, of the supply and distribution of drinking water in factories.

ix. Latrines and Urinals (section 19)

Every factory shall make suitable arrangement for the provisions of latrines and urinals for the workers. These points as stated below, are subject to the provisions of section 19 and the rules laid down be the state government in this behalf.

i. every factory shall make provision for sufficient number or latrines and urinals of prescribed standard. These should be conveniently situated and accessible to all workers during working hours;

ii. separate arrangement shall b made for male and female workers;

iii. all theses places shall have suitable provisions for lighting and ventilation;

iv. no latrine or urinals shall communicate with any workroom unless in between them there is provision of open space or ventilated passage;

v. all latrines and urinals shall be kept in a clean and a sanitary conditions at all times;

vi. a sweeper shall be employed whose exclusive job will be to keep clean all latrines and urinals;

vii. where more than 250 workers are ordinarily employed in a factory following additional measures shall be taken under section 19(2)

   a. all latrines and urinals accommodation shall be of prescribed sanitary type.

   b. All internal walls upto ninety centimeters and the Rooms and the sanitary blocks shall be laid in glazed tiles or otherwise furnished to provide a smooth polished impervious surface;

   c. The floors, walls, sanitary pan, etc., or latrines and urinals shall be washed and cleaned with suitable detergents and/ or disinfectants, at least onces in every seven days atleast once in every seven days.

xii. the state government is empowered to make rules in respect of following:

   a. Prescribing the number of latrines and urinals to be provided to proportion to the number of male and female workers ordinarily employed in the factory.

   b. Any additional matters in respect of sanitation in factories;

   c. Responsibility of the workers in these matters.

XI. Spittoons (section20)

1. every factory should have sufficient number of spittoons situated at convenient places. These should be maintained in a clean and hygienic conditions;

xiii. the state Government is empowered to make

xiv rules regarding the type and number of spittoons, their location and standard of cleanliness;

xv. spittings should be done in the spittoons only. If any worker violates the rule, he can be punished with fine not exceeding five rupees. However, the penalty for the violation shall be predominantly displayed at suitable places in the premises of the factory

B. Safety (Chapter iv)

Chapter iv of the act contains provisions relating to safety.

These are used below:

Fencing of machinery (sec.21) : Fencing of machinery in use or in motion has been obligatory under section 21. This section requires that lowing types of machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly maintained and kept in position while the parts of machinery they are fencing are in motion or in use. Such types of machinery or their parts are:

a. every moving parts of a prime-mover and flywheel connected to a prime-mover or flywheel is in the engine house or not;

b. head-race and tail-race of water wheel and water turbine;

c. any part of a stock-bar which projects beyond the head stock of a lathe;

d. every part of an electric generator, a motor or rotary convertor or transmission machinery unless they are in the safe position;

e. every dangerous part of any other machinery unless they are in safe position.

This section dies not contemplate a case when a worker is working on or near a machine in motion for the purpose of its examination or for carrying out the work of mounting, lubricating, cleaning, or adjusting the machine. Such works are covered under Section 22.

Rules and Exemption

The State Government is empowered to make rules providing additional safeguards in respect of any particular machinery or part thereof. It may exempt any particular machinery or part thereof. From the compliances of above stated provisions on such conditions which ensure the safety of the workers.

Meaning of "Shall be securely fenced"

Though the words "Shall be securely fenced" suggest that the fencing shall always be there, the statute has put the matter beyond doubt by expressly saying that the fencing shall be kept in position while the machine is working. A Machinery is securely fenced if it is fenced against danger which may be reasonably expected. The risk or danger ad contemplated by this section must reasonably be foreseeable.

The carelessness, the indolence, the inadvertence, the weariness and even the disobedience of a workman are things which an occupier of a factory can and is expected to reasonably foresee and should therefore be provided against under section 21.

Thus, safeguards are to be provided for protection of not only the diligence built also those who act inadvertently or even inefficiently or foolishly.

Nature of Obligation

It has been held that the liability under section 21 is absolute but this liability is linked to dangers of foreseeable nature. The supreme court ins state of Gujarat v. Jetha Mal Ghalabhai Patel held that it will be the duty of the occupier or the manger to keep the guard in position when the machine is working. Where it appears that he has hot done so, it will be for working him to establish that be was not liable. The mere fact that someone else had removed the safeguards, without the knowledge, consent, or connivance or the occupier or manger, does not provide a defence to him.

Employer cannot evade his liability on commercial or mechanical reason and even substitutes for fencing will not absolves him from liability. Similarly the argument that factory inspector did not find out danger in machinery is not defence under this section.

It may be noted that the protection afforded is to every person employed in the factory and not .every workman working on the machine over which safeguard IS to be provided.

ii. Safety Measures in case of work on or near machinery in motion: Section 22 lays down the procedure for carrying out examination or any part a while it is in motion or as a result of such examination to carry out the operations mentioned under clause(i) or ii) of the provision to section 21 (10. Such examination or operation shall be carried out only be specially from adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of appointment and while he is so engaged

i. worker shall not handle a belt at a moving pulley unless;
ii. the belt is not more than 15 centimeters in width;
iii. the pulley is normally for the purpose of drive and not merely a flywheel or balance wheel (in which case a belt is not permissible);
iv. the belt joint is either laced or Rush with the belt; i vi) the belt including the joint and pulley rim is in good repair;
v. there is reasonable clearance between pulley and any fixed plant and structure;
vi. secure foothold and where necessary secure handhold ore provided for the operator;
vii. any ladder in use for carrying out any examination or operation aforesaid is securely fixed or lashed or is firmly held by a second person.

Without prejudice to any other provision of this Act relating to machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinion and all spur, worm and other toothed or friction gearing in motion with shall be securely fenced to prevent such contact.

Restriction on Woman or Young Person to Work an Such Machines

No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover or any transmission machinery while the prime- mover or transmission machinery is in motion or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication and adjustment thereof would expose the woman or the young person to risk of injury from any moving part either of that machine or of any adjacent machinery section 22(2)}.

The State Government may be notification in Official Gazette, prohibit in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when whose parts are in motion.

iii. Employment of Young Persons on Dangerous Machines: Section 23 provides that no young person shall be required or allowed to work at any machine to which this section applied unless he has been fully instructed as to dangers arising in connection with the machine and the precautions to be observe and (a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience or the machine.

The above provisions shall apply only to those machines which are considered by State Government as dangerous on which young persons ought not to work unless the foregoing requirements are complied with.

iv. Striking Gear and Devices for Cutting Off Power: Section 24 provides that in every factory suitable striking gears of other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulley which form part to the transmission machinery and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley. Further, driving belts when not in use shall not be allowed to rest or ride upon shafting in motion. Suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom in every factory. It has been added by amending Act 94 of 1976 that when a device which can inadvertently shift from 'off' to 'on' position is provided in a factory to cut off power arrangements shall be provided for locking the devices on safe position to prevent accidental start of the transmission machinery or other machine to which the device is fitted.

v. Self-acting machines : Section 25 provides further safeguards for workers from being injured by self-acting machines. It provides that not transfer part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass whether in the course of his employment of otherwise, be allowed to run on its outward or inward transverse within distance of forty five centimeters from any fixed structure which is not part of the machines. However, Chief Inspector may permit the continue use of a machine installed before the commencement of this Act, which does not comply with the requirements of this section, on such conditions for ensuring safety, as he may think fit to impose.

vi. Casing of new machinery: Section 26 provides further safeguards for casing of new machinery of dangerous nature. In all machinery driven by power and installed in any factory

i. Every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger

ii. All spur, warm and other toothed or fraction gearing which does not required frequent adjustment while in motion shall be completely encased unless it is so situated as to be so safe as it would be if it were completely encased. The section places statutory obligation on all persons who sell or let on hire or as agent of seller or hirer to comply with the section and in default shall be liable to punishment with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 500 or with both.

vii. Prohibition of employment of women and children near Cotton Openers: According to Section 27, no child or women shall be employed in any port of a factory for pressing cotton in which a cotton opener is at work. However, if the feed-end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women ,and children may be employed on the side of partition where the feed-end is situated.

viii. Hoists and Lifts: Section 28 provides that in every factory:

i. Every hoist and lift shall be of good mechanical construction, sound material and adequate strength. It shall be properly maintained and thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination.

ii. Every hoist way and lift away shall be sufficiently protected by an enclosure fitted with gates and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part.

iii. The maximum safe working load shall be marked on every hoist or lift and no load greater, than such load shall be carried thereon

iv. The cage of every hoist and lift shall be fitted with a gate on each side from which access is afforded to a landing

v. Such gates of the hoist and lift shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

The following additional requirements shall apply to hoist and lifts used for carrying person and installed or reconstructed in a factory after the commencement of this act, namely :

i. where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with its attachments shall be capable of carrying the whole weight of the cage together its maximum load.

ii. Efficient devices shall be provided and maintained capable of supporting cage together with its maximum load in the event breakages of the ropes, chains or attachments.

iii. An efficient automatic device shall be provided and maintained to prevent the cage from the cage from over running.

The above condition can be relaxed in suitable circumstances by the Chief Inspector or state Government under the Act.

Explanation to this section provided that no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage; the direction or movement of which is restricted by a guide or guides.

xi. Lifting machines, ropes, chains and Lifting Tackles: In terms of section 29, in any factory the following provisions shall be compiled with respect of every lifting machine and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:

i. All parts including the working gear, whether fixed or movable, shall be (a) of good construction, sound material and adequate strength and free from defects; (b) properly maintained; and (c) thoroughly examined by a competent person at least once in every period of 12 months or at such intervals as chief Inspector may specify in writing and a register shall be kept containing the prescribed particulars of every such examination;

ii. No lifting machine or no chain, rope or tackle, shall except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked theron together with an identification mark and duly entered in the prescribed register and size of lifting machine or chain rope or lifting tackle in use shall be displayed in prominent positions on that premises;

iii. While any person is employed or working on or bear the wheel track of a traveling crane in any in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within 6 meters of that place.

The State Government may make rules in respect of lifting machines or any chain, or rope or lifting tackle uses in factories. These rules shall prescribed further requirements to be complied with in addition to those set out in this section. Rules may also provide for exception from compliance with all or any of the requirements of this section where in its opinion such compliance is unnecessary or impracticable.

x. Safety measures in case of use of revolving machinery: Section 30 of Act prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate maximum safe working peripheral speed for every grindstone or abrasive wheel, the speed of the shaft or spindle upon such shaft or spindle necessary to secure such safe working peripheral-speed. Speed indicated in the notice shall not be exceeded and effective measures in this regard shall be taken.

xi. Pressure plant: Section 31 provides for taking effective measures ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at pressure above atmospheric pressure, does not exceed the limits. The state Government may make rules to regulate such pressures or working and may also except any part of any plant or machinery From the compliance of his section.

xii. Floors, stairs and means of access: Section 32 provides that every factory (a) all floors, steps, stairs passages and gangways shall be of sound construction and properly maintained shall be kept free From obstruction and substances likely

to cause persons to slip and where it is necessary to ensure safety, steps, stairs passages and gangways shall be provided with substantial handrails, (b) there shall, be so far as is reasonably practicable, be provided, and maintained safe means of access to every place at which any person is at any time required to work; (c) when any person has to work at a height from where he is likely to fall, provisions shall be made, so far as its reasonably, practicable, by fencing or otherwise, to ensure the safety of the person so working.

xiii. Pits, sumps, opening in floors etc. : Section 33 requires that in ever factory fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its dept, situation, construction, or contents is or may be source of danger shall be either securely covered or securely fenced. The State Government may exempt any factory from the compliance of the provisions of this section subject to such conditions as it may prescribe.

xiv. Excessive weights: Section 34 provides that no person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause hi injury. The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or n any class or description of factories or in any carrying on any specified process.

xv. Protection of eyes: Section 35 requires the State Government to make rules and require for providing the effective screens or suitable gaggles for the protection or persons employed or on immediate vicinity of any such manufacturing process carried on in any factory which involve (1) risk of course of the process or; (2) risk to the eyes by reason of exposure to excessive light

xvi. Precautions against dangerous fumes, gases, etc. : Section 36 provides-

i. That no person shall be required or allowed to enter any chamber tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

ii. No person shall be required or allowed to enter any confined space as is referred to in Sub-section 1 until all practicable measures have been taken to remove any gas, fume, vapour or dust, which may be present, so as to bring its level within the permissible limits and to present any ingress of such gas, fume, vapour or dust and unless-

A certificate in writing has been given by a competent person base on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or

such person is wearing suitable breathing apparatus and a belt securely attachment to a rope the free and of which is held by a person outside the confined space.

xvii. Precautions regarding the use of portable electric light : Section 36A of the Act provides that in any factory –

i. no portable electric light or any other electric appliance of voltage exceeding 24c volts shall be permitted for use inside any chamber, tank, vat pit, pipe, flue or other confined space unless adequate safety device are provide; and

ii. if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat pit, pipe or flue or other confined space unless adequate safety devices are provided, no lamp or light other than that of flame proof construction shall be permitted to be used therein.

xviii. Explosives or inflammable dust gas, etc. : Sub-section 1 of section 37 of the Act provides that in every factory where manufacturing process produces dust, gas, fume or vapour of such character and to such extent to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by (a) effective enclosure of the plant or machinery used in the process, (b) removal or prevention of the accumulation of such dust, gas, fumes or vapour, and (c) exclusion or effective enclosure of all possible sources of ignition.

But if the plant or machinery is not so as withstand the portable pressure of the wall, all practicable measures to restrict the spread and effect of any explosion by the provision in the plant or machinery of chokes, baffles, vents or other effective appliance should be taken under sub- section2 of section 37.

Sub section3 provides that where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure that part shall not be opened except in accordance with the following provisions namely, (a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part or any such pipe shall be effectively stopped by a stop- value or other means; (b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to a atmospheric pressure; (c) where any such fastening as aforesaid has been loosened or removed effective measures shall be token to prevent any explosive or inflammable gas vapour from entering the port of pipe until the fastening has been secured, or, as the case may be, securely replaced; Provided that if plant or machinery is installed in open air, above section shall not apply.

Sub-section4 further lays down that no plant, tank or vessel containing any inflammable or explosive substance shall be subjected in any factory to any welding, brazing, soldering, or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising there from or to render such substance and fumes non-explosive or non-inflammable, and in such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

The State Government can exempt any factory from compliance of above provisions subject to such .conditions as may be prescribed.

xix. **Precautions in case of fire:** Section 38 provides that in every factory all practicable measures shall be taken to outbreak of fire and its spread, both internally and externally and to

provide and maintain (al safe means of escape for all persons in the event of fire, and (b) the necessary equipment and facilities for existinguishing fire.

The State Government has necessary powers to make rules requiring the measures to be adopted to give effect to the above provisions.

Not withstanding foregoing precautions:

the chief inspector having regard to the nature of the work carried on in any factory, construction of factory, special risk to life or safety or any other circumstances is of the opinion that the measures provided are not adequate he may be order in writing require such additional measures which he may consider reasonable and necessary, to be provided in the factory before such date a is specified in the order.

xx. Power to require specification of defective parts or tests to stability : Section 39 states that when the inspector feels that the factory are dangerous to human life or safety he may serve on the occupier or manager or both notice in writing requiring him before the specified date to furnish determine whether wuch building, machinery or plant can be used with safety or to carry out such tests in such a manner as may be specified in order and to inform the inspector of the results thereof.

xxi) Safety building of machinery : Section 40 provides that the inspector in case of dangerous conditions of building or nay part of ways, machinery or plant require the manager or the occupier or both to take such measures which in his opinion should be adopted and require them to be carried out before a specified date. In case the danger to human life is immediate and imminent from such usage of building, ways or machinery he may order prohibiting the same unless it is repaired or altered.

xxii) Maintenance of building : Section 40A provides that if it appears to the inspector that any building or a part of it is in such a state of disrepair which may lead to conditions detrimental to the health and welfare of workers he may serve on the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date

xxiii) Safety officer : Section 40B provides that in every factory (1) where 1000 or more worker are ordinarily employed or (2) where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with duties and qualifications and conditions of services may be prescribed by State Government.

xxiv) Power to make rules to supplement this chapter : Is vested in the State Government under Section 41 for such devices and measures to secure the safety of the workers employed in the factory.

LESSON 28:
WELFARE OF WORKERS UNDER THE ACT

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the provisions for the welfare of workers under the Factories Act?
- What are the provisions regarding leaves under The Factories Act?

Welfare (Chaper V)

Following provisions relate to the measures to be taken for the welfare of workers.

i. Washing Facilities : (Section 42)

Section42 provides that every factory should provide and maintain adequate and suitable washing facilities for its workers for the use of male and female, such facilities should be separate and adequately screened. Such facilities should be conveniently accessible for all worker and be kept in a state of cleanliness. The State Government is empowered to make rules prescribing standards of adequate and suitable washing facilities.

ii. Facilities far Staring and Drying Clothing: (Section 43)

Section 43 empowers the Sate Government in respect of any factory or class or description of factories to make rules requiring the provision therein of (1) suitable places for keeping clothing not worn during working hours, and (2) for drying of wet clothing.

Facilities far Sitting: (Section 44)

There are certain operations, which can be performed by the workers only in a standing position. This not only affects the health of a worker but also efficiency.

According to section 44(1), every factory shall provide and maintain suitable facilities for sitting, for those who work in standing positions so that they may make use of them as and when any opportunity comes in the course of their work. If, in the opinion of the Chief Inspector, any work can be effectively performed in a sitting position, he may direct, in writing, the occupier of the factory, to provide before a specified date such seating arrangements as may be practicable, for all workers also engaged. The State Government, may by a notification in the Official Gazette, declares that above provisions shall not apply to any specified factory or any manufacturing process.

iv. First-aid Appliances: (Section 45)

The following arrangements should be made every factory in respect of first-aid facilities.

Provision of at least one first-aid box or cupboard, subject to following condition, for every 150 workers ordinarily employed at anyone time in the factory.

It should with prescribed contents and nothing else should be stored in it. It should be properly maintained and readily accessible during all working hours.

A responsible person who holds a certificate in first-aid treatment, recognized by the State Government should be made the in-charge of such first-aid box or cupboard. Such a person should be readily available during working hours of the factory. Where there are shifts in the factory, a separate person may be appointed for each shifts provided he is a responsible and trained in first-aid treatment.

When more than 500 hundred workers are ordinarily employed in a factory, an ambulance room should be provided maintained by every such factory. Such room should be of prescribed size containing prescribed equipments and is in the charge of such medical and nursing staff as may be prescribed.

i) Canteens: (Section 46)

a) the state Government may make rules requiring that in any specified factory wherein more than 250 workers are already employed, a canteen should be provided and maintained by the occupier for the use of workers.

b) Such rules may relate to any of the following matters:

the date by which the canteen shall be provided;

the standards in respect of construction, accommodation, furniture and other equipment of canteen;

the foodstuffs to be served and the prices to be charged.

The items of expenditure in the running of the canteen which are not to be taken into account in fixing in the cost of food-stuffs and which shall be borne by the employer;

the construction of a managing committee for the canteen and the representation of the workers in the management of the canteen, and

the delegation, to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (iii)

Employees working in canteens in industrial establishments run by Managing Committee are not employees of the Managing Committee, but are employees of occupier (Kanpur Suraksha Karmachari Union vs. Union of India SC 1988 (CSLW 141)

vi. Shelters, Rest Rooms and Lunch Rooms : (Section 47)

The provision of some sort of shelter is a musi, where workers can their meals brought by them during rest interval. The following provisions have been made I this respect:

In every factory where more than 150 workers are ordinarily employed, the occupier should make adequate and suitable arrangements for shelters or rest rooms and lunch-rooms with provision of drinking water where the workers can take rest or

eat meals brought by them. However any canteen, which is maintained in accordance with the provisions of section 45m shall be regarded as part of the requirements of this sub-section. Where a lunch room exists no worker shall eat any food in the workroom.

Such planes should be equipped with the facility of drinking water. Such places should be sufficiently lightened, ventilated and kept cool and clean conditions.

The conditions and accommodation, furniture and equipment of such place should conform to the standards, if any, laid down by the State Government.

By a notification in the Official Gazette, the State Government may exempt any factory from the compliance of these provisions. Further, where any canteen is maintained under Section 45, then provision of such shelter room, etc., is not necessary.

vii) Creches: (Section 48)

Following provisions have been made in respect of creches in the factories;

In every factory where in more than 30 women workers are ordinarily employed, the facility of suitable rooms should be provided and maintained for the use of children under the age of six years of such women.

There should be adequate accommodation in such rooms. These places should be sufficiently lighted and ventilated and kept in clean and sanitary conditions. Women trained in case of children and infants should be made in charge of such rooms.

The State Government .s empowered to make rules in respect of following matters:

i. Location and standards in respect of construction, accommodation, furniture and other equipment of such places.
ii. Provisions of facilities for washing and changing clothing of children or any other additional facility for their care.
iii. Provisions of free milk or refreshment or both for children.
iv. Facilities for the mothers of such children to feed them at suitable intervals in the factory.

1. The committee appointed under sub-section 1 shall consist of a Chairman and the terms of reference of the committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.
2. The recommendations of the committee shall be advisory in nature.

41E. Emergency Standards

i. Where the Central Government is satisfied that no standards of safely have been prescribed in respect of a hazardous process or class of hazardous processes, or where the standards so prescribed are in- adequate, it may direct the Director-General of factory Advice Service and labour Institutes or any institution specialized in matters relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standard sin respect of such hazardous processes.
ii. The emergency standards laid down under sub-section (1) shall, unile they are incorporated in the rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the rules made under this act.

41F Permissible Limits of Chemical and Toxic Substance

1. The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing process in any factory shall be of the value indicated in the second schedule (may refer to the bare Act)
2. The Central Government may, at any time, at any time, for the purpose of giving effect to any scientific proof obtained from specialized institutions of expert in the field, by notification in the Official Gazette, make suitable changes in the said schedule.

41 G Workers Participation in Safety Management

1. The occupier shall, in every factory where a hazardous process takes place or where substance are used or handled, set up a Safety committee consisting of equal number of representatives of workers and management to promote co-operation in between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in behalf:
2. The composition of safety committees, the tenure of office of its members and their rights and duties shall be as may be prescribed.

41 H Right of Workers to Warn About Imminent Danger

1. Where the workers employed in the factory engaged in hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.
2. It shall the duty of occupier, agent, manage, or the person incharge of the factory or process to make immediate remedial action if he satisfied about the existence of such imminent danger and sends report forthwith of the action taken to the nearest Inspector.
3. If the occupier, agent, manager or any other person incharge referred to the sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless refer the matter forthwith to the nearest inspector whose decision or the question of the existence of such imminent danger shall be final.

7. Working Hours of Adults (Chapter VI)

Chapter VI contains provision for regulating working hours for the adult workers and the some are explained below:

Weekly Hours (Section 51) !

An adult worker shall be allowed to work only for forty-eight hours in a week (Section 51).

Weekly Holidays (Section 52)

Section 52 provides that there shall be a holiday for the whole day in every week and such weekly holiday shall be on the first day of the week.

However, such holiday may be substituted for anyone of the three days immediately before or after the first day of the week provided the manager of the factory has:

1. delivered a notice at the office of the Inspector; and
2. displayed a notice in the factory to this effect.

The effect of all this is that the subject to above said conditions 1 &2 there shall be a holiday during ten days. In other words no adult worker shall work for more than ten days consecutively without a holiday for the whole day.

Such notices of substitution may be cancelled by appropriate notices but not later than the day of weekly holiday or the substituted holiday ever is earlier (Section 52).

Compensatory Holidays (Section 53)

When a worker is deprived of any of the weekly holiday as a result of passing of an order or making of a rule exempting a factory or worker from the provision of Section 52, he is entitled to compensatory holidays of equal number to the holidays so lost. These holidays should be allowed either in the some month in which holidays become due or within next two months immediately following that month.

Daily Hours (Section 54)

An adult worker, whether male or female shall not be required or allowed to work in a factory for more than 9 hours in any day. Section 54 should be read with section 59. In other words, the daily hours of work ,f should be so adjusted that the total weekly hours does not exceed 48. The s liability of the employer under this section cannot be absolved on the ground that the workers are willing to work for longer hours without any extra payment.

The daily maximum hours of work specified in Section 54 can be y exceeded provided

i. it is to facilitate the change of shift; and
ii. the previous approval of the Chief Inspector has been obtained.

v. Intervals for Rest (Section 55)

No adult worker shall continuously work for more than 5 hours unless a rest interval of at least an hour is given to him (Section 55.1)

The State Government or subject to the control of the State Government thus Chief Inspector may, by written or order for reasons specified therein, exempt any factory, from the compliance of above provisions to the extent that the total number hours worked without rest interval does not exceed six (Section 55.ii)

vi. Spread Over (Section 56)

Section 56 provides that the daily working ours should be adjusted un such a manner, that inclusive of rest interval under Section 55, they are not spread over more than 10½ hours on any day. Thus, we see this section restrict the practice of forcing the stay of workers in the factory for unduly long periods without contravening the provision of Section 54 relating to daily hours of work.

Provision to Section 56 provides that the limit may be extended upto 12 hours by the Chief inspector for reasons to be specified in writing.

vii. Night Shifts (Section 57)

Where worker in a factory works in night shifts, i.e., shift extending beyond mid-night:

i. the weekly or compensatory holiday shall be a period of 24 consecutive hours beginning when his shift end;
ii. the following day shall be deemed to be the period of 24 hours beginning when shift ends, and the hours he has worked after mid-night shall be counted in the previous day.

vii. Prohibition of Overlapping Shifts (Section 58)

According to Section 58 (1) where the work in the factory is carried on b the means of multiple shifts, the period of shifts should be arranged in such a manner that not more than one relay of workers is engaged in work of the same kind at the same time

In case of any factory or class or description of factories or any department or section of a factory or any category of description of workers, the State Government or subject to the control of the Sate Government the Chief Inspector may, by written or order and for specified reasons, grant exemption from the compliance of the provisions of Section 58 (1) on such condition as may be deemed expedient Section 58(2).

ix. Extra Wages for Overtime (Section 59)

The following provisions have been made in respect of over time wages:

i. Where a worker works in a factory for more than 9 hours in any day or more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. Section 59(1)

Meaning of Ordinary Rate of Wages Section 59

According to Section 59(2) ordinary rate off wages means:

Basic wages; Plus,

Allowances which include the cash equivalent of the advantage accruing through the confessional sale workers of foodgrains and other articles as the worker is for the time being entitled to, but it does not include a bonus and wages for overtime.

Rate of wages for piece rate workers Section 59(3)

Where the workers in the factory are paid on piece rate bases, the time rate shall be deemed to be equivalent to the daily average of their full- time earning$ for the days on which they actually worked on the same or identical job during the month immeadtely preceding the calendar month during which the over-time work was done and such time rates shall be deemed to be the ordinary rate of wages of those workers.

Provided in the case of worker who has not worked in the immeadtely preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the days on which he actually worked in the week the overtime work was done.

x. Restriction on Double Employment (Section 60)
According to Section 60 no adult worker shall be required to work in any factory on any day if he has already been working in any other factory on that day. However, in certain exceptional circumstances as may be prescribed, the double employment may be permitted.

xi. Notice of Periods of Work for Adults (Section 61)

1. A notice of period of work, showing clearly for everyday the periods, during which adult workers may be required to work, shall be displayed and a correctly maintained in every factory. The display of notice should in accordance with the provisions of Section 108(2)
2. The period shown in the notice shall not contravene the provisions of)f the Factories Act in respect of following matters:

   Weekly hours, Section 51.

   Weekly holidays, Section 52.

   Compensatory holidays, Section 53.

   Daily hours, Section 54.

   Intervals of rest, Section 55.

   Spread over of working hours, section 56.

   of Prohibition of overlapping shifts, Section 58.
3. The period of work shall be fixed before hand in any of the following ways:
   i. where the adult workers work during the same periods, the manager of the factory shall fix those periods for such workers generally. Section 61(3);
   ii. where all the workers are not working during the same period, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in each group Section 61(4);
   iii. the manager shall fix period of work for each such groups provided they are not working on shift basis Section 61(5);
   iv. where any group is working on a systems of shifts, periods shall be fixed, by the manager during which relay of the group may work provided such relays are not subject to predetermined periodical changes of shifts Section 61(6);
   v. where the relays are subject to predetermined periodical changes of shifts, the manager shall draw up a scheme of shifts, where under the periods during which any relay of the group may be required to work and relay which will be working at any time of the day shall be known for any day Section 61(7).
4. The form of such notice and the manner in which it shall be maintained, may be prescribed by the State Government Section. 61(8).
5. Any proposed change in the system of work in the factory, which necessitates a change in the notice, shall be notified to the Inspector in duplicate before the change is made. No such change shall be made except with the inspector and that too till until one week has elapsed since the last change, Section 61(10). This provision intends to prevent sudden variations or casual alterations in the periods of work.

xii. Register of Adult Workers (Section 62)
The manager of every factory shall maintain register of adult workers to be available to the Inspector at all tomes during working hours containing following particulars:

vii. the name of the worker;

viii. the nature of his work;

ix. the group, if any, in which he is included;

x. where his groups work on shifts, the relay to which he is allotted; and

xi. other particulars as may be prescribed.

Where any factory is maintaining a muster roll or a register which contains the above mentioned particulars, the Inspector may be order or in writing direct that such muster roll or register shall be maintained in the place of and be treated as the register of adult workers in that factory. Further an adult worker shall be required or allowed to work in factory unless his particulars have been entered in this register Section 62(1A).

Inspector of the Register
Section 62(1) empowers the Inspector to demand the production of register of adult workers at all times during working hours or when any work is being carried on in the factory. It is the duty of the manger to produce the register when demanded at the time of inspection. If the manager does not happen to be on the premises on at *time* of Inspection he should make arrangement that the register is made available to the inspector. The evident intention of the legislature is that the register should be at the place where the work is going on. Thus, where a manager is absent at the time of l. inspection of the factory by the inspector and the assistant manager, who is present at that time, fails to produce register on demand; the manager has committed breach of Section 62.

Effect of Entry in the Register
If the name of any person is entered in the register of adult workers, it is a conclusive evidence that the person is employed in the factory. In other Words, there is a presumption that the person, whose name appears in the attendance register, is employed in the factory.

Liability 10 Maintain Register
The liability to maintain the register of adult workers have been imposed on the manger of the factory. The occupier cannot be held liable for the failure of the manager to maintain the register. But if somebody else has been made responsible for maintaining such register, manager can plead under Section 101 that the offence was committed by another person including the occupier.

Xii. Hours of Work to Correspond with Notice under Section 61 and Register under Section 62 (Section63)
No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of period of work for adults displayed in the factory and the entries made

before hand against his name in the register of adult workers of the factory.

Presence of Worker During Rest Period

Where a worker is merely present during the rest period as notified or .is found working during that period, there is no contravention of Section 63 and hence not punishable.

xiv. Power to Make Exempting Rules

The State Government is empowered under Section 64, to make rules defining certain persons holding supervisory or managerial or confidential positions and granting exemptions to them from the provisions of this chapter except Section 66(1) (b) and provision to Section 66(1) provided that such person shall be entitled for extra wages in respect of overtime under Section 59 of his ordinary rate of wages is not more than 750 per month.

The State Government may make rules in respect of adult workers providing for exemptions of:

xii. Workers engaged on urgent repairs

xiii. Worker engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits and laid down for the general working of the factory from the provisions of Section 51, 54, 55 and 56.

xiv. Workers engaged in any work which is necessarily so intermittent that the intervals during which they do not work while on duty, ordinarily amount to more than the intervals for required by or under Section 51, 54, 55 and 56.

xv. Workers engaged in any work, which for technical reasons must be, carried on continuously from the provisions of Section 51, 54, 55 and 56.

xvi. Workers engaged in the printing of newspapers that are held up on account of the breakdown of machinery from the provisions of Section 51, 54 and 56.

xvii. Worker engaged in the loading unloading o railway wagons pr lorries or trucks from the provisions of Section 51, 52, 54, 55 and 56.

xviii. Workers engaged in any work, notified in the Official Gazette as of national importance, from the provisions of Section 51, 52, 54, 55 and 56.

xix. Workers engage in making or supping of articles of prime necessity of which must be made or supplied everyday, from the provisions of Sections 51 and 52.

xx. Worker engaged in manufacturing process, which cannot be carried on except during fixed seasons, from the provisions of Section 51, 52 and 54.

xxi. Workers engaged in a manufacturing processes which cannot be except at times dependent on the irregular action of natural forces, from provisions of Section 52 and 55 relating to rest intervals.

xxii. Worker engaged in engine rooms or boiler houses or in attending to power plant or transmission machinery, from the provisions of Section 51 and 52.

Limitations on Power to Make Rules for Exemption Section 64(4)

xxiii. The total number of hours of work in any day shall not exceed ten.

xxiv. The spreadover inclusive of intervals for rest should not exceed 12 hours in anyone day.

However, provision to Section 64(4) empowers the State Government to waive the restriction contained in clauses (1) and (2) as stated above, where the workers are engaged in any work, which for technical reasons must be carried on continuously. This is in order to enable a shift worker to work the whole or part of a subsequent shift in the absence of a worker who has failed to report for duty.

xxv. The total number of overtime shall not exceed fifty for anyone quarter. A 'Quarter' is a period of three consecutive months beginning on the 1st of the January the 1st of April and 1st of July, or the 1 of October.

xxvi. The total number of weekly hours including overtime shall not exceed 60.

"Overall limit: Section 64(5) provides that rules made under Section 64 hall remain in force for not more than five years.

xv. Power to Make Exempting Orders (Section 65)

Following provisions have been made in this respect-

xxvii. Where the nature of the work carried on in any factory is such that the fixing of period of work before hand for any adult worker is not necessary, the State Government may, by written order relax or modify the provisions of Section 61, relating to display of notice, to such an extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

xxviii. To deal with an exceptional pressure of work in any factory the state government or the Chief Inspector has been empowered to grant exception, by written order and subject as such conditions as it or he may deem expedient, from any or all of the provisions relating to weekly hours Section 51, weekly holidays (Section 52) daily hours (Section 54) and spreadover (Section 56).

Conditions for Exemption Section 65(3)

An exemption granted shall be subject to the following conditions namely:

xxix. The total number of hours of work in any day shall not exceed twelve;

xxx. The spread over, inclusive of intervals for rest, shall exceed thirteen hours in any one day;

xxxi. The total number of hours of work in any week, including overtime shall not exceed sixty;

xxxii. No worker shall be allowed to work overtime, for more than seven days at a stretch an the total number of hours of overtime work in any quarter shall not exceed seventy-five.

11. Additional Provisions Regulating Employment of Women in a Factory (Section 66)

We have discussed the provisions relating to working hours of adult workers, both male and female. However, certain additional restrictions have been found necessary on the working hours of female workers. Section 66 makes following provisions in this respect.

xxxiii. No exemption shall be granted to female workers, from the provisions of Section 54 relating to daily hours of works.

xxxiv. Women workers shall not be employed except between the hours of 73.00 AM and 7.00 P.M. However, the state government may by a notification in Official Gazette, vary these limits to the extent that no women shall be employed between the hours o 10.00 P.M. and 5.00 A.M.

xxxv. There shall be no change of shifts except after a weekly holiday or any other holiday.

Exemptions from the above restriction

The State Government has been empowered to make rules granting exemptions from above stated restriction in respect of women working in fishing-curing or fish canning factories. This has been done with a view to prevent damage to or deterioration in any raw material. However, before granting ant exemption, the state government may lay down any condition as it thins necessary. Such rules made by the State Government shall remain in force for not more than three years at a time Section 66(3).

12. Employment of Young Persons and Children (Chapter VII)

Most of the civilized nation a restrict the employment of children in the factories. The Royal Commission on labour observed that this is based on the principle that the supreme right of the State to the guardianship of the children controls the natural rights of the parent when the welfare of the society of the children themselves conflicts with parental rights. Workers as young as five years of age may be found in some these places working without any adequate meal, intervals or weekly rest days at low as 2 annas in the case of those tenderest years. Therefore, to curb these and other evil practices of employing children, following legislative measures have been adopted.

I) Genera Prohibition as to Employment of Children (Section 67)

According to section 67 a child who has not completed his fourteenth year of age, shall not be employed in any factory.

ii) Employment of children and Adolescents-Conditions (Section 68)

According to Section 68, children completing their fourteenth year or adolescent, shall be required to work in any factory, unless following conditions are fulfilled :

a. the manager of the factory has obtained a certificate of fitness granted to such young person under Section 69;

b. while at work, such child or adolescent carries a token giving reference to such certificate.

iii. What is Certificate of Fitness (Section 69)

Before a young person is employed in the factory, a Certifying Surgeon has to certify that such person is fit for that work in the Factory. To get this certificate, an application to Certifying Surgeon has to made either:

c. by the young person himself; or

d. by his parent or guardian; or

e. by the manager of the Factory.

If the application is made by a person other than the manager, it must be accompanied by a document, signed by the manager, that such young person will be employed in the Factory if a certificate of Fitness is granted in his favour Section 69(1).

Certificate of Fitness to Work as a Child Section 69(2)(a)

The certifying surgeons may grant or renew to any such young person, a certificate of fitness, in the prescribed Form, to work as a child, if, after examination, he is satisfied that

xxxvi. such young person has completed his 14th year;

xxxvii. has attained the prescribed physical standards; and

xxxviii. is fit for such work.

Certificate of fitness to work as an adult Section 69(2)(b)

If the certifying Surgeon, after examination is satisfied that such a young person has completed his 15th year and is fit for full day's work in the factory, he may grant or renew a certificate of Fitness, in the prescribed form, to such young person, to work as an adult.

Provision to Section 69(2) provides that before granting or renewing a certificate of Fitness. The Certifying Surgeon must has personal knowledge of the work and manufacturing process where in such young person will be employed. If he has no personal knowledge, he must examine such place personally.

Other features of certificate of fitness.

xxxix. Validity : The certificate is valid for a period of 12 months from the period of issue Section 69 (3) (a).

xi. Conditions of Issue: It may be issued subject to conditions in regard to (i) the nature of work in which a young person may be employed, or (ii) the re-examination of such young person before the expiry of 12 months. Section 69(3)(b). Such young person shall not be required or allowed to work except in accordance with these conditions Section 69(6).

xii. Revocation of the Certification: The certificate can be revoked by he Certifying Surgeon, at any time of, in his opinion, the worker is no longer fit to work as such in the factory Section 69(4).

xiii. Certifying Surgeon to state reasons for refusal or revocation: Where a Certifying Surgeon refuses to grant a certificate to revokes a certificate he shall state his reasons in writing if requested by any person, for so doing Section 69(5).

xIiii. Fee for certificate : Any fee payable for a certificate shall be paid by the occupier and it cannot be removed from the young person, his parents, or guardian Section 69(7).

iv. Effect of certificate of fitness granted to adolescents.

xliv. The effect of granting a certificate of fitness to an adolescent and that of carrying a token giving reference to such certificate is that he is deemed to be an adult for the purpose of Chapter VI relating to working hours, and Chapter VIII relating to annual leave wages Section 70(1).

xlv. No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been grated a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 p.m. and 7 a.m.

Provided that the State Government may by notification in the official Gazette, in respect of any factory or group or class or description of factories:

xIvi. Vary the limits laid down in this sub-section, so, however, that no such section shall authorize the employment of any female adolescent between 10 p.m. and 5 a.m.

xlvii. Grant exemption from the provisions of the sub-section in case of serious emergency where national interest is involved Section 70(IA).

xviii. Where an adolescent has not been granted this certificate, he shall notwithstanding his age, be deemed to be a child for all the purposes of this Act Section 70(2).

v. Penalty for Using False Certificate of Fitness (Section 98)

If the certificate of fitness is granted to any person, no other person can use it. The person granting the certificate cannot allow its use or attempt to use by another person. In other words, no person knowingly use or attempt to a false certificate and whosoever contravenes above provisions can be punished with imprisonment extending up to one month or with fine upto Rs. 50 or with both.

vi. Working Hours for Children (Section 71)

Section 71, lays down further restrictions on the employment of children in the factories. These restrictions as stated below relate to working hours for children.

xix. A child shall not be required or allowed to work for more than 4-1/2 hours in any day Section 71 (1)(a).

I. He is not permitted to work during night, i.e., during a period of atleast 12 consecutive hours, including rest interval, between 10 P.M. and 6 A.M.

Ii. The period for work shall be limited to two shifts only Section 71 (2)

Iii. These shifts shall not overlap.

liii. Shifts should not spreadover more than 5 hours each.

liv. Each child shall be employed in only one of the relays.

Iv. The relays should not be changed more frequently than once in a period of 30 days; otherwise previous permission of the Chief Inspector should be sought In writing.

lvi. The provisions relating to weekly holiday under Section 52, also apply to child workers. But Section 73 does not permit any exemption in respect of these provisions.

lvii. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory Section 71(4)

lviii. No female child shall be required or allowed to work in any factory except between 8 A.M and 7 P.M.

The Act not only prohibits the double employment of a child by the of occupier or manager, but also prohibits under Section 99 his parent or guardian or person having custody or of control over him or obtaining direct benefit from his wages. Allowing him to go for double employment. If they contravene this provision, they can be punished with a fine extending upto fifty rupees unless the child works without the consent or connivance of his parent or guardian or such other person

Notice of Periods of Work for Children (Section 72)

lix. A Notice showing clearly for every day the period during which children may be require or followed to work, shall be displayed and correctly maintained as per Section 108 (2) in every factory, which employs children.

lx. The period of work shall be fixed before hand according to the method prescribed for adult worker under section 61.

lxi. The period of work so fixed shall not contravene the provisions of Section 71 relating to working hours for children Section 72 (2)

lxii. The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to such a notice.

Register of Child Worker (Section 72)

According to Section 73(1), in every factory, in which children are employed a register of child workers should be maintained and should be available for inspection by the inspector at all times during working hours or when any work is being carried on the factory.

The register shall contain following particulars:

lxiii. The name of each child worker.

lxiv. The group, if any, to which he belongs,

lxv. The nature of his work

lxvi. If his group works on shift system, the relay to which he is allotted.

lxvii. The number of his certificate of fitness.

If the above particulars are not mentioned in the register of child workers such child will not be allowed to work in any factory section 73(IA).

Power of the State Government

Acco9rding to Section 73 (2), the State Government may prescribe the form of the register of child workers, the manner in which it shall be maintained, and the period for which it shall be preserved.

Hours of work to correspond with notice under section 12 and register under Section 73 (section 74)

According to Section 74, the employment of any child shall be in accordance with the notice to be displayed under Section 72 and the entries made before hand against his name in the register of child worker of the factory maintained under Section 73.

Power to require medical examination (Section 75)

Section 75 empowers the inspector to serve on the manager of a factory, a notice requiring medical examination of a person by a surgeon, if in his opinion, such person is a young person and is working without a certificate of fitness or, such person, the though in possession of certificate of illness, is no longer Fit For work in the capacity stated therein.

The inspector may further direct that such person shall not be employee or permitted to work in any Factory until he has been examined and also granted a certificate of Fitness or Fresh certificate of Fitness or has been certified by Certifying Surgeon not to be young person.

State Government's Powers to Make Rules (Section76)

The State Government may, make rules regarding the employment of young persons in respect of Following matters:

lxviii. Prescribing the Form of certificate of Fitness;

lxix. Providing grant of duplicate certificates in the event of loss of the original certificate.

lxx. Fixing up the fees, which may be charged of such certificate and renewals there of and such duplicate.

lxxi. Prescribing the physical standards to be attained by children and adolescents.

lxxii. Regulating the procedures of the Certifying Surgeon.

lxxiii. Specifying the other duties of Certifying Surgeons in respect of employment of young persons in Factories.

lxxiv. Fixing the Fees to be charged For duties performed by the Certifying Surgeons and the persons by whom it shall be payable.

Certain Other Provisions of Law not Barred (Section77)

The provisions relating to the employment of young persons in the factries shall be in addition to, and not in derogation of the provisions of the .Employment of Children Act, 1938.

3. Annual Leave with Wages (Chapter VIII)

Application of the Chapter (Section 78)

1. According to Section 78(1), the provisions contained in this chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement including settlement or contract of service.
2. Where such award, agreement including settlement or contract of service provided in this chapter, the worker shall be entitled to such longer annual leave but if those provisions are less Favorable then this chapter shall apply provision to Section 78(1).
3. The provisions of this chapter do not apply to workers in any factory of any railway administration by the government who are governed by leave rules approved by the central government.

Annual Leave with Wages (Section 79)

Following provisions have been made with regard to annual leave with wages.,

Basis of Leave

lxxxv. According to section 79(1), where a worker has worked for a minimum period of 240 days or more during any calendar year, i.e.,

The year beginning from 1st January, he is entitled to leave with wages on following basis:

i. For adults – one day for every 20 days of work performed by them during the provisions calendar year.

ii. For children – One day for every 15 days of work performed by him during the previous calendar year.

lxxxvi. If worker does not commence his services from 1st January, he is also entitled to these leaves at the above mentioned rates provided he is worked for 2/3rd of the total number of days in the remaining part of the calendar year.

lxxxvii. The leaves are exclusive of all holidays whether occurring during or at either end of the period of leave.

lxxxviii. In calculating leave, fraction of leave of half a day or more shall be treated as one full days leave and fraction of less than half a day shall be ignored.

lxxxix. Computation of qualifying period of 240 days.

For the purpose of calculating the minimum period, following periods are also included.

lxxx Any days of lay-off as regard or as permissible under the Standing Orders.

lxxxi For female workers, period of maternity leave not exceeding 12 weeks.

lxxxii Leave earned in the year prior to that in which the leave is enjoyed. Hough the above mentioned days included in calculated the qualifying period, but the worker will not be entitled to earn leave for this wages.

Explanation to Section 79 (1)

A worker who is discharged or dismissed from service or quits his employment or is superannuated or dies while in service during the course of the calendar year, he or his heir or nominee as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immeadtely before his discharge dismissal, quitting from employment, superannuating or death, calculated at the rates specified in Sub section (1), even if he had not worked for the entire period specified in Subsection (1) or l , (2) making him eligible to avail of such leave and such payment shall be it

Ixxxiii) Where the worker IS discharged or dismissed or quits employment, before the expiry of second working day from the date of such discharge, dismissal or quitting;

xxxiv) Where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

Accumulation or Carried Forward of Leaves: Section 79(5)

If any worker does not avail any earned leave entitled to him during the calendar year, it can be carried forward to the next

calendar year subject to the maximum of 30 days for an adult worker and 40 dates for a child worker.

But if a worker applies for leave with wages and is not granted such leave in accordance with any approved scheme under Section 79(8) and (9), or in contravention of Section 79(10). He can carry forward the leave refused, without any limit.

How to Apply for Leave with Wages

lxxxv) If a worker wants to avail leave with wages earned by him during the year, he must apply in writing, to the manager of the factory at least 25 days before the date on which he wishes to 10 on leave. Section 79(6).

lxxxvi) In case a worker is employed in a public utility service as defined in Section 2(n) of the Industrial Disputes act, 1947, the application for leave with wages shall be made at least 30 days in advance.

lxxxvii) The annual leave with wages cannot be availed fro more than three times during any year.

lxxxviii) The application to avail annual leave with wages for illness purposes can be made at any time Section 79(7).

lxxxix) An application for leave which does not contravene the provision of section 79(6) shall not be refused unless the refusal is in accordance with the scheme for the time being in operation under Sub-section 79 Section 79(10).

Scheme of Leave

To ensure continuity of work, the grant of leave can be regulated. For this purpose, the occupier or the manager should prepare a scheme in writing, regulating the grant of leave to the workers and lodge it with the Chief Inspector.

The Scheme should be prepared in agreement wit the following bodies or persons

xc. i. Workers Committee formed under section 3 of the Industrial Disputes At.1947, or

ii. Such other Committee formed under any other Act, or

iii. In the absence of any of the above Committee, the representatives of the workers chosen in the prescribed manner Section 78(8).

xci. The scheme shall be availed for 12 months from the date on which it comes into force. It can be renewed, with or without modification, for a further person of 12 months Section 79(9).

xcii. The scheme shall be displaced at some conspicuous and convenient place in the factory Section 79(9).

Wages During Leave Period (Section 80)

According to Section 80(1) the amount of wages payable for the leave allowed under section 78 or 79, shall be entitled to give wages at the rate equal to the daily average of the total full time earnings for the day on which he actually worked during the month immeadtely preceding his leave. Such full time earning will also include the dearness allowance and cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles. But will exclude any overtime wages and bonus.

Provided in the case of a worker who has not work on any day during the calendar month immeadtely preceding his leave, he shall be paid at a equal to the daily average of his total full time earnings, for the days on which he actually worked, during the last calendar month preceding his leave in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles.

The cash equivalent of the advantage accruing through the concessional sale to the workers of foodgrains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of foodgrains and the other articles admissible to a standard family Section 80(2).

“Standard Family” means a family consisting of a worker, his/her spouse and two children below the age of 14 years requiring in all three adult consumption units Expl l to Section 80(2).

“Adult Consumption Unit” means the consumption unit of a male above the age of 14 years, and the consumption unit of a female above the age of *1A* years, and that of a child below the age of 14 years, shall be at the rate 8 and 6 respectively of one adult consumption unit Expl. II to Section 80(2).

Power to Make Rules

The State Government is empowered to make rules prescribing (a) the manner in which the cash equivalent of the advantage accruing through the confessional sale, to a worker, of foodgrains and other articles shall be computed, and (b) the registers that shall be maintained in a factory for the purpose of securing compliance With the provisions other section. Section 80(3).

Payment in Advance in Certain Cases Section 81)

Section 81 provides that where an adult worker has been allowed leave for not less than 4 days and a child worker for not les than 5 days, wages due for the leave period should be paid in advance, i.e., before his leave begins.

Mode of Recovery of Unpaid Wages (Section 82)

Any unpaid wages due to the workers under this chapter can be recovered as delayed wages under provisions of the Payment of Wages Act, 1936.

Power to Make Rules

Section 83 empowers the State Government to make rules directing managers of factories to keep registers containing such particulars as may be prescribed. It may require that the register shall be open for inspection by the inspectors.

Power to Exempt Factories (Section 84)

The State Government can exempt, by a written order and subject to such conditions as may be specified, any factory from the compliance of all or any of the provisions of this chapter, if in its opinion the leave rules framed by the factory are not less favorable than those contained in this chapter,

Explanation to This Chapter

In deciding whether the benefits which are provided for by any leave rules are less favorable than those for which this chapter makes provisions, or not, the totality of the benefits shall be taken into account.

LESSON 29:
WELFARE OF WORKERS UNDER THE ACT (Continued)

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the provisions for the welfare of workers under the Factories Act?
- What are the provisions regarding leaves under The Factories Act?

Special Provisions (Chapter IX)

Power to Apply the Ad to Certain Premises (Section 85)

The state government may by notification in the official gazette declare that all or any provisions of the Act shall apply to any place where in manufacturing process is carried on with or without the aid of power or is so ordinarily carried on notwithstanding that (i) the number of persons employed there in is less than 10 if working with the aid of power and less than 20 if working with out the aid of power, or (ii) the person working therein not employed by owner but with his permission or under an agreement with him. Provided that manufacturing process is not being carried on by the owner only with the aid of his family.

Power to Exempt Certain Institutions

State Government has also necessary powers under Section 86 to exempt any manufacturing process attached to public institutions maintained for the purpose of education, training, research or reformation from all or any of the provisions of this Act. Such exemption shall be granted only after the Government satisfied itself on the inquiry of the application made by such institutions.

Dangerous Operations

Section 87 provides that where State Government is of the opinion that any manufacturing process or operation carried on in a factory express any persons employed in it to a serious risk of bodily injury poisoning or disease it may make rules applicable to any factory or class or description of factories in which manufacturing process or operation is carried on.

Power to Prohibit Employment on Account of Serious Hazard (Section 87 A)

It is a new section inserted by the Factories Amendment Act, 1987 empowering an inspector to order in writing to a occupier of the factory to prohibit from employing any person in the factory or any part thereof which he considers may call serious hazard by way of injury or death to the persons employed therein or to the general public in the vicinity. However, a minimum number of persons necessary to attend to the minimum tasks, till the hazards are removed, may be employed.

Such order shall have effect for a period of 3 days. The period may be examined by the Chief Inspector by subsequent order. However, the aggrieved person has a right to appeal or a proper remedy by the occupier.

Notice of certain Accidents:

Section 88 provides as under:

xcvii. Where any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of 48 hours or more immediately following the accident or which is of such a nature as may be prescribed in this behalf, the manager shall send notice thereof to such authorities in the prescribed form and within the prescribed time.

xcviii. The authority on receipt of above notice in the cases of death shall make injury within a period of one month of the occurrence through the inspector.

xcix. The State Government may make rules for regulating the procedure of inquiry under this section.

c. Under section 88-A, notice has to be given to prescribed authorities of any dangerous occurrence in the factory causing bodily injury or disability or not.

ci. Notice of certain diseases (Section 89)

In case a worker contracts any disease specified in the third schedule, “the manner of the factory shall give a notice to the Chief inspector in the prescribed manner. In case any medical practitioner is attending the person he shall send a report in writing to the Chief inspector stating the name of patient, disease and the name and address of the factory in which the patient was last employed etc. Where he report is certified by the certifying surgeon as correct the medical practitioner shall be entitled for prescribed fee. If the medical practitioner fails to comply with the provisions of Section 89 he shall be liable to punishment with fine, which may extend to Rs. One thousand.

cii) Power to Direct injury into Cases of Accident or disease:

The State Government has been provided under Section 90, with powers to appoint a person to inquire into the cause of any accident or disease as specified in the above para and may also appoint one or more persons having legal or special knowledge to act as assessors in such inquiry. Such person shall have all powers of a civil court under he Code of Civil procedure, 1908 and may exercise any of the powers of an Inspector under this act. The report of such inquiry shall be submitted to the State Government who can get it published. State Government may make rules for regulating the procedure of inquires under this section.

ciii. Power of Inspector for taking Samples:

Section 91 empowers an inspector to take in the manner hereinafter provided sufficient sample of substance used or intended to be used in the factory at the time during the normal working hours of a factory informing the occupier or its manager. Such samples will be taken when the inspector is of the belief that he use of the substance is in contravention of any of the provisions of this Act or rules made hereunder or is likely to cause bodily injury to, or injury to the health of the workers of the factory. Three samples of such substance will be taken at one time, since one is to be sent to the person informed other to the government analyst for analysis and report thereon and the third for production to the Court before which the Proceedings if any are instituted in respects of the substance. The inspector shall in the presence of the informed person or in his absence as the cause may be divide the sample into three portions and effectively seal and suitably mark them and permit such person to add his own seal and mark thereto. The report of analyst will form part of evidence in the proceedings instituted the use of such substance.

Section 91-A which authorizes the Chief Inspector, Direct General of Factory Advice service and labor institutes and director general of health services to undertake safety and occupational surveys of the factory and every worker shall present himself when so required to undergo such medical examination as may be considered necessary by such person and furnish all information in his possession and relevant for survey. Time spent by worker for such examination shall be counted for work and if it is extra to working hours, worker is entitled for overtime payment.

15. Penalties and Procedures (Chapter X)

civ. General Penalties for Offences

If there is any contravention or provisions of these act or any rules or order made there under the occupier and manager shall each be guilty of an offence and punishable with imprisonment for a term which may extent to two years or with fine which may extend to Rs. One lakh or with both and if the contravention so continued after conviction, with a further fine of Rs. One thousand for each day till contravention continues.

The provisions of the section 92 provides penalty for contravention of any of the provisions of the Chapter IV or any rule made there under or under Section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than Rs. 25,000 in case of an accident causing death and Rs. 5,000 in case of serious bodily injury. Explanation to this section defines series bodily injury which involves permanent loss of the use of or permanent injury to any limb or sight or hearing or the or the fracture of any bone excluding the fracture (not being fracture of more than one bone or joint of any phalanges of the hand or foot.)

Section 94 stipulates for enhanced penalty after previous conviction under Section 92 of the Act of the individual who is again guilty of a offence involving contravention of the same provision. Punishment for subsequent conviction includes imprisonment for a term which may extent to three years of which may not be less than Rs. 10,000 but may extend Rs Two lakhs or with both . Provided that the court may, for ant adequal and special reasons to be mentioned in the judgment impose a fine of less than Rs. 10,000. Provided further that where contravention of any of the provisions of Chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than Rs. 35,000 in case of death and Rs. 10,000 in the case of an accident causing serious bodily injury.

No cognizance shall be taken of any conviction made more than two tears before the commission of offence for which the person is subsequently convicted.

v. Liabilities of Owner of Premises in Certain Circumstances

Section 93 provides for wherein any premises separate buildings are being leased out by the owner to different occupiers for use as separate factories owner of the premises shall be responsible for the provision and maintenance of common facilities and services such as approach roads, drainage, water supply, lighting and sanitation. Section 93(11).

Wherein any premises, independent floors or flats are leased to different occupiers for use as separate factories, the owner shall be liable as if he was the manager or occupier of a factory for nay contravention of the provisions of this Act in respect of the (1) latrines, urinals, washing facilities and common supply of water for this purpose; (2) fencing of machinery and plant belonging to owner and entrusted to the custody or use of an occupier; [3) safe means of access to floors or flats and maintenance and cleanliness of staircase and common passages; (4) precautions in case of fire; (5) maintenance of hoists and lifts; and (61 maintenance of any other common facilities provided in the premises Section 93(3).

But the liability of the owner-under Section 93(3) arises only wherein any premises, independent rooms with common latrine, urinals and washing facilities are leased to different occupier for use as separate factories so that the owner should also comply with the provisions of maintaining such facilities Section 93(5).

For the purpose of Sub-Sections (51 and (7) computing the total number of workers employed, the whole of the premises shall be deemed to be single factory Section 93(3).

The owner is liable for contravention of Chapter III except Sections 14 I and 15; Chapter IV except Sections 22, 23, 27, 34, 35 and 36 where in any premises, portions of a room or a shed leased out of different occupiers for use as separate factories: Provided that in respect of the provisions of Section 21, 24, and 32, the owner's liability shall be only in so far as such provisions relate to things under his control and the occupier shall be d responsible for complying with the provisions of Chapter IV un respect of 0 plant and machinery belonging to or supplied by him and for contravention of the Section 42.

The Chief Inspector has been empowered to issue orders to the owners IV in respect of the carrying out of the provisions as mentioned above but 7 subject to the control of the State Government.

vi. Penalty for Obstructing Inspector

Section 95 lays down penalty of punishment with imprisonment of six months or fine with Rs. 10,000 or both for willfully obstructing an inspector in the exercise of any power conferred on him by or under this Act or failing to produce any registers and other documents to him on demand or concealing or preventing any worker from appearing before or being examined by Inspector.

vii. Penalty for Wrongfully disclosing of results of analyst under Section 91:

Section 96 provides the imprisonment extending up to a term of six months and fine up to Rs. 10,000 or both for the wrongful disclosure of result of analysts of the analysis done under Section 91 of Act.

4.A Penalty for Contravention of Sections 41B, 41C & 41H:

Section 96A provides punishments with seven years imprisonment or fine which may extend to Rs. Two lakhs for the non-compliance with or contravenes any of the provisions of Section 41B, 41C & 41H o rules made there under by any person. In case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If such failure contravention continues beyond period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

cviii. Offences by Workers and Penalties therefore:

cix. Section 97 lays down that if any worker contravenes the provisions of this Act or any rules o orders made thereunder imposing any duty or liability on workers he will be punishable with fine which may extend to Rs. 500/-

cx. Section 98 imposes penalty for using false certificate of fitness. Such punishment involves imprisonment or such a term, which may not extend to two months or with fine, which may extend to Rs. 1,000/- o with both.

cxi. Penalty for permitting double employment of child by parents as guardians-is stipulated under Section 99. It includes punishment with fine extending Rs. 50 unless it appears to the Court that the child worked without consent and connivance of, such parents, guardian person.

cxii. Onus of Providing Limits of What is Practicable etc.

Section (104A) : Onus of proves is on the person who is alleged to have failed to comply with such duty etc. to prove that he has taken all measurement or it was not reasonable practicable.

ciii. Cognizance of Offences (Section 105):

According to Section 1 05(1), no court shall take cognizance of any ,Hence under the Act, except on complaint by or with the previous sanitation in writing of an Inspector.

Section 105(2) lays down that no court below that of a Presidency Magistrate of the first class, shall try any offence punishable under this Act.

xiv. Limitations of Prosecutions (Section 106):

No court shall take cognizance of any offence punishable under this Act unless its complaint is made within three months of the date on which the alleged commission of the of Fence came to the knowledge of an Inspector. Where the of Fence consists of disobeying a written order made by the Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed. The period of limitation, (i) in the case of a continuing offence, shall be computed with reference to every point of time during which the offence continues, and (ii) were for the performance of any Act time is granted or extended on an application made by the occupier or manager of the factory, the period of limitation shall be computed from the date on which the time so granted or extended expired.

cxv Jurisdiction of a court for entertaining proceedings, etc. (Section 106A -interested by the Factories Amendment Act, 1987):

For the purpose of conferring jurisdiction on any court in relation to an offence under this act or the rules made there under in connection with the ration of any plant, the place where the plant is For the time being situate II be deemed to be the place where such offence has been committed.

Appeals (Section 107)

The following provisions have been made in this respect.

The appeal lies against the written orders of the Inspector.

The manager or the occupier alone can File appeal against such orders of the inspector.

The appeal should be made within 30 days of the service of the order. Appeal should be made to the prescribed authority.

The appellate authority may, if it thinks Fit, suspend the order, appealed against, pending the decision of the appeal. This provision is subject to such rules as the state government may make in this behalf and also subject to such conditions as the appellate authority may think fit to impose Section 107(3).

Subject to the rules made in this behalf by the State Government, the appellate authority mayor if so required the petition, shall hear appeal with the assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concern Section 107(2).

However, the State Government may prescribe classes of appeals which shall not be heard with the aid of assessor.

If no assessor is appointed buy such body before the time fixed for hearing the appeal, or if the assessor so appointed fails to attend is due to sufficient reason, the appellate authority may proceed to hear the appeal without the aid of assessors or any assessor. The appellate authority has the power of confirm, modify or reverse that order.

17. Display and Service of Notice

Section 108 deals with the types and the manner of display of notices as follows:

1. Notice under the Act

i. All notices required to be displayed in a factory should be in English and in a language understood by he majority of the workers in a factory.

ii. The should be displayed at some conspicuous and convenient place at or near the main entrance to the factory.

iii. They should be maintained in a clean and legible condition Section 108(2).

2. Notice Containing Abstracts of the Act

In addition to the notices required to be displayed under the provision of the Act, a notice containing (i) such abstracts of this Act and of the rules made thereunder as may be prescribed, (ii) name and address of the inspector, and also that of the certifying surgeon, should be displayed every factory.

3. Notice Relating to Health, Safety or Welfare

The chief inspector may, by order in writing, serve on the manager any factory, require the display of any other notice or poster, relating to the health, safety or welfare of the workers in the factory.

4. Service of Notices (Section 109)

Section 109 empowers the State Government to make rule prescribing the manner in which the orders issued under this Act should be served on the owners, occupiers or managers of factories.

18. Returns

Section 110 empower the State Government to make rules regarding the admission by the owners, occupiers or managers of factory of such returns, occasional or periodical, which in its opinion are required for the purposes of this Act.

9. Right of workers, etc. (Section 111 A)

i. Every worker shall have the right to obtain from the occupier, information, relating to workers health and safety at work;

ii. Get trained within the factory wherever possible, or, to get himself sponsored by the occupier for getting trained by the Chief Inspector, where training is imparted for workers' health and safety at work;

iii. Represent to the Inspector directly or through his representatives in the matter of inadequate provision for protection of his health or safety in the factory.

20. Powers to Make Rules and to Give Directions

There are various sections il1 the Act that give powers to the State Government to make rules for certain prescribed matters. In addition to those , Section 112 empowers the State Government to make rules providing for any matter which, under *any* of the provisions of the Act, is to or *may* be prescribed, or which may be considered expedient in order to give effect to the purpose of this Act. This provision requires a conscious exercise of the mind of the person making the rules in order to arrive at the pinion that it is expedient to make the rules. Whenever this power is exercised the notification issued should make it clear that there was such conscious exercise of the mind by the rule making authority.

All rules made under this act are subject to the condition of previous ~s Publication in the Official Gazette.

Power to Give Direction

By virtue of Section 113, the Central Government may issue any direction of State Government for carrying into execution of the provision of the Act. The power is vested in the Central Government because it too has concurrent jurisdiction to enact legislation in respect of factories.

1. Protections to Persons Acting under this Ad (Section 117)

No suit, prosecution or other legal proceedings shall lie against *any pe*rson for anything which is one or intended to be done in good faith under is Act. Thus, this section protects person from unnecessary harassment for done or intended to be done in good faith.

In the case of State of Gujarat v. Kansara Mani al Bhikalal, the prime Court observed that the protection conferred by Section 117 can only be claimed by a person who can plead that he was required to do or it to do something under the Act or that he intends to comply with *any* of provisions. It cannot confer immunity in respect of actions, which are not done under the Act but are done contrary to it. Further, this section gives protection not only to the inspecting Staff of the factory department but so to managers of factories. But the Act should not be of such a nature that it contravenes the provisions of the Act. It is hardly possible to apply Section 117 to a case in which the provisions of the Act or the rules made thereunder are contravened by reason of sheer neglect on his part to acquaint himself with the requirements of the law.

22. Restriction on Disclosure of Information (Section 118)

Inspectors are empowered to visit a factory and check up the manufacturing process or other work going on in the factory. In the course of such official duties, an inspector is likely to gain some information relating to the manufacturing or commercial business or the working process. Such information may be used so that no inspector shall, while in service or after leaving the service disclose any such information about the manufacturing or commercial business or the working process which may come to his knowledge in the course of his official duties. If any inspector contravenes these provisions, he shall be punishable with imprisonment extending upto six months or with fine extending upto one thousand rupees or with both.

The disclosure under following circumstances is, however not prohibited.

i. Where the disclosure is in connection with execution under the purpose of this Act;

ii. Where the owner of such business or process consents in writing to such disclosure; and

iii. Where the disclosure is for the purpose of any legal proceedings under the Act, or any criminal proceedings taken under this Act or otherwise, or for the purpose of any report of such proceedings.

Every Inspector has been placed with further restriction on disclosure of any source of any complaint brought to his notice

on the breach under provisions of this Act. He shall not disclose to the occupier, manager or his representative while making an inspection. That inspection is made in pursuance of complaint received by him, unless the persons who has made of complaint, has consented to disclose his name (Section 118A).

23. Effect of the Act

The provisions of this Act shall effect notwithstanding anything inconsistent therewith contained in the Contract labour (Regulation and Abolition) Act, 1970.

This Act shall apply to factories belonging to the Central or any State Government unless otherwise provided (Section 116.)

Points To Remember

At present the orders relating to "**The Factories Act, 1948**" are contained in a number of office Circulars/Orders issued from time to time. The question of consolidation of these existing orders/circulars into one Master Circular has been under the consideration of the Ministry of Railways (Railway Board). They have now decided to issue consolidated instructions in the form of a Master Circular on the subject as below for the information and guidance of all concerned.

2. All the Railways and Production Units must be having copy of the Factories Act, 1948 and the amendments issued from time to time. However, some of the important interpretations of the Actare reproduced below for information and convenience sake:

Interpretation

a) **"Adult"** means a person who has completed his eighteenth year of age;

(b) **"Adolescent"** means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

(c) **"Child"** means a person who has not completed his fifteenth year of age.;

(d) **"Hazardous process"** means any process or activity in relation to an industry specified in the First Schedule to the Act where, unless special care is taken, raw materials used therein or the intermediate or finished products, by-products, waste or effluents thereof would:

(i) >cause material impairment to the health of the person engaged in or connected therewith; or

(ii) result in the pollution of the general environment.

(e) **"Manufacturing process"** means any process for—

(i) >making, altering, repairing ornamenting, finishing, packing, oiling. washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport , delivery or disposal; or

(ii) pumping oil, water, sewage or any other substance ; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure of other similar process or book binding :

v) >constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels ; or

(vi) preserving or storing any article in cold storage.

f) "**Worker"** means a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process (but does not include any member of the Armed Forces of the Union).

(g) **"Factory"** means any premises including the precincts thereof—

where on 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried out with the aid of power, or is ordinarily so carried on, or

where on 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on;

but does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the Armed Forces of the Union, a railway running shed or a hotel, restaurant or eating place;

"**Occupiers**" - **3.** The Chief Mechanical Engineers of Railway Production Units have been appointed as "**Occupiers**" of the respective units in terms of the provisions of the Factories Act, 1948.

3.1 The officers mentioned at Annexure 'A' have been appointed as "**Occupier**" of the respective Zonal Railways factories/workshops under the provisions of the Factories Act, 1948.

4. In accordance with the Supreme Court Judgment, in the case of Jhansi Workshop of the Central Railway, the Time-keepers employed in Railway Workshops which come under the purview of the Factories Act, 1948 and who are at present governed by the provisions of the Hours of Employment Regulations on the Railways should be henceforth treated as "**workers**" under the Factories Act, 1948 for all purposes.

(g) **"Factory"** means any premises including the precincts thereof—

where on 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried out with the aid of power, or is ordinarily so carried on, or

where on 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on;

but does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the Armed Forces of the Union, a railway running shed or a hotel, restaurant or eating place;

(h) **"Occupier"** of a factory means the person who has ultimate control over the affairs of the factory provided that—

in the case of a factory owned or controlled by the Central Government or any State Government or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government or State Government, or the local authority, as the case may be, should be deemed to the occupier

5. Time-keepers and other categories of staff employed in workshops who are classified as "**workers**" under the Factories Act, 1948 but who are not regular workshop staff, their conditions of service in all respects other than those regulated by the statute, should be the same as were in force prior to their coming under the scope of the Factories Act, 1948. However, on the Railways/Production Units which have in the mean while introduced differ-ent practices by treating such categories of staff as workshop staff in matters not connected by the provisions of the said Act, before or after the Supreme Court judgment referred to in Board's letter at para 4 above, the status quo should be maintained.

6. The benefit of grant of Casual Leave in addition to the payment of overtime under the Factories Act, 1948 to Time Keepers employed in the workshops is withdrawn with effect from 28.05.1971. Casual Leave taken before this date need not be reopened for adjustment

. The workshop authorities concerned may decide, in consultation with their FA & CAO and the Law Officer, the question of treating clerical and other allied categories of staff employed in different nature of the jobs in Railway workshops as "**Workers**" under the Factories Act, 1948 keeping in view: —

(a). nature of job performed by each category of such employees;

(b). definition of the term "**worker**" given in the Factories Act, i.e. whether their duties are incidental to or connected with manufacturing process;

(c). the decision given by the Supreme Court in the case of Time Keepers referred to above, i.e. the definition of "**worker**" under the Factories Act, 1948 does not exclude employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of the word "**worker**"; and
(d). If necessary after ascertaining the position obtaining in this regard in major non-Railway workshops situated in the same State.

However, where clerical staff employed in workshops are already being treated as "**workers"** under the Factories Act, 1948, no change need be made in the decision taken by the Railway Administrations.

12. General:
While referring to this circular, the original letters referred to herein should be read for a proper appreciation. This circular is only a consolidation of the instructions issued so far and should not be treated as a substitution to the originals. In case of doubt, the original circular should be relied upon as authority.
The instructions contained in the original circulars referred to have only prospective effect from the date of issue unless specifically indicated otherwise in the concerned circular. For dealing with old cases, the instructions in force at the relevant time should be referred to; and
(c). If any circular on the subject, which has not been superseded, has not been taken into consideration while preparing this consolidated letter, the said circular, which has been missed through oversight should be treated as valid and operative. Such a missing circular, if any, may be brought to the notice of the Railway Board.

8. The recognised Unions may bring any issues arising out of the decision taken by the Railway Administrations in accordance with the guidelines laid down in para 7 above, in PNM Meetings with the Railways concerned and the Railways should deal with such issues them selves.
9. The provisions of the Factories Act, 1948 more so with the introduction of provisions relating to "**Hazardous processes**", east very important responsibilities on the "**Occupier**" which should be carefully studied and appropriate action taken to avoid any infringement of these provisions.
10. Overtime under Section 59 (l) of the Factories Act, 1948 to the staff governed by the same should be calculated on a daily basis or weekly basis, whichever is more favourable to the employee. Past cases dealt with otherwise need not be opened.
11. For purpose of payment of overtime to workshop staff sent out from shops with trial engines or vehicles and to those sent out from shops to work at outstation temporarily, no distinction should be drawn between the hours of duty put in by them beyond shop hours and the hours during which such staff actually work. Irrespective of whether they are actually engaged in work, the total period during which they remain on duty beyond shop hours should be counted as duty for payment of overtime.

Time-keepers - Time-keepers and other categories of staff employed in workshops who are classified as "**workers**" under the Factories Act, 1948 but who are not regular workshop staff, their conditions of service in all respects other than those regulated by the statute, should be the same as were in force prior to their coming under the scope of the Factories Act, 1948. However, on the Railway s/Production Units which have in the mean while introduced differ-ent practices by treating such categories of staff as workshop staff in matters not connected by the provisions of the said Act, before or after the Supreme Court judgment referred to in Board's letter at para 4 above, the status quo should be maintained.

Casual Leave- The benefit of grant of Casual Leave in addition to the payment of overtime under the Factories Act, 1948 to Time Keepers employed in the workshops is withdrawn with effect from 28.05.1971. Casual Leave taken before this date need not be reopened for adjustment.

7. The workshop authorities concerned may decide, in consultation with their FA & CAO and the Law Officer, the question of treating clerical and other allied categories of staff employed in different nature of the jobs in Railway workshops as "**Workers**" under the Factories Act, 1948 keeping in view:—

(a). nature of job performed by each category of such employees;

(b). definition of the term "**worker**" given in the Factories Act, i.e. whether their duties are incidental to or connected with manufacturing process;

(c). the decision given by the Supreme Court in the case of Time Keepers referred to above, i.e. the definition of "**worker**" under the Factories Act, 1948 does not exclude employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of the word "**worker**"; and
(d). If necessary after ascertaining the position obtaining in this regard in major non-Railway workshops situated in the same State.

11. For purpose of payment of overtime to workshop staff sent out from shops with trial engines or vehicles and to those sent out from shops to work at outstation temporarily, no distinction should be drawn between the hours of duty put in by them beyond shop hours and the hours during which such staff actually work. Irrespective of whether they are actually engaged in work, the total period during which they remain on duty beyond shop hours should be counted as duty for payment of overtime.

12. General:

While referring to this circular, the original letters referred to herein should be read for a proper appreciation. This circular is only a consolidation of the instructions issued so far and should not be treated as a substitution to the originals. In case of doubt, the original circular should be relied upon as authority.

However, where clerical staff employed in workshops are already being treated as "**workers"** under the Factories Act, 1948, no change need be made in the decision taken by the Railway Administrations.

8. The recognised Unions may bring any issues arising out of the decision taken by the Railway Administrations in accordance with the guidelines laid down in para 7 above, in PNM Meetings with the Railways concerned and the Railways should deal with such issues them selves.

9. The provisions of the Factories Act, 1948 more so with the introduction of provisions relating to "**Hazardous processes**", east very important responsibilities on the "**Occupier**" which should be carefully studied and appropriate action taken to avoid any infringement of these provisions.

10. Overtime under Section 59 (l) of the Factories Act, 1948 to the staff governed by the same should be calculated on a daily basis or weekly basis, whichever is more favourable to the employee. Past cases dealt with otherwise need not be opened.

The instructions contained in the original circulars referred to have only prospective effect from the date of issue unless specifically indicated otherwise in the concerned circular. For dealing with old cases, the instructions in force at the relevant time should be referred to; and

(c). If any circular on the subject, which has not been superseded, has not been taken into consideration while preparing this consolidated letter, the said circular, which has been missed through oversight should be treated as valid and operative. Such a missing circular, if any, may be brought to the notice of the Railway Board.

Questions for Test

1. Discuss the important provisions of the Factories Act, 1948.
2. What do you understand by the term 'Worker', 'Manufacturing Process' and "Factory under the Factories Act, 1948?
3. Does the factories Act, apply to factories belonging to the Central Government?
    1. Define manufacturing process as used in the Factories Act 1948?
    2. What are the provisions in the said Act regarding precautions in case of fire?
    3. What are the rules regarding the powers of the inspectors of Factories to require medical examination of young persons?
    4. Who are certifying surgeons? What are their duties?
    5. Discuss the rules regarding approval, licensing and registration of Factories Act, 1948? What are their duties and powers?
    6. What are the provisions of the Factories Act, 1948 with regard to appointment of welfare officers? What are their qualification and what are their duties?
    7. What provisions have been made in the Factories Act, 1948 for (a) Latrines and urinal for workmen in factories Act, (b) Spittoons, (c) drinking water for workmen, (d) Lighting of workrooms (e) ensuring safety of workers in respect of work on machines, (f) Fencing of machinery?
    8. What are working hours for children and women in a factory?
    9. Under the Factories Act, 1948, What are the main provision and restrictions regarding the employment of your person? How should the register of child workers be maintained in a factory?
    10. Discuss briefly the provisions of the Factories Act, 1948 regarding the hours of work and leave with pay?
    11. What are the weekly and daily hours for which an adult worker may be required or allowed to work in a factory?
    12. Describe the provisions of annual leave with wages available to a workers under the act?
    13. State the procedure for safety and occupational health survey under the Factories Act, 1948?
    14. Write a note on provision relating to hazardous processes as introduced by factories (Amendment) Act, 1987?
    15. What are the obligation and rights of workers under the Factories Act, 1948?
    16. What are the general duties of the occupiers and manufacturers as a safeguard articles and substances for use in factories?
    17. Write a note on the power of an inspector appointed under the Factories Act, 1948 to prohibit employment on account of serious hazards?

LESSON 30:
THE EMPLOYERS' LIABILITY ACT, 1938

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the provisions of the above act?

Introductory

So, Students in an organization major communication gaps and points of isuue are between an employer and an employee. The Industrial Dispute Act 1947 did make a reference to dispute between an employer and an employee. An employer is a principal who employs another to perform service in his affairs a who controls or has right to control physical conduct of other in performance of the service. He is one who stands to another in such a relation that he not only controls the results of the work of that other but also may direct the manner in which such work shall be done.

The relation of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes to him his personal labour for an agreed period. The relation exists where the employer has the right to select the employee, the power to remove and discharge him and the right to direct both what work shall be done and the manner in which it shall be done. Such term has generally been replaced by "employer and employee".

The growing complexity of industry with the increasing use of machinery and consequent danger to workmen alongwith their comparative poverty rendered it advisable that they should be protected as far as possible from hardships arising from accidents. There are several enactments providing for payment of compensation or damages to the workman or his relatives or dependents in case of employment injury. The Employers' Liability Act, 1938 declares that certain defences shall not be raised by the employer in a suit for damages in respect of injuries sustained by the workers. The Employers' Liability Bill had been passed and became an Act on 24-9-1938. The statement of Objects and Reasons of this Bill runs:

Under the common law of England, in civil suits for damages for injuries sustained by workmen it is open to the employer to plead-

i. the doctrine of common employment, by which the employer is not normally liable to pay damages to a workman for an injury resulting from the default of another workman;

ii. the doctrine of assumed risk, by which an employee is presumed to have accepted a risk if it is such that he ought to have known it to be part of the risks of his occupation.

The Royal Commission on Labour regarded both these doctrines as inequitable and recommended by a majority that a measure should be enacted abrogating these defences. Provisional Governments were consulted in 1932 and were almost unanimously in favour of legislation for the purpose. In the mean time judicial decision in British India while generally agreeing as to the inequitability of the doctrines have been such as to leave it open to employers in most provinces to have recourse to them.

The Bill seeks to abolish these defences in the case of all workmen.

This book, comprising The Employers' Liability Act, 1938 (Act No. 24 of 1938), as it stands today, with short comments, is likely to provide a first hand knowledge about the law of said subject.

An Act to declare that certain defences shall not be raised in suits for damages in respect of injuries sustained by workmen

Whereas it is expedient to declare that certain defences shall not be raised in suits for damages in respect of injuries sustained by workmen;

It is hereby enacted as follows:-

1. Short Title and Extent

1. This Act may be called the Employers' Liability Act, 1938.
2. It extends to the whole of India.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context-

a. "workman" means any person who has entered into, or works under a contract of, service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise and whether the contract is expressed or implied, oral or in writing; and

b. "employer" includes any body of persons whether incorporated or not, any managing agent of an employer, and the legal representatives of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

Comments

Workman

Under section 2(s) of the Industrial Disputes Act, 1947, "workman" means any person (including an apprentice) employed in any industry to do any skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence

of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

i. who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

ii. who is employed in the police service or as an officer or other employee of a prison; or

iii. who is employed mainly in a managerial or administrative capacity; or

iv. who, being employed in supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.- Ananda Bazar Patrika (P) Ltd. v. The Workmen, (1970) 3 SCC 248:

A Development Officer is a "workman" within the meaning of Section 2(s). Parliament never intended to exclude non-managerial employees of their ordinary rights under labour welfare legislation without justification.-S.K. Venna v. Mahesh Chandra, AIR 1984 SC 1462.

The essential condition of a person being a workman within the meaning of the definition in s. 2(s), Industrial Disputes Act is that he should be employed to do the work in that industry and that there should be an employment of his by the employer and there should be a relationship between the employer and him as between employer and employees or master and servant. When workmen who initially worked under a contractor for working in Food Corporation of India (an instrumentality under the State within the meaning of Art. 12, Constitution of India) are brought under the direct payment system under the Corporation on eliminating the intermediate contractor, they are workmen under the Food Corporation of India.-Workmen, F.CI. v. F. C. I. AIR 1985 SC 670.

Section 2(g) of the Trade Unions Act, 1926 defines "workmen" to mean all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

Under section 2(n) of the Workmen's Compensation Act, 1923, "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is-

i. a railway servant as defined in s. 3 of the Indian Railways Act, 1890, not permanently employed in an administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II,

ii. employed on monthly wages not exceeding five hundred rupees in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether the contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of the Armed Forces of the Union.

'Workman' means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-

A. who is employed mainly in a managerical or administrative capacity; or

B. who being employed in a supervisory capacity draw wages exceeding five hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature; or

C. who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of the trade or business of the principal employer and the process is to be carried out either in the house of the out-worker or in some other premises, not being premises under the control and management of principal employer. Contract Labour (Regulation and Abolition) Act 1970, s. 2(i)

The test is if the employee is to do mainly the supervisory work, even if there is some odd technical, clerical or mannual work, if the main work is supervisory he cannot be called a workman, if it is only incidental he is a "workman".-Burmah Shell Oil Storage and Distributing Company of India Ltd. v. The Burmah Shell Management Staff Association, AIR 1971 SC 922.

"Workman" within the terms of Section 2(s) of Industrial Disputes Act is that he should be employed to do the work in an industry and that there should be an employment of his by the employer and that there should be a relationship between the employer and him as between employer and employee or master and servant.- Workmen of the Food Corporation of India v. The Food Corporation of India, AIR 1985 SC 670.

Employer

"Employer" is one who employs the services of others; one for whom employees work and who pays their wages or salaries. The word is the correlative of "employee".

'Employer' Means-

i. in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representatives of a deceased owner or occupier and, where a person has been named as manager of the factory under s. 7(1)(f) of the Factories Act, 1948, the person so named; and

ii. in relation to any other establishment, the person who, or the authority which, has : the ultimate control over the affairs of the establishment, and where the said affairs are entrusted

to a manager, managing director or managing agent, such manager, managing director or managing agent-'Employees' Provident Fund Act, 1952, s.2(e); Payment of Bonus Act, 1965, s. 2(14).

'Employer' Means-

i. in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf or where no authority is prescribed, the head of the department;

ii. in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority-industrial Disputes Act, 1947, s. 2(g).

'Employer' includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working with him.-Workmen's Compensation Act, 1923, s. 2(e); Personal Injuries (Compensation Insurance) Act, 1963, s. 2(a).

'Employer' in relation to a dock worker means the person by whom he is employed or to be employed as aforesaid.-Dock Workers (Regulation of Employment) Act, 1948, s. 2(c).

'Employer' means any person who employs any qualified person for doing any work in any establishment and includes any person interested with the supervision and control of qualified persons in such establishment.-National Service Act, 1972, s. 2(a).

'Employer' means the owner of a coal mine as defined in clause (g) of section 3 of the Indian Mines Act, 1923-Coal Mines Provident Fund and Bonus Schemes Act, 1948. s. 2(e).

'Employer' when used in relation to a plantation means the person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be employer in relation to that plantation-Plantations Labour Act, 1951, s. 2(e).

'Employer' includes the legal representative of a deceased employer.-Payment of Wages Act, 1936, s. 2(ia).

'Employer' means in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop-

i. belonging to or under the control of the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees or where no person or authority has been so appointed, the head of the Ministry or the Department concerned.

ii. belonging to or under the control of any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority.

iii. in any other case, the person who or the authority which has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.- Payment of Gratuity Act, 1972, s. 2(f).

The directors of a private limited company are the employers and are liable to pay wages to 1,1 the workers under the Payment of Wages Act, 1936-Bhalgora Coal Co. v/s. lndrajit Singh AIR 1964 Pat 292.

For meaning of "employer" within the meaning of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, refer Anantharamaiah Wool/en Factory v. State of Karnataka 1981Lab IC 538.

An "employer" is one who employs, one who engages or keeps men in service, one who uses or enjoys the service of other persons for pay or salary. (Aiyar Lexicon 1940 Edn.) The "employee" is one who works for other for hire. The employer is one who employs the services of other persons-Central Board of Direct Taxes v. Aditya V. Birla, AIR 1988 SC 420

The word "employer" occurring in sections 33 and 33-A of that Act meant the identical employer concerned with the industrial dispute, which was the subject-matter of the adjudication and could not include an employer who merely happened to discharge or punish or alter the conditions of service of workmen unless such employer could be shown to be mere nominee or benamidar of the former or fell within the category of his heirs, successors or assigns within the meaning of section 18(3)(c) of the Act.-S.K.G. Sugar Ltd. v. Sri Ali Hassan, Chairman, Industrial Tribunal, Bihar, AIR 1959 SC 230.

3. Defence of Common Employment Barred in Certain Cases

Where personal injury is caused to a workman-

a. by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

b. by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

c. by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or

d. by reason of the act or omission of any person in the service of the employer done or made-

   i. in the normal performance of the duties of that person; or'

   ii. in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or

under any law for the time being in force to be approved) by any authority and which has been so approved; or

iii. in obedience to particular instructions given by any other person to whom the employer has delegated authority in that behalf;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

Comments

Employers' Liability Act may otherwise be called Workers' Compensation Act and these Acts define and limit the occasions and the extent to which public and private employers shall be liable in damages (compensation) for injuries to their employees occurring in the course of their employment, and particularly abolishing the common law rule that the employer is not liable if the injury is caused by the fault or negligence of a fellow servant and also the defenses of contributory negligence and assumption of risk. These Acts provide for fixed awards to employees or their dependents in case of employment related accidents and diseases, dispensing with the need by employee to bring legal action and prove negligence on the part of the employer. Some of the statutes go beyond the simple determination of the right to compensation, and provide insurance systems, either under the State supervison or otherwise.

3A. Contracting Out

Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto, shall be void insofar as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

Comments

Persons for whose benefit a statute has been passed may contract with others so as to deprive themselves of the benefit of the statute. The Employers' Liability Act prohibits contracting out. Under section 17 of the Workmen's Compensation Act, 1923, any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void insofar as it purports to remove or reduce the liability of any person to pay compensation under that Act.

Likewise, under section 25 of the Minimum Wages Act, 1948, any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void insofar as it purports to reduce the minimum rate of wages fixed under that Act.

Another example prohibiting contracting out is section 23 of the Payment of Wages Act, 1936 which says that any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void insofar as it purports to deprive him of such right.

That apart, when the consideration or object of an agreement is of such a nature that, if permitted, it would defeat the provisions of any law, such an agreement is void under section 23 of the Contract Act, 1872.

4. Risk not to be Deemed to have been Assumed without Full Knowledge

in any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk was fully explained to an understood by the workman and the workman voluntarily undertook the same.

5. Saving

Nothing in this act shall affect the validity of any decree or order of a civil court passed before the commencement of this Act in any such suit for damages.

Points To Remember

PREAMBLE
[Act 24 of 1938]
As amended by Acts 3 of 1951, 5 of 1951 and 51 of 1970]
[24th September, 1938]
An Act to declare that certain defences shall not be raised in suits for damages in respect of injuries sustained by workmen Whereas it is expedient to declare that certain defences shall not be raised in suits for damages in respect of injuries sustained by workmen;
It is hereby enacted as follows :
1. SHORT TITLE AND EXTENT.- (1) This Act may be called the Employers' Liability Act, 1938.
(2) It extends to the whole of India.

2. DEFINITIONS. - In this Act, unless there is anything repugnant in the subject or context, - (a) "workman" means any person who has been entered into or works under a contract of, service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, oral or in writing; and
(b) "employer" includes any body of persons whether incorporated or not, any managing agent of an employer, and the legal representatives of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.

d) by reason of the act or omission of any person in the service of the employer done or made - (i) in the normal performance of the duties of that person; or
(ii) in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being in force to be approved by any authority and which has been so approved); or
(iii) in obedience to particular instructions given by any other person to whom the employer has delegated authority in that behalf; a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

3. DEFENCE OF COMMON EMPLOYMENT BARRED IN CERTAIN CASES. - Where personal injury is caused to a workman - (a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or
(b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
(c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or

3-A. CONTRACTING OUT. - Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto, shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

4. RISK NOT TO BE DEEMED TO HAVE BEEN ASSUMED WITHOUT FULL KNOWLEDGE. - In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk was fully explained to and understood by the workman and that the workman and that the workman voluntarily undertook the same.

5. SAVING.- Nothing in this Act shall affect the validity of any decree or order of a Civil Court passed before the commencement of this Act in any suit for damages.

Questions for Test

1. Discuss the objective and purpose of The Employer's Liability Act 1938?
2. Define the following – (a) workman (b) employer under The Employer's Liability Act 1938?
3. Discuss the exceptions to the rule where Defence of common employment barred in certain cases?

LESSON 31:
INTRODUCTION TO THE EMPLOYEES STATE INSURANCE ACT 1948

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the definitions under the Act?
- What are the committees under the Act?

My dear students, The employees' State insurance Act, 198 (act' for short) is a social security legislati0on. The Act provided for certain benefits to employees' in case of sickness, maternity and employment injury and also makes provision for certain benefits to employees' in case of sickness, maternity and employment injury and also makes provision for certain other matters in relation thereto. The act extends to the whole of India. The central government is empowered to enforce the provision of the Act by notification in the official Gazette. However, the central government is empowered to enforce different states or for different factories(including factories belonging to the government) other than seasonal factories (section 1(4)). According to the provision to section 1(4) of the Act, nothing contained in subsection (4) 0f section 1 shall apply to a factory or establishment belonging to or under the control of the government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under the act section 1(5) of the act empower the appropriate government to extend any of the provisions of the act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. However this can be done by the appropriate government is a state government, it can extend the provisions of the act with approval of the central government, it can extend the provisions of the act with the approval of the central government. Under these enacting provisions the act has been extended by many state governments to shops, hotels, restaurants, cinemas, road transport undertaking, etc, employing 20 or more persons. According to the proviso to sun-section (5) of section 1 where the provisions of the act have been brought into force in any part of a state, said provisions shall stand extended to any such establishment in another part of that state.

It may be noted that a factory or an establishments to which that Act applies shall continue to be governed by the act even if the number of persons employed therein at any time falls below the limit specified by or under the act the manufacturing process therein ceases to the carried on with the aid of power (section 1(6)). The coverage under the act is at present restricted to employees drawing wages not exceeding Rs. 3000 per month. Up to 31st December 1991 the total number of areas/centers covered under the act is 607 and the total number of employees and beneficiaries covered is 61.13 lakhs and 26940 lakhs respectively. The act has been extensively amended by the E.S.L. (amendment) act, 1989 and most of the amendments brought about by the amendment act has been brought into force. The study lesson gives an one view of the act as amended by the amendment act.

Employees' State Insurance Act, 1948

So, students an employee's state insurance act is an act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. Whereas it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto; In order to make you understand the topic much more clearly I have made an attempt to present this chapter in point form.

It is hereby enacted as follows: -

Preliminary

1. Short title, extent, commencement and application

1. This Act may be called the Employees' State Insurance Act,1948.
2. It extends to the whole of India
3. It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and [for different States or for different parts thereof].
4. It shall apply, in the first instance, to all factories (including factories belonging to the government) other than seasonal factories:

   [PROVIDED that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.]
5. The appropriate government may, in consultation with the Corporation and [5][where the appropriate government is a State Government, with the approval of the Central Government], after giving six months' notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise :

   [PROVIDED that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.]

[6. A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that

the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.]

2. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

1. "Appropriate government" means, in respect of establishments under the control of the Central Government or [7][a railway administration] or a major port or a mine or oilfield, the Central Government, and in all other cases, the [State] Government;
2. "Confinement" means labour resulting in the issue of a living child or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead;
3. "Contribution" means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;
4. "Corporation" means the Employees' State Insurance Corporation set up under this Act;

[5. "Dependant" means any of the following relatives of a deceased insured person, namely,-

i. a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted [daughter;]

[(ia) a widowed mother;]

ii. if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;

iii. if wholly or in part dependent on the earnings of the insured person at the time of his death,-

a. a parent other than a widowed mother,

b. a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor

c. a minor brother or an unmarried sister or a widowed sister if a minor,

d. a widowed daughter-in-law,

e. a minor child of a pre-deceased son,

f. a minor child of a pre-deceased daughter where no parent of the child is alive, or

g. a paternal grand-parent if no parent of the insured person is alive,]

6. "Duly appointed" means appointed in accordance with the provisions of this Act or with the rules or regulations made there under;

[7. "Employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;]

8. "Employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-

i. who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or

ii. who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

iii. whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

[and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment [or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment; but does not include]

a. any member of [the Indian] naval, military or air forces; or

[b. any person so employed whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government]]:

PROVIDED that an employee whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]

9. "Exempted employee" means an employee who is not liable under this Act to pay the employee's contribution;

[10. "Family" means all or any of the following relatives of an insured person, namely,-

i. a spouse;

ii. a minor legitimate or adopted child dependent upon the insured person;

iii. a child who is wholly dependent on the earnings of the insured person and who is

a. receiving education, till he or she attains the age of twenty-one years,

b. an unmarried daughter;

iv. a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;

v. dependent parents;

11. "Factory" means any premises including the precincts thereof-

a. whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

b. whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;]

12. "Immediate employer", in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory, or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer [and includes a contractor];

[12A. "insurable employment" means an employment in a factory or establishment to which this Act applies;]

13. "Insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act;

[14A. "Managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;]

[14AA. "Manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948;]

14B. "Mis-carriage" means expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any mis-carriage, the causing of which is punishable under the Indian Penal Code;]

15. "Occupier" of the factory shall have the meaning assigned to it in the Factories Act, 1948];

[15A. "Permanent partial disablement" means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement:

PROVIDED that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement;

15B. "Permanent total disablement" means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

PROVIDED that permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more;]

[15C. "Power" shall have the meaning assigned to it in the Factories Act, 1948;]

16. "Prescribed" means prescribed by rules under this Act;

17. "Principal employer" means-

i. in a factory, the owner or occupier of the factory, and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under [20][the Factories Act, 1948]; the person so named;

ii. in any establishment under the control of any department of any government in India, the authority appointed by such government in this behalf or where no authority is so appointed, the head of the department;

iii. in any other establishment, any person responsible for the supervision and control of the establishment;

18. "Regulation" means a regulation by the Corporation;

19. "Schedule" means a Schedule to this Act;

[19A. "Seasonal factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortications of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year-

a. in any process of blending, packing or repacking of tea or coffee; or

b. in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify;]

20. "Sickness" means a condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds;

21. "Temporary disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of [21][doing the work which he was doing prior to or at the time of the injury];

22. "Wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes [any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or lay - off and] other additional remuneration, if any, [paid at intervals not exceeding two months], but does not include-

a. any contribution paid by the employer to any pension fund or provident fund, or under this Act;

b. any traveling allowance or the value of any traveling concession;

c. any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

d. any gratuity payable on discharge.

[23. "Wage period" in relation to an employee means the period in respect of which wages are ordinarily payable to him whether in terms of the contract of employment, express or implied or otherwise.]

[24. all other words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947, shall have the meanings respectively assigned to them in that Act.]

[2A. Registration of Factories and Establishments
Every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf.]

Part II: Corporation, Standing Committee and Medical Benefit Council

3. Establishment of Employees' State Insurance Corporation

1. With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the administration of the scheme of employees' state insurance in accordance with the provisions of this Act a Corporation to be known as the Employees' State Insurance Corporation.

2. The Corporation shall be a body corporate by the name of Employees' State Insurance Corporation having perpetual succession and a common seal and shall by the said name sue and be sued.

4. Constitution of Corporation

The Corporation shall consist of the following members, namely:-

[a. a Chairman to be [appointed] by the Central Government;

b. a Vice-Chairman to be [appointed] by the Central Government;]

c. not more than five persons to be [appointed] by the Central Government,

d. one person each representing each of the [[States] in which this Act is in force] to be [appointed] by the State Government concerned;

e. one person to be [appointed] by the Central Government to represent the [Union Territories];

f. [ten] persons representing employers to be [appointed] by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government;

g. [ten] persons representing employees to be [appointed] by the Central Government in consultation with such organisations of employees as may be reorganised for the purpose by the Central Government;

h. two persons representing the medical profession to be [appointed] by the Central Government in consultation with such organisation of medical practitioners as may be recognised for the purpose by the Central Government

i. three members of Parliament of whom two shall be members of the House of the People (Lok Sabha) and one shall be a member of the Council of States (Rajya Sabha) elected respectively by the members of the House of the People and the members of the Council of States; and

j. the Director-General of the Corporation ex-officio.]

5. Term of Office of Members of the Corporation

1. Save as otherwise expressly provided in this Act, the term of office of members of the Corporation other than [the members referred to in clauses (a), (b), (c), (d) and (e) of section 4 and the ex officio member,] shall be four years, commencing from the date on which their [appointment] or election is notified:

   PROVIDED that a member of the Corporation shall, notwithstanding the expiry of the said period of four years, continue to hold office until the [appointment] or election of his successor is notified.

2. The members of the Corporation referred to in clauses [(a),(b),(c) and (e)]of section 4 shall hold office during the pleasure of the government [appointing] them.

6. Eligibility for Re-nomination or Re-election

An outgoing member of the Corporation, the Standing Committee, or the Medical Benefit Council shall be eligible for [re-appointment] or re-election as the case may be.

7. Authentication of Orders, Decisions etc.

All orders and decisions of the Corporation shall be authenticated by the signature of the Director General of the Corporation and all other instruments issued by the Corporation shall be authenticated by the signature of the Director General or such other officer of the Corporation as may be authorised by him.]

8. Constitution of Standing Committee

A Standing Committee of the Corporation shall be constituted from among its members, consisting of-

a. A Chairman, [appointed] by the Central Government;

b. three members of the Corporation [appointed] by the Central Government];

[bb. three members of the Corporation representing such three State Governments thereon as the Central Government may, by notification Gazette, specify from time to time;]

c. [eight] members elected by the Corporation as follows-

ii. [three] members from among the members of the Corporation representing employers;

iii. [three] members from among the members of the Corporation representing employees;

iv. one member from among the members of the Corporation representing the medical profession; and

v. one member from among the members of the Corporation elected by [Parliament];

[d. the Director General of the Corporation, ex officio.]

9. Term of Office of Members of Standing Committee

1. Save as otherwise expressly provided in this Act, the term of office of a member of the Standing Committee, other than a member referred to in clause (a) or [clause (b) or clause (bb)] of section 8, shall be two years from the date on which his election is notified:

   PROVIDED that a member of the Standing Committee shall, notwithstanding the expiry of the said period of two years, continue to hold office until the election of his successor is notified:

   PROVIDED FURTHER that a member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation.

2. A member of the Standing Committee referred to in clause (a) or [clause (b) or clause (bb)] of section 8 shall hold office during the pleasure of the Central Government.

10. Medical Benefit Council

1. The Central Government shall constitute a Medical Benefit Council consisting of-

   a. The Director General, Health Services, ex officio, as Chairman;

   b. A Deputy Director General, Health Services, to be [appointed] by the Central Government;

   c. The medical commissioner of the Corporation, ex officio;

   d. One member each representing each of the [[States (other than Union Territories) in Which this Act is in force] to be [appointed] by the State Government concerned;

   e. Three members representing employers to be [appointed] by the Central Government in consultation with such organisations of employers as may be recognised for the purpose by the Central Government;

   f. three members representing employees to be [appointed] by the Central Government in consultation with such organisations of employees as may be recognised for the purpose by the Central Government; and

   g. three members, of whom not less than one shall be a woman, representing the medical profession, to be [appointed] by the Central Government in consultation with such organisations of medical practitioners as may be recognised for the purpose by the Central Government.

2. Save as otherwise expressly provided in this Act, the term of office of a member of the Medical Benefit Council, other than a member referred to in any of the clauses (a) to (d) of sub-sec. (1), shall be four years from the date on which his [appointment] is notified:

   [PROVIDED that a member of the Medical Benefit Council shall notwithstanding the expiry of the said period of four years continue to hold office until the [appointment] of his successor is notified.]

3. A member of the Medical Benefit Council referred to in clauses (b) and (d) of sub-section (1) shall hold office during the pleasure of the government [appointing] him.

11. Resignation of Membership

A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to the Central Government and his seat shall fall vacant on the acceptance of the resignation by that government.

12. Cessation of Membership

[1. A member of the Corporation, the Standing Committee or the Medical Benefit Council shall cease to be a member of that body if he fails to attend three consecutive meetings thereof :

   PROVIDED that the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, may, subject to rules made by the Central Government in this behalf, restore him to membership.

[2. Where in the opinion of the Central Government any person [appointed] or elected to represent employers, employees or the medical profession on the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be, has ceased to represent such employers, employees, or the medical profession, the Central Government may, by notification in the Official Gazette, declare that with effect from such date as may be specified therein such person shall cease to be a member of the Corporation, the Standing Committee or the Medical Benefit Council, as the case may be.]

[3. A person referred to in clause (i) of section 4 shall cease to be a member of the Corporation when he ceases to be a Member of Parliament.]

13. Disqualification

A person shall be disqualified for being chosen as or for being a member of the Corporation, the Standing Committee or the Medical Benefit Council-

a. if he is declared to be of unsound mind by a competent court; or

b. if he is an undischarged insolvent; or

c. if he has directly or indirectly by himself or by his partner any interest in a subsisting contract with, or any work being done for, the Corporation except as a medical practitioner or as a shareholder (not being a director) of a company; or

d. if before or after the commencement of this Act, he has been convicted of an offence involving moral turpitude.

14. Filling of Vacancies

1. Vacancies in the office of [appointed] or elected members of the Corporation, the Standing Committee and the Medical Benefit Council shall be filled by [appointment] or election, as the case may be.
2. A member of the Corporation, the Standing Committee or the Medical Benefit Council [appointed] or elected to fill a casual vacancy shall hold office only so long as the member in whose place he is [appointed] or elected would have been entitled to hold office, if the vacancy had not occurred.

15. Fees and Allowances

Members of the Corporation, the Standing Committee and the Medical Benefit Council shall receive such fees and allowances as may from time to time be prescribed by the Central Government.

16. Principal Officers

[1. The Central Government may, in consultation with the Corporation, appoint a director general and a financial commissioner.]

2. The director general shall be the chief executive officer of the Corporation.
3. [The director general and the financial commissioner] shall be whole-time officers of the Corporation and shall not undertake any work unconnected with their office without the sanction of the Central Government [and of the Corporation.]
4. [The director general or the financial commissioner] shall hold office for such period, not exceeding five years, as may be specified in the order appointing him. An outgoing [director general or financial commissioner] shall be eligible for re-appointment if he is otherwise qualified.
5. [The director general or the financial commissioner] shall receive such salary and allowances as may be prescribed by the Central Government.
6. A person shall be disqualified from being [appointed] as or for being [The Director General or the Financial Commissioner] if he is subject to any of the disqualifications specified in section 13.
7. The Central Government may at any time remove [the director general or the financial commissioner] from office and shall do so if such removal is recommended by a resolution of the Corporation passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the total strength of the Corporation.

17. Staff

1. The Corporation may employ such other staff of officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Government shall be obtained for the creation of any post [the maximum monthly salary of which [exceeds such salary as may be prescribed by the Central Government.]

[2. a. The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

PROVIDED that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

b. In determining the corresponding scales of pay of the members of the staff under clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final.]

3. Every appointment to [posts [(other than medical posts)] posts under Central Government], shall be made in consultation with the [Union] Public Service Commission:

PROVIDED that this sub-section shall not apply to an officiating or temporary [appointment] for [a period] not exceeding one year:

[PROVIDED FURTHER that any such officiating or temporary appointment shall not confer any claim for regular appointment and the services rendered in that capacity shall not count towards seniority or minimum qualifying service specified in the regulations for promotion to next higher grade.]

[4. If any question arises whether a post corresponds to a [Group A and Group B] post under the Central Government, the question shall be referred to that government whose decision thereon shall be final.]

18. Powers of the Standing Committee

1. Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.
2. The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf.
3. The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

19. Corporation's Power to Promote Measures for Health, etc. of Insured Persons

The Corporation may, in addition to the scheme of benefits specified in this Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Corporation

within such limits as may be prescribed by the Central Government.

20. Meetings of Corporation, Standing Committee and Medical Benefit Council

Subject to any rules made under this Act, the Corporation, the Standing Committee and the Medical Benefit Council shall meet at such times and places and shall observe such rules or procedure in regard to transaction of business at their meetings as may be specified in the regulations made in this behalf.

21. Supersession of the Corporation and Standing Committee

1. If in the opinion of the Central Government, the Corporation or the Standing Committee persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, that government may, by notification in the Official Gazette, supersede the Corporation, or in the case of the Standing Committee, supersede, in consultation with the Corporation, the Standing Committee:

   PROVIDED that before issuing a notification under this sub-section the Central Government shall give a reasonable opportunity to the Corporation or the Standing Committee, as the case may be, to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Corporation or the Standing Committee, as the case may be.

2. Upon the publication of a notification under sub-section (1) superseding the Corporation or the Standing Committee, all the members of the Corporation or the Standing Committee, as the case may be, shall, as from the date of such publication, be deemed to have vacated their offices.

3. When the Standing Committee has been superseded, a new standing Committee shall be immediately constituted in accordance with section 8.

4. When the Corporation has been superseded, the Central Government may-

   a. immediately [appoint] or cause to be [appointed] or elected new members to the Corporation in accordance with section 4 and may constitute a new Standing Committee under section 8;

   b. in its discretion, appoint such agency, for such period as it may think fit, to exercise the powers and perform the functions of the Corporation and such agency shall be competent to exercise all the powers and perform all the functions of the Corporation.

5. The Central Government shall cause a full report of any action taken under this section and the circumstances leading to such action to be laid before [Parliament] at the earliest opportunity and in any case not later than three months from the date of the notification superseding the Corporation or the Standing Committee as the case may be.

22. Duties of Medical Benefit Council

The Medical Benefit Council shall-

a. advise [the Corporation and the Standing Committee] on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;

b. have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and

c perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

23. Duties of [Director General and the Financial Commissioner]

The [director general and the financial commissioner] shall exercise such powers and discharge such duties as may be prescribed. They shall also perform such other functions as may be specified in the regulations.

24. Acts of Corporation, etc. not Invalid by Reason of Defect in Constitution, etc.

No act of the Corporation, the Standing Committee or the Medical Benefit Council shall be deemed to be invalid by reason of any defect in the constitution of the Corporation, the Standing Committee or the Medical Benefit Council, on the ground that any member thereof was not entitled to hold or continue in office by reason of any disqualification or of any irregularity in his [appointment] or election, or by reason of such act having been done during the period of any vacancy in the office of any member of the Corporation, the Standing Committee or the Medical Benefit Council.

25. Regional Boards, Local Committees, Regional and Local Medical Benefit Councils

The Corporation may appoint regional boards, local committees and regional and local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations.

LESSON 32:
CONTRIBUTIONS AND FUNDS UNDER THE EMPLOYEES STATE INSURANCE ACT 1948

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the rules for allocation of funds under the Act?
- What is meant by contributions under the Act?

Employees' State Insurance Fund

1. All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.
2. The Corporation may accept grants, donations and gifts from the Central or any [State Government,] local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.

[3. Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit on an account styled the account of the Employees' State Insurance Fund.]

4. Such account shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

27. Grant by the Central Government

[Omitted by Act No. 44 of 1966, section 12 (w.e.f. 17th, June, 1967)]

28. Purposes for which the Fund may be Expended

Subject to the provisions of this Act and of any rules made by the Central Government in that behalf, the Employees' State Insurance Fund shall be expended only for the following purposes, namely:-

i. payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;

ii. payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the regional boards, local committees and regional and local Medical Benefit Councils;

iii. payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;

iv. establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families, their families;

v. payment of contributions to any [State Government,] local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, their families including the cost of any building and equipment in accordance with any agreement entered into by the Corporation;

vi. defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;

vii. defraying the cost (including all expenses) of the Employees' State Insurance Courts set up under this Act;

viii. payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;

ix. payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;

x. defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;

xi. defraying expenditure, within the limits prescribed, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

xii. such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

[28A. Administrative Expenses

The types of expenses which may be termed as administrative expenses and the percentage of the income of the Corporation which may be spent for such expenses shall be such as may be prescribed by the Central Government and the Corporation shall keep its administrative expenses within the limit so prescribed by the Central Government.]

29. Holding of Property, etc.

1. The Corporation may, subject to such conditions as may be prescribed by the Central Government, acquire and hold property both movable and immovable, sell or otherwise transfer any movable or immovable property which may have become vested in or have been acquired by it and do all things necessary for the purposes for which the Corporation is established.
2. Subject to such conditions as may be prescribed by the Central Government, the Corporation may from time to time, invest any moneys which are not immediately required for expenses properly defrayable under this Act and may, subject as aforesaid, from time to time re-invest or realise such investments.
3. The Corporation may, with the previous sanction of the Central Government and on such terms as may be prescribed by it, raise loans and take measures for discharging such loans.
4. The Corporation may constitute for the benefit of its staff or any class of them, such provident or other benefit fund as it may think fit.

30. Vesting of the Property in the Corporation

All property acquired before the establishment of the Corporation shall vest in the Corporation and all income derived and expenditure incurred in this behalf shall be brought into the books of the Corporation.

31. Expenditure by Central Government to be Treated as a Loan

[Omitted by Act No. 44 of 1966, section 12 w.e.f. 17th., June, 1967.]

32. Budget Estimates

The Corporation shall in each year frame a budget showing the probable receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget for the approval of the Central Government before such date as may be fixed by it in that behalf. The budget shall contain provisions adequate in the opinion of the Central Government for the discharge of the liabilities incurred by the Corporation and for the maintenance of a working balance.

33. Accounts

The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.

[34. Audit

1. The accounts of the Corporation shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Corporation to the Comptroller and Auditor-General of India.
2. The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of government accounts and in particular, shall have the right to demand the production of books, account, connected vouchers and other documents and papers and to inspect any of the offices of the Corporation.
3. The accounts of the Corporation as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Corporation which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor General.]

35. Annual report

The Corporation shall submit to the Central Government an annual report of its work and activities.

36.Budget, Audited Accounts and the Annual Report to be Placed before [Parliament]

The annual report, the audited accounts of the Corporation [together with [the report of the Comptroller and Auditor-General of India thereon and the comments of the Corporation on such report] under section 34] and the budget as finally adopted by the Corporation shall be placed before [Parliament]

37. Valuation of Assets and Liabilities

The Corporation shall, at intervals of five years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government:

PROVIDED that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

Part IV: Contributions

38. All Employees to be Insured

Subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act.

39. Contributions

1. The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

[2. The contributions shall be paid at such rates as may be prescribed by the Central Government:

PROVIDED that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989.]

[3. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.]

4. The contributions payable in respect of each [wage period] shall ordinarily fall due on the last day of the [wage period], and where an employee is employed for part of the [wage period], or is employed under two or more employers

during the same [69][wage period], the contributions shall fall due on such days as may be specified in the regulations.

5. a. If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:

   PROVIDED that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

b. Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under sections 45C to 45-1.

Explanation: In this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).]

40. Principal Employer to Pay Contributions in the First Instance

1. The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.
2. Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made there under, the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise:

   PROVIDED that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.
3. Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.
4. Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.
5. The principal employer shall bear the expenses of remitting the contributions to the Corporation.

41. Recovery of Contributions from Immediate Employer

1. A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

[1A. The immediate employer shall maintain register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub-section (1).]

2. In the case referred to in sub-section (1), the immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to sub-section (2) of section 40.

42. General Provisions as to Payment of Contributions

1. No employee's contribution shall be payable by or on behalf of an employee whose average daily wages [during a wage period are below [such wages as may be prescribed by the Central Government]].

Explanation: The average daily wages of an employee shall be calculated [in such manner as may be prescribed by the Central Government.]

2. Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each [wage period] [in respect of the whole or part of which wages are payable to the employee and not otherwise.]

43. Method of Payment of Contribution

Subject to the provisions of this Act, the Corporation may make regulations for any matter relating or incidental to the payment and collection of contributions payable under this Act and without prejudice to the generality of the foregoing power such regulations may provide for-

a. the manner and time of payment of contributions;

b. the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed;

[bb. the date by which evidence of contributions having been paid is to be received by the Corporation;]

c. the entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards relate; and

d. the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been lost, destroyed or defaced.

[44. Employers to Furnish Returns and Maintain Registers in Certain Cases

1. Every principal and immediate employer shall submit to the Corporation or to such officer of the Corporation as it may direct such returns in such form and containing such particulars relating to persons employed by him or to any factory or establishment in respect of which he is the principal or immediate employer as may be specified in regulations made in this behalf.

2. Where in respect of any factory or establishment the Corporation has reason to believe that a return should have been submitted under sub-section (1) but has not been so submitted, the Corporation may require any person in charge of the factory or establishment to furnish such particulars as it may consider necessary for the purpose of enabling the Corporation to decide whether the factory or establishment is a factory or establishment to which this Act applies.
3. Every principal and immediate employer shall maintain such registers or records in respect of his factory or establishment as may be required by regulations made in this behalf.]

45. Inspectors, their Functions and Duties

1. The Corporation may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.
2. Any Inspector appointed by the Corporation under sub-section (1) (hereinafter referred to as Inspector), or other official of the Corporation authorised in this behalf by it may, for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with-
   a. require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act; or
   b. at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or
   c. examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises, or any person whom the said Inspector or other official has reasonable cause to believe to be or to have been an employee;
   [d. make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises;
   e. exercise such other powers as may be prescribed.]
3. An Inspector shall exercise such functions and perform such duties as may be authorised by the Corporation or as may be specified in the regulations.

[45A. Determination of Contributions in Certain Cases

1. Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of section 44 or any Inspector or other official of the Corporation referred to in sub-section 45 is [prevented in any manner] by the principal or immediate employer or any other person, in exercising his functions or discharging his duties under section 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment:

   [PROVIDED that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.]
2. An order made by the Corporation under sub-section (1) shall be sufficient proof of the claim of the Corporation under section 75 or for recovery of the amount determined by such order as an arrear of land revenue under section 45B [or the recovery under section 45C to section 45-I]].

45B. Recovery of Contributions

Any contribution payable under this Act may be recovered as an arrear of land revenue.

[45C. Issue of Certificate to the Recovery Officer

1. Where any amount is in arrears under this Act, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below-
   a. attachment and sale of the movable or immovable property of the factory or establishment or, as the case may be, the principal or immediate employer;
   b. arrest of the employer and his detention in prison;
   c. appointing a receiver for the management of the movable or immovable properties of the factory or establishment or, as the case may be, the employer:

   PROVIDED that the attachment and sale of any property under this section shall first be effected against the properties of the factory or establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.
2. The authorised officer may issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

45D. Recovery Officer to whom Certificate is to be Forwarded

1. The authorised officer may forward the certificate referred to in section 45C to the Recovery Officer within whose jurisdiction the employer-
   a. carries on his business or profession or within whose jurisdiction the principal place of his factory or establishment is situate; or
   b. resides or any movable or immovable property of the factory or establishment or the principal or immediate employer is situate.

2. Where a factory or an establishment or the principal or immediate employer has property within the jurisdiction of more than one Recovery Officers and the Recovery Officer to whom a certificate is sent by the authorised officer-
   a. is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction; or
   b. is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the manner prescribed by the Central Government and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the factory or establishment or the principal or immediate employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

45E. Validity of Certificate and Amendment Thereof

1. When the authorised officer issues a certificate to a Recovery Officer under section 45C, it shall not be open to the factory or establishment or the principal or immediate employer to dispute before the Recovery Officer the correctness of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.
2. Notwithstanding the issue of a certificate to a Recovery Officer, the authorised officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.
3. The authorised officer shall intimate to the Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of section 45F.

45F. Stay of Proceedings under Certificate and Amendment or Withdrawal Thereof

1. Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time, for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.
2. Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.
3. Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceedings under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject matter of a further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeals or other proceeding remains pending.
4. Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorised officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

45G. Other Modes of Recovery

1. Notwithstanding the issue of a certificate to the Recovery Officer under section 45C, the Director General or any other officer authorised by the Corporation may recover the amount by any one or more of the modes provided in this section.
2. If any amount is due from any person to any factory or establishment or, as the case may be, the principal or immediate employer who is in arrears, the Director General or any other officer authorised by the Corporation in this behalf may require such person to deduct from the said amount the arrears due from such factory or establishment or, as the case may be, the principal or immediate employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Corporation:

   PROVIDED that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908.

3. i. The Director General or any other officer authorised by the Corporation in this behalf may, at anytime or from time to time, by notice in writing, require any person from whom money is due or may become due to the factory or establishment or, as the case may be, the principal or immediate employer or any person who holds or may subsequently hold money for or on account of the factory or establishment or, as the case may be, the principal or immediate employer, to pay to the Director General either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the factory or establishment or, as the case may be, the principal or immediate employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

   ii. A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the principal or immediate employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

   iii. A copy of the notice shall be forwarded to the principal or immediate employer at his last address known to the Director General or, as the case may be, the officer so

authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Director General or the officer so authorised.

iv. Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

v. Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

vi. Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the principal or immediate employer or that he does not hold any money for or on account of the principal or immediate employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer on the date of the notice, or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less.

vii. The Director General or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

viii. The Director General or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the principal or immediate employer to the extent of the amount so paid.

ix. Any person discharging any liability to the principal or immediate employer after the receipt of a notice under this sub-section shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer so discharged or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less.

x. If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Director General or the officer so authorised, he shall be deemed to be a principal or immediate employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 45C to 45F and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 45C.

4. The Director General or the officer authorised by the Corporation in this behalf may apply to the court in whose custody there is money belonging to the principal or immediate employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

5. The Director General or any officer of the Corporation may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from a factory or an establishment or, as the case may be, from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961.

45H. Application of Certain Provisions of the Income Tax Act

The provisions of the Second and the Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount of contributions, interests or damages under this Act instead of to the income-tax:

PROVIDED that any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to a factory or an establishment or the principal or immediate employer under this Act.

45I. Definitions

For the purposes of sections 45C to 45H:

a. "Authorised officer" means the Director General, Insurance Commissioner, Joint Insurance Commissioner, Regional Director or such other officer as may be authorised by the Central Government, by notification in the Official Gazette;

b. "Recovery officer" means any officer of the Central Government, State Government or the Corporation, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a recovery officer under this Act.]

LESSON 33:
BENEFITS UNDER THE EMPLOYEES STATE INSURANCE ACT 1948

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the benefits under the Employees State Insurance Act?
- What are the transient provisions under the Act?

Benefits

1. Subject to the provisions of this Act, the insured persons, [their dependants or the persons hereinafter mentioned, as the case may be,] shall be entitled to the following benefits, namely,-
   a. periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner [or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf] (hereinafter referred to as sickness benefit);
   [b. periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);]
   c. periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);
   d. periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit);
   e. medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit); and
   [f. payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as [funeral expenses]):

   PROVIDED that the amount of such payment shall not exceed [88][such amount as may be prescribed by the Central Government] and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.]
2. The Corporation may, at the request of the appropriate government, and subject to such conditions as may be laid down in the regulations, extend the medical benefit to the family of an insured person.

48. When Person Deemed Available for Employment

[Omitted by Act No. 44 of 1966]

[49. Sickness Benefit

The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.

50. Maternity Benefit

The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.]

[51. Disablement Benefit

Subject to the provisions of this Act

a. a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment [at such rates and for such period and subject to such conditions as may be prescribed by the Central Government];
b. a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment [at such rates and for such period and subject to such conditions as may be prescribed by the Central Government] :

51A. Presumption as to Accident Arising in Course of Employment

For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

51B. Accidents Happening While Acting in Breach of Regulations, etc.

An accident shall be deemed to arise out of and in the course of an insured person's employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if

a. the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or on

without instructions from his employer, as the case may be; and

b. the act is done for the purpose of and in connection with the employer's trade or business.

5IC. Accidents Happening While Travelling in Employer's Transport

1. An accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if
   a. the accident would have been deemed so to have arisen had he been under such obligation; and
   b. at the time of the accident, the vehicle
      i. is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and
      ii. is not being operated in the ordinary course of public transport service.
2. In this section "vehicle" includes a vessel and an aircraft.

51D. Accidents Happening While Meeting Emergency

An accident happening to an insured person in or about any premises at which he is for the time-being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.]

[52. Dependants' Benefit

1. If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants' benefit shall be payable [at such rates and for such period and subject to such conditions as may be prescribed by the Central Government] to his dependants specified in [sub-clause (i), and sub clause (ia) and] sub-clause (ii) of clause (6A) of section 2.
2. In case the insured person dies without leaving behind him the dependants as aforesaid, the dependants' benefit shall be paid to the other dependants of the deceased [at such rates and for such period and subject to such conditions as may be prescribed by the Central Government].

52A. Occupational Disease

1. If an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an 'employment injury' arising out of and in the course of employment.
2. i. Where the Central Government or a State Government, as the case may be, adds any description of employment to the employments specified in Schedule III to the Workmen's Compensation Act, 1923, by virtue of the powers vested in it under sub-section (3) of section 3 of the said Act, the said description of employment and the occupational diseases specified under that sub-section as peculiar to that description of employment shall be deemed to form part of the Third Schedule.
   ii. Without prejudice to the provisions of clause (i), the Corporation after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may by a like notification add any description of employment to the employments specified in the Third Schedule and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively and thereupon the provisions of this Act shall apply, as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.
3. Save as provided by sub-sections (1) and (2) no benefit shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.
4. The provisions of section 51A shall not apply to the cases to which this section applies.]

[53. Bar Against Receiving or Recovery of Compensation or Damages under any Other Law

An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.]

[54. Determination of Question of Disablement

Any question-

a. whether the relevant accident has resulted in permanent disablement; or
b. whether the extent of loss of earning capacity can be assessed provisionally or finally; or
c. whether the assessment of the proportion of the loss of earning capacity is provisional or final; or

d. in the case of provisional assessment, as to the period for which such assessment shall hold good,

shall be determined by a medical board constituted in accordance with the provisions of the regulations and any such question shall hereafter be referred to as the "disablement question".

54A. References to Medical Boards and Appeals to Medical Appeal Tribunals and Employees' Insurance Courts

1. The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement question and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.
2. If the insured person or the Corporation is not satisfied with the decision of the medical board, the insured person or the Corporation may appeal in the prescribed manner and within the prescribed time to-
   i. the medical appeal tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees' Insurance Court, or
   ii. the Employees' Insurance Court directly] :

   [PROVIDED that no appeal by an insured person shall lie under this sub-section if such person has applied for commutation of disablement benefit on the basis of the decision of the medical board and received the commuted of such benefit:

   PROVIDED FURTHER that no appeal by the Corporation shall lie under this sub-section if the Corporation paid the commuted value of the disablement benefit on the basis of the decision of the medical board.]

[55. Review of Decisions by Medical Board or Medical Appeal Tribunal

1. Any decision under this Act of a medical board or a medical appeal tribunal may be reviewed at any time by the medical board or the medical appeal tribunal, as the case may be, if it is satisfied by fresh evidence that the decision was given in consequence of the non-disclosure or mis-representation by the employee or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent).
2. Any assessment of the extent of the disablement resulting from the relevant employment injury may also be reviewed by a medical board, if it is satisfied that since the making of the assessment there has been a substantial and unforeseen aggravation of the results of the relevant injury:

   PROVIDED that an assessment shall not be reviewed under this sub-section unless the medical board is of opinion that having regard to the period taken into account by the assessment and the probable duration of the aggravation aforesaid, substantial injustice will be done by not reviewing it.
3. Except with the leave of a medical appeal tribunal, an assessment shall not be reviewed under sub-section (2) on any application made less than five years, or in the case of a provisional assessment, six months, from the date thereof and on such a review the period to be taken into account by any revised assessment shall not include any period before the date of the application.
4. Subject to the foregoing provisions of this section, a medical board may deal with a case of review in any manner in which it could deal with it on an original reference to it, and in particular may make a provisional assessment notwithstanding that the assessment under review was final; and the provisions of section 54A shall apply to an application for review under this section and to a decision of a medical board in connection with such application as they apply to a case for disablement benefit under that section and to a decision of the medical board in connection with such case.

55A. Review of Dependants' Benefit

1. Any decision awarding dependants' benefit under this Act may be reviewed at any time by the Corporation if it is satisfied by fresh evidence that the decision was given in consequence of non-disclosure or misrepresentation by the claimant or any other person of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) or that the decision is no longer in accordance with this Act due to any birth or death or due to the marriage, re-marriage or cesser of infirmity of, or attainment of the age of eighteen years by, a claimant.
2. Subject to the provisions of this Act, the Corporation may, on such review as aforesaid, direct that the dependants' benefit be continued, increased, reduced or discontinued.]

56. Medical benefit

1. An insured person or (where such medical benefit is extended to his family) a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefit.
2. Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.
3. A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit [101][or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations]:

   PROVIDED that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations:

[PROVIDED FURTHER that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement:

PROVIDED ALSO that an insured person, who has attained the age of superannuation, and his spouse shall be eligible to receive medical benefit subject to payment of contribution and such other conditions as may be prescribed by the Central Government.

Explanation : In this section, "superannuation", in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment.]

57. Scale of medical benefit

1. An insured person and (where such medical benefit is extended to his family) his family shall be entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the Corporation, and an insured person or, where such medical benefit is extended to his family, his family shall not have a right to claim any medical treatment except such as is provided by the dispensary, hospital, clinic or other institution to which he or his family is allotted, or as may be provided by the regulations.
2. Nothing in this Act shall entitle an insured person and (where such medical benefit is extended to his family) his family to claim reimbursement from the Corporation of any expenses incurred in respect of any medical treatment, except as may be provided by the regulations.

58. Provision of Medical Treatment by State Government

1. The State Government shall provide for insured persons and (where such benefit is extended to their families) their families in the State reasonable medical, surgical and obstetric treatment:

   PROVIDED that the State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on such scale and subject to such terms and conditions as may be agreed upon.
2. Where the incidence of sickness benefit payment to insured persons in any State is found to exceed the all-India average, the amount of such excess shall be shared between the Corporation and the State Government in such proportion as may be fixed by agreement between them:

   PROVIDED that the Corporation may in any case waive the recovery of the whole of any part of the share which is to be borne by the State Government.
3. The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment that should be provided to insured persons and (where such medical benefit is extended to the families) their families (including provision of buildings, equipment, medicines and staff) and for the sharing of the cost thereof and of any excess in the incidence of sickness benefit to insured persons between the Corporation and the State Government.
4. In default of agreement between the Corporation and any State Government as aforesaid the nature and extent of the medical treatment to be provided by the State Government and the proportion in which the cost thereof and of the excess in the incidence of sickness benefit shall be shared between the Corporation and that government, shall be determined by an arbitrator (who shall be or shall have been a Judge of the [102][High Court] [103][of a State]) appointed by the Chief Justice of India (and the award of the arbitrator) shall be binding on the Corporation and the State Government.

59. Establishment and maintenance of hospitals, etc. by Corporation

1. The Corporation may, with the approval of the State Government, establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of insured persons and (where such medical benefit is extended to their families) their families.
2. The Corporation may enter into agreement with any local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and (where such medical benefit is extended to their families) their families, in any area and sharing the cost thereof.

[59A. Provision of Medical Benefit by the Corporation in lieu of State Government

1. Notwithstanding anything contained in any other provision of this Act, the Corporation may, in consultation with the State Government, undertake the responsibility for providing medical benefit to insured persons and where such medical benefit is extended to their families, to the families of such insured persons in the State subject to the condition that the State Government shall share the cost of such medical benefit in such proportions may be agreed upon between the State Government and the Corporation.
2. In the event of the Corporation exercising its power under sub-section (1), the provisions relating to medical benefit under this Act shall apply, so far as may be, as if a reference therein to the State Government were a reference to the Corporation.]

General

60. Benefit not Assignable or Attachable

1. The right to receive any payment of any benefit under this Act shall not be transferable or assignable.
2. No cash benefit payable under this Act shall be liable to attachment or sale in execution of any decree or order of any Court.

61. Bar of Benefits under Other Enactments

When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

62. Persons not to Commute Cash Benefits

Save as may be provided in the regulations, no person shall be entitled to commute for a lump sum any [disablement benefit] admissible under this Act.

[63. Persons not Entitled to Receive Benefit in Certain Cases

Save as may be provided in the regulations, no person shall be entitled to sickness benefit or disablement benefit for temporary disablement on any day on which he works or remains on leave or on a holiday in respect of which he receives wages or on any day on which he remains on strike.]

64. Recipients of Sickness or Disablement Benefit to Observe Conditions

A person who is in receipt of sickness benefit or disablement benefit (other than benefit granted on permanent disablement)-

a. shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under this Act and shall carry out the instructions given by the medical officer or medical attendant in charge thereof;

b. shall not while under treatment do anything which might retard or prejudice his chances of recovery;

c. shall not leave the area in which medical treatment provided by this Act is being given, without the permission of the medical officer, medical attendant or such other authority as may be specified in this behalf by the regulations; and

d. shall allow himself to be examined by any duly appointed medical officer [106][* * *] or other person authorised by the Corporation in this behalf.

65. Benefits not to be Combined

1. An insured person shall not be entitled to receive for the same period-
   a. both sickness benefit and maternity benefit; or
   b. both sickness benefit and disablement benefit for temporary disablement; or
   c. both maternity benefit and disablement benefit for temporary disablement.
2. Where a person is entitled to more than one of the benefits mentioned in sub-section (1), he shall be entitled to choose which benefit he shall receive.

66. Corporation's Right Recover Damages from Employer in Certain Cases

[Omitted by Act No. 44 of 1966, section 29, w.e.f. 17th., June, 1967]

67. Corporation's Right to be Indemnified in Certain Cases

[Omitted by Act No. 44 of 1966, section 29 w. e.f. 17th., June, 1967]

68. Corporation's Rights where a Principal Employer Fails or Neglects to Pay Any Contribution

1. If any principal employer fails or neglects to pay any contribution which under this Act he is liable to pay in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on a lower scale, the Corporation may, on being satisfied that the contribution should have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled, if the failure or neglect had not occurred and the Corporation shall be entitled to recover from the principal employer either-
   [i. the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the benefit which would have been payable on the basis of the contributions which were in fact paid by the employer; or]
   ii. twice the amount of the contribution which the employer failed or neglected to pay whichever is greater.
2. The amount recoverable under this section may be recovered as if it were an arrear of land revenue [or under section 45C to section 45I].

69. Liability of Owner or Occupier of Factories, etc. for Excessive Sickness Benefit

1. Where the Corporation considers that the incidence of sickness among insured persons is excessive by reason of-
   i. in sanitary working conditions in a factory or establishment or the neglect of the owner or occupier of the factory or establishment to observe any health regulations enjoined on him or under any enactment; or
   ii. in sanitary conditions of any tenements or lodgings occupied by insured persons and such in sanitary conditions are attributable to the neglect of the owner of the tenements or lodgings to observe any health regulations enjoined on him by or under any enactment,

   the Corporation may send to the owner or occupier of the factory or establishment or to the owner of the tenements or lodgings, as the case may be, a claim for the payment of the amount of the extra expenditure incurred by the Corporation as sickness benefit; and if the claim is not settled by agreement, the Corporation may refer the matter with a statement in support of its claim, to the appropriate government.
2. If the appropriate government is of opinion that a prima facie case for inquiry is disclosed, it may appoint a competent person or persons to hold an inquiry into the matter.
3. If upon such inquiry it is proved to the satisfaction of the person or persons holding the inquiry that the excess in incidence of sickness among the insured persons is due to the default or neglect of the owner or occupier of the factory or establishment or the owner of the tenements or lodgings, as the case may be, the said person or persons shall determine the amount of the extra expenditure incurred as sickness benefit, and the person or persons by whom the

whole or any part of such amount shall be paid to the Corporation.

4. A determination under sub-section (3) may be enforced as if it were a decree for payment of money passed in a suit by a Civil Court.
5. For the purposes of this section, "owner" of tenements or lodgings shall include any agent of the owner and any person who is entitled to collect the rent of the tenements or lodgings as a lessee of the owner.

70. Repayment of Benefit Improperly Received

1. Where any person has received any benefit or payment under this Act when he is not lawfully entitled thereto, he shall be liable to repay to the Corporation the value of the benefit or the amount of such payment, or in the case of his death his representative shall be liable to repay the same from the assets of the deceased, if any, in his hands.
2. The value of any benefits received other than cash payments shall be determined by such authority as may be specified in the regulations made in this behalf and the decision of such authority shall be final.
3. The amount recoverable under this section may be recovered as if it were an arrear of land revenue [or under section 45C to section 45I].

71. Benefit Payable up to and Including Day of Death

[If a person dies], during any period for which he is entitled to a cash benefit under this Act, the amount of such benefit up to and including the day of his death shall be paid to any person nominated by the deceased person in writing in such form as may be specified in the regulations or, if there is no such nomination, to the heir or legal representative of the deceased person.

72. Employer not to Reduce Wages, etc.

No employer by reason only of his liability for any contributions payable under this Act shall, directly or indirectly, reduce the wages of any employee, or except as provided by the regulations, discontinue or reduce benefits payable to him under the conditions of his service which are similar to the benefits conferred by this Act.

73. Employer not to Dismiss or Punish Employee During Period of Sickness, etc.

1. No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.
2. No notice of dismissal or discharge or reduction given to an employee during the period specified in sub-section (1) shall be valid or operative.

[Part V-A: Transitory Provisions

73A. Employer's Special Contribution

1. For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the employer's special contribution) at the rate specified under sub-section (3).
2. The employer's special contribution shall, in the case of a factory or establishment situate in any area in which the provisions of both Chapters IV and V are in force, be in lieu of the employer's contribution payable under Chapter IV.
3. The employer's special contribution shall consists of such percentage, not exceeding five per cent of total wage bill of the employer, as the Central Government may, by notification in the Official Gazette, specify from time to time:

   PROVIDED that before fixing or varying any such percentage the Central Government shall give by like notification not less than two months' notice of its intention so to do and shall in such notification specify the percentage which it proposes to fix or, as the case may be, the extent to which the percentage already fixed is to be varied :

   PROVIDED FURTHER that the employer's special contribution in the case of factories or establishments situate in any area in which the provisions of both Chapters IV and V are in force shall be fixed at a rate higher than that in the case of factories or establishments situate in any area in which the provisions of the said Chapters are not in force.
4. The employer's special contribution shall fall due as soon as the liability of the employer to pay wages accrues, but may be paid to the Corporation at such intervals, within such time and in such manner as the Central Government may, by notification in the Official Gazette, specify, and any such notification may provide for the grant of a rebate for prompt payment of such contribution.

Explanation: "Total wage bill" in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as may be specified for the purposes of this section by the Central Government by notification in the Official Gazette.

73B. Special Tribunals for Decision of Disputes or Questions under this Chapter where there is no Employees' Insurance Court

1. If any question or dispute arises in respect of the employer's special contribution payable or recoverable under this Chapter and there is no Employees' Insurance Court having jurisdiction to try such question or dispute, the question or dispute shall be decided by such authority as the Central Government may specify in this behalf.
2. The provisions of sub-section (1) of section 76, sections 77 to 79 and 81 shall, so far as may be, apply in relation to a proceeding before an authority specified under sub-section (1) as they apply in relation to a proceeding before an Employees' Insurance Court.

73C. Benefits under Chapter V to Depend upon Employee's Contribution

The payment of the employee's contribution for any week in accordance with the provisions of Chapter IV in any area where all the provisions of that Chapter are in force shall, for the purpose of Chapter V, have effect as if the contributions payable under Chapter IV in respect of that employee for that week had been paid, and shall accordingly entitle the employee as an insured person to the benefits specified in Chapter V if he is otherwise entitled thereto.

Explanation : In the case of an exempted employee, the employee's contribution shall be deemed to have been paid for a week if the Corporation is satisfied that during that week the employer's contribution under Chapter IV would have been payable in respect of him but for the provisions of this Chapter.

73D. Mode of Recovery of Employer's Special Contribution

The employer's special contribution payable under this Chapter may be recovered as if it were an arrear of land revenue.

73E. Power to Call for Additional Information or Return

Without prejudice to the other provisions contained in this Act, the Corporation may, for the purpose of determining whether the employer's special contribution is payable under this Chapter or for determining the amount thereof, by general or special order, require any principal or immediate employer or any other person to furnish such information or returns to such authority, in such form and within such time as may be specified in the order.

73F. Power to Exempt to be Exercised by Central Government Alone in Respect of Employer's Special Contributions

Notwithstanding anything contained in this Act, the Central Government may, having regard to size or location of, or the nature of the industry carried on, in any factory or establishment or class of factories or establishments, exempt the factory or establishment or class of factories or establishments from the payment of the employer's special contribution under this Chapter and nothing contained in sections 87 to 91 (inclusive) shall be deemed to authorize any State Government to grant any such exemption.

73G. Application of Certain Provisions of this Act to Employer's Special Contribution

Save as otherwise expressly provided in this Chapter, the provisions of Chapter IV, section 72 and Chapter VII and any rules and regulations made under this Act shall, so far as may be, apply in relation to the payment or recovery of employer's special contributions, the penalties specified in connection therewith and all other matters incidental thereto as they would have applied in relation to an employer's contribution if this Chapter were not in force and the employer's contribution had been payable under this Act.

73H. Power to Remove Difficulties

[Repealed by the Act No. 44 of 1966, w.e.f. 17th., June, 1967.]

73-I. Duration of Chapter VA

The Central Government may, by [notification in the Official Gazette, (vide SO No. 173(E) dated 26th., March, 1973)] direct that the provisions of this Chapter shall cease to have effect on such date as may be specified in the notification, not being a date earlier than three months from the date of the notification:

PROVIDED that on the provisions of this Chapter so ceasing to have effect the provisions of section 6 of the General Clauses Act, 1897, shall apply as if the provisions of this Chapter had then been repealed by a Central Act.]

LESSON 34:
POWERS OF THE COURT UNDER THE EMPLOYEES STATE INSURANCE ACT 1948

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the powers of the court under the Employees State Insurance Act?
- How is the adjudication of claims done under the Act?

Adjudication of Dispute and Claims

74. Constitution of Employees' Insurance Court

1. The State Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local area as may be specified in the notification.
2. The Court shall consist of such number of Judges as the State Government may think fit.
3. Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.
4. The [State] Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.
5. Where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them.

75. Matters to be Decided by Employees' Insurance Court

1. If any question or dispute arises as to-
   a. whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
   b. the rate of wages or average daily wages of an employee for the purposes of this Act, or
   c. the rate of contribution payable by a principal employer in respect of any employee, or
   d. the person who is or was the principal employer in respect of any employee, or
   e. the right of any person to any benefit and as to the amount and duration thereof, or
   [ee. any direction issued by the Corporation under section 55A on a review of any payment of dependants benefits, or]
   f. any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, [or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act,]

   such question or dispute [subject to the provision of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.
2. [Subject to the provisions of sub-section (2A), the following claims] shall be decided by the Employees' Insurance Court, namely:-
   a. claim for the recovery of contributions from the principal employer;
   b. claim by a principal employer to recover contributions from any immediate employer;
   d. claim against a principal employer under section 68;
   e. claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and
   f. any claim for the recovery of any benefit admissible under this Act.

[2A. If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.]

[2B. No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent of the amount due from him as claimed by the Corporation:

PROVIDED that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.]

3. No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by [a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.]

76. Institution of Proceedings, etc.

1. Subject to the provisions of this Act and any rules made by the State Government, all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose.
2. If the Court is satisfied that any matter arising out of any proceeding, pending before it can be more conveniently dealt with by any other Employees Insurance Court in the same State, it may, subject to any rules made by the State Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other Court the records connected with that matter.
3. The State Government may transfer any matter pending before any Employees' Insurance Court in the State to any such Court in another State with the consent of the State Government of that State.
4. The Court to which any matter is transferred under sub-section(2) or sub-section (3) shall continue the proceedings as if they had been originally instituted in it.

77. Commencement of Proceedings

1. The proceedings before an Employees' Insurance Court shall be commenced by application.

[1A. Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation : For the purpose of this sub-section,-

a. the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

[b. the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

PROVIDED that no claim shall be made by the Corporation after five years of the period to which the claim relates;

c the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.]]

2. Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation.

78. Powers of Employees' Insurance Court

1. The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of [section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973].
2. The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.
3. All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the Court.
4. An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

79. Appearance by Legal Practitioners, etc.

Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of his examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade, union authorised in writing by such person or with the permission of the Court, by any other person so authorised.

80. Benefit not Admissible Unless Claimed in Time

[Omitted by Act No. 44 of 1966, section 34, w.e.f. 28th., January, 1968.]

81. Reference to High Court

An Employees' Insurance Court may submit any question of law for the decision of the High Court and if it does so shall decide the question pending before it in accordance with such decision.

82. Appeal

1. Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.
2. An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves substantial question of law.
3. The period of limitation for an appeal under this section shall be sixty days.
4. The provisions of sections 5 and 12 of the [Limitation Act, 1963] shall apply to appeals under this section.

83. Stay of Payment Pending Appeal

Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

Part VII: Penalties

84. Punishment for False Statements

Whoever, for the purpose of causing any increase in payment or benefit under this Act, or for the purpose of causing any payment or benefit to be made where no payment or benefit is authorised by or under this Act, or for the purpose of avoiding any payment to be made by himself under this Act or enabling any other person to avoid any such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to [six months], or with fine not exceeding [two thousand] rupees, or with both.

[PROVIDED that where an insured person is convicted under this section, he shall not be entitled for any cash benefit under this Act for such period as may be prescribed by the Central Government.]

85. Punishment for Failure to Pay Contributions, etc.

If any person-

a. fails to pay any contribution which under this Act he is liable to pay, or

b. deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or

c. in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or

d. in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or

e. fails or refuses to submit any return required by the regulations, or makes a false return, or

f. obstructs any Inspector or other official of the Corporation in the discharge of his duties, or

g. is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided,

[he shall be punishable-

[i. where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but

   a. which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

   b. which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees:

   PROVIDED that the Court may, for any adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a lesser term;

ii. where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.]

[85A. Enhanced Punishment in Certain Cases After Previous Conviction

Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to [124][two years and with fine of five thousand rupees]:

PROVIDED that where such subsequent offence is for failure by the employer to pay any contribution which under this Act he is liable to pay, he shall, for every such subsequent offence, be punishable with imprisonment for a term which may extend to [125][five years but which shall not be less than two years and shall also be liable to fine of twenty-five thousand rupees.]

[85B. Power to recover damages

1. Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover [126][from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations]:

   PROVIDED that before recovering such damages, the employer shall be given a reasonable opportunity of being heard :

   [PROVIDED FURTHER that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in regulations.]

2. Any damages recoverable under sub-section(I) may be recovered as an arrear of land revenue [or under section 45C to section 45-I].

85C. Power of Court to Make Orders

1. Where an employer is convicted of an offence for failure to pay any contribution payable under this Act, the Court may, in addition to awarding any punishment by order, in writing require him within a period specified in the order (which the Court may if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution in respect of which the offence was committed, [and to furnish the return relating to such contributions].

2. Where an order is made under sub-section (I), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the Court, but if, on the expiry of such period or extended period, as the case may be, the order of the Court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punishable with imprisonment in respect thereof under section 85 and shall also be liable to pay fine which may extend to [one thousand rupees] for every day after such expiry on which the order has not been complied with.]

86. Prosecutions

1. No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner [or of such other officer of the Corporation as may be authorised in this behalf by the 129[Director-General of the Corporation]].

[2. No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under this Act.]

3. No court shall take cognisance of any offence under this Act except on a complaint made in writing in respect thereof

[86A. Offences by Companies

1. If the person committing an offence under this Act is a company, every person, who at the time the offence was committed was incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

   PROVIDED that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2. Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,

i. "company" means any body corporate and includes a firm and other associations of individuals; and

ii. "director" in relation to-

   a. a company, other than a firm, means the managing director or a whole-time director;

   b. a firm means a partner in the firm.]

Part - VIII: Miscellaneous

87. Exemption of a Factory or Establishment or Class of Factories or Establishments

The appropriate government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment or class of factories or establishments in any specified area from the operation of this Act for a period not exceeding one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time.

88. Exemption of Persons or Class of Persons

The appropriate government may, by notification in the Official Gazette and subject to such conditions as it may deem fit to impose, exempt any person or class of persons employed in any factory or establishment, or class of factories or establishments to which this Act applies from the operation of the Act.

89. Corporation to Make Representation

No exemption shall be granted or renewed under section 87 or section 88, unless a reasonable opportunity has been given to the Corporation to make any representation it may wish to make in regard to the proposal and such representation has been considered by the appropriate government.

90. Exemption of Factories or Establishments Belonging to Government or Any Local Authority

The appropriate government may, [after consultation with the Corporation,] by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt any factory or establishment belonging to any local authority, [from the operation of the Act], if the employees in any such factory or establishment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

91. Exemption from One or More Provisions of the Act

The appropriate government may, with the consent of the Corporation, by notification in the Official Gazette, exempt any employees or class of employees in any factory or establishment or class of factories or establishments from one or more of the provisions relating to the benefits provided under this Act.

[91A. Exemptions to be Either Prospective or Retrospective

Any notification granting exemption under section 87, section 88, section 90 or section 91 may be issued so as to take effect either prospectively or retrospectively on such date as may be specified therein.]

[91B. Misuse of Benefits

If the Central Government is satisfied that the benefits under this Act are being misused by insured persons in a factory or establishment, that Government may, by order, published in the Official Gazette, disentitle such persons from such of the benefits as it thinks fit:

PROVIDED that no such order shall be passed unless a reasonable opportunity of being beard is given to the concerned factory or establishment, insured persons and the trade unions registered under the Trade Unions Act, 1926 having members in the factory or establishment.

91C. Writing Off of Losses

Subject to the conditions as may be prescribed by the Central Government, where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount.]

92. Power of Central Government to Give Directions

[1. The Central Government may give directions to a State Government as to the carrying into execution of this Act in the State.

[2. The Central Government may, from time to time, give such directions to the Corporation as it may think fit for the

efficient administration of the Act, and if any such direction is given, the Corporation shall comply with such direction.]

93. Corporation Officers and Servants to be Public Servants

All officers and servants of the Corporation shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

[93A. Liability in Case of Transfer of Establishment

Where an employer, in relation to a factory or establishment transfers that factory or establishment in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contribution or any other amount payable under this Act in respect of the periods up to the date of such transfer:

PROVIDED that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.]

94. Contributions, etc., Due to Corporation to have Priority Over Other Debts

There shall be deemed to be included among the debts which, under section 49 of the Presidency-Towns Insolvency Act, 1909, or under section 61 of the Provincial Insolvency Act,1920, [or under any law relating to insolvency in force [in the territories which, immediately before the lst November, 1956 were comprised in a Part B State]], [or under section 530 of the Companies Act, 1956], are in the distribution of the property of the insolvent or in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, the amount due in respect of any contribution or any other amount payable under this Act the liability where for accrued before the date of the order of adjudication of the insolvent or the date of the winding up, as the case may be.

[94A. Delegation of Powers

The Corporation, and, subject to any regulations made by the Corporation in this behalf, the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation.]

95. Power of Central Government to Make Rules

1. The Central Government may [after consultation with the Corporation and] subject to the condition of previous publication, make rules not inconsistent with this Act for the purpose of giving effect to the provisions thereof.
2. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matter, namely,-

[a. the limit of wages beyond which a person shall not be deemed to be an employee;

ab. the limit of maximum monthly salary for the purpose of sub-section (1) of section 17;]

[ac. the manner in which [appointments] and elections of members of the Corporation, the Standing Committee and the Medical Benefit Council shall be made;

b. the quorum at meetings of the Corporation, the Standing Committee and the Medical Benefit Council and the minimum number of meetings of those bodies to be held in a year.

c. the records to be kept of the transaction of business by the Corporation, the Standing Committee and the Medical Benefit Council;

d. the powers and duties of the [Director General and the Financial Commissioner] and the conditions of their service;

e. the powers and duties of the Medical Benefit Council;

[ea. the types of expenses which may be termed as administrative expenses, the percentage of income of the Corporation which may be spent for such expenses;

eb. the rates of contributions and limits of wages below which employees are not liable to pay contribution;

ec. the manner of calculation of the average daily wage;

ed. the manner of certifying the certificate to recover amount by the Recovery Officer.

ee. the amount of funeral expenses;

ef. the qualifications, conditions, rates and period of sickness benefit, maternity benefit, disablement benefit and dependants benefit;

eg. the conditions for grant of medical benefits for insured persons who cease to be in insurable employment on account of permanent disablement;

eh. the conditions for grant of medical benefits for persons who have attained the age of superannuation;]

[ei. the manner in which and the time within which appeals may be filed to medical appeal tribunals or Employees' Insurance Courts;]

f. the procedure to be adopted in the execution of contracts;

g. the acquisition, holding and disposal of property by the Corporation;

h. the raising and repayment of loans;

i. the investment of the funds of the Corporation and of any provident or other benefit fund and their transfer or realisation;

j. the basis on which the periodical valuation of the assets and liabilities of the Corporation shall be made;

k. the bank or banks in which the funds of the Corporation may be deposited, the procedure to be followed in regard to the crediting of moneys accruing or payable to the Corporation and the manner in which any sums may be paid out of the Corporation funds and the officers by whom such payment may be authorised;

l. the accounts to be maintained by the Corporation and the forms in which such accounts shall be kept and the times at which such accounts shall be audited;

m. the publication of the accounts of the Corporation and the report of auditors, the action to be taken on the audit report, the powers of auditors to disallow and surcharge items of expenditure and the recovery of sum so disallowed or surcharged;

n. the preparation of budget estimates and of supplementary estimates and the manner in which such estimates shall be sanctioned and published;

o. the establishment and maintenance of provident or other benefit fund for officers and servants of the Corporation;

[oa. the period of non-entitlement for cash benefit in case of conviction of an insured person;]

p. any matter which is required or allowed by this Act to be prescribed by the Central Government.

[2A. The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interest of any person other than the Corporation to whom such rule may be applicable.]

3. Rules made under this section shall be published in the Official Gazette and thereupon shall have effect as if enacted in this Act.

[4. Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session [or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

96. Power of State Government to Make Rules

1. The State Government may, [after consultation with the Corporation], subject to the condition of previous publication, make rules not inconsistent with this Act in regard to all or any of the following matters, namely-

a. the constitution of Employees' Insurance Courts, the qualifications of persons who may be appointed Judges thereof, and the conditions of service of such Judges;

b. the procedure to be followed in proceedings before such Courts and the execution of orders made by such Courts;

c. the fee payable in respect of applications made to the Employees' Insurance Court, the costs incidental to the proceedings in such Court, the form in which applications should be made to it and the particulars to be specified in such applications;

d. the establishment of hospitals, dispensaries and other institutions, the allotment of insured persons or their families to any such hospital, dispensary or other institution;

e. the scale of medical benefit which shall be provided at any hospital, clinic, dispensary or institution, the keeping of medical records and the furnishing of statistical returns; the nature and extent of the staff, equipment and medicines that shall be provided at such hospitals, dispensaries and institutions;

g. the conditions of service of the staff employed at such hospitals, dispensaries and institutions; and

h. any other matter which is required or allowed by this Act to be prescribed by the State Government.

2. Rules made under this section shall be published in the Official Gazette and thereupon shall have effect as if enacted in this Act.

[3. Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.]

97. Power of Corporation to Make Regulations

1. The Corporation may, subject to the condition of previous publication, make regulations, not inconsistent with this Act and the rules made there under, for the administration of the affairs of the Corporation and for carrying into effect the provisions of this Act.

2. In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely-

i. the time and place of meetings of the Corporation, the Standing Committee and the Medical Benefit Council and the procedure to be followed at such meetings;

[ia. the time within which and the manner in which a factory or establishment shall be registered;]

ii. the matters which shall be referred by the Standing Committee to the Corporation for decision;

iii. the manner in which any contribution payable under this Act shall be assessed and collected;

[iiia. the rate of interest higher than twelve per cent on delayed payment of contributions,]

iv. reckoning of wages for the purpose of fixing the contribution payable under this Act;

[iva. the register of employees to be maintained by the immediate employer;

ivb. the entitlement of sickness benefit or disablement benefit for temporary disablement on any day on which person works or remains on leave or on holiday and in respect of which he receives wages or for any day on which he remains on strike;]

v. the certification of sickness and eligibility for any cash benefit;

[vi. the method of determining whether an insured person is suffering from one or more of the diseases specified in the Third Schedule;]

vii. the assessing of the money value of any benefit which is not a cash benefit;

viii. the time within which [and the form and manner in which] any claim for a benefit may be made and the particulars to be specified in such claim;

ix. the circumstances in which an employee in receipt of disablement benefit may be dismissed, discharged, reduced or otherwise punished;

x. the manner in which and the place and time at which any benefit shall be paid;

xi. the method of calculating the amount of cash benefit payable and the circumstances in which and the extent to which commutation of disablement and dependant's benefits, may be allowed and the method of calculating the commutation value;

xii. the notice of pregnancy or of confinement and notice and proof of sickness;

[xiia. specifying the authority competent to give certificate of eligibility for maternity benefit;

xiib. the manner of nomination by an insured woman for payment of maternity benefit in case of her or her child's death;

xiic. the production of proof in support of claim for maternity benefit or additional maternity benefit;]

xiii. the conditions under which any benefit may be suspended;

xiv. the conditions to be observed by a person when in receipt of any benefit and the periodical medical examination of such person;

xvi. the appointment of medical practitioners for the purposes of this Act, the duties of such practitioners and the form of medical certificates;

[xvia. the qualifications and experience which a person should possess for giving certificate of sickness;

xvib. the constitution of medical boards and medical appeal tribunals;]

xvii. the penalties for breach of regulations by fine (not exceeding two days' wages for a first breach and not exceeding three days' wages for any subsequent breach) which may be imposed on employees;

[xviia. the amount of damages to be recovered as penalty;

xviib. the terms and conditions for reduction or waiver of damages in relation to a sick industrial company;]

xviii. the circumstances in which and the conditions subject to which any regulation may be relaxed, the extent of such relaxation, and the authority by whom such relaxation may be granted;

[xix. the returns to be submitted and the registers or records to be maintained by the principal and immediate employers, the forms of such returns, registers or records, and the times at which such returns should be submitted and the particulars which such returns, registers and records should contain;]

xx. the duties and powers of Inspectors and other officers and servants of the Corporation;

[xxi. the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of the officers and servants of the Corporation other than the [Director General and Financial Commissioner;]

xxii. the procedure to be followed in remitting contributions to the Corporation; and

xxiii. any matter in respect of which regulations are required or permitted to be made by this Act.

2A. The condition of previous publication shall not apply to any regulations of the nature specified in clause (xxi) of sub-section (2).]

3. Regulations made by the Corporation shall be published in the Gazette of India and thereupon shall have effect as if enacted in this Act.

[4. Every regulation shall, as soon as may be, after it is made by the Corporation, be forwarded to the Central Government and the government shall cause a copy of the same to be laid before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]

98. Corporation may Undertake Duties in Part B States

[Repealed by Act No. 53 of 1951, section 26.]

[99. Medical Care for the Families of Insured Persons

At any time when its funds so permit, the Corporation may provide or contribute towards the cost of medical care for the families of insured persons.]

[99A. Power to Remove Difficulties

1. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions or give such directions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

2. Any order made under this section shall have effect notwithstanding anything inconsistent therewith in any rules or regulations made under this Act.]

[100. Repeal and Saving

If, immediately before the day on which this Act comes into force [in any part of the territories which, immediately before the lst November, 1956, were comprised in a Part B State], there is in force in [that part] any law corresponding to this Act, that law shall, on such day, stand repealed:

PROVIDED that the repeal shall not affect-

a. the previous operations of any such law, or

b. any penalty, forfeiture or punishment incurred in respect of any offence committed against any such law; or

c. any investigation or remedy in respect of any such penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

PROVIDED FURTHER that subject to the preceding proviso anything done or any action taken under any such law shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.]

Schedule II

[Section 2 (15A) and (15B)]

Part I: List of Injuries Deemed to Result in Permanent Total Disablement

S. No.	Description of injury	% age of loss of earning capacity
1.	Loss of both hands or amputation at higher sites	100
2.	Loss of a hand and a foot	100
3.	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot	100
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential	100
5.	Very severe facial disfigurement	100
6.	Absolute deafness	100

Part II: List of Injuries Deemed to Result In Permanent Partial Disablement

S. No.	Description of injury	%age of loss of earning capacity
7.	Amputation through shoulder joint	90
8.	Amputation below shoulder with stump less than 20.32 cm from tip of acrimion	80
9.	Amputation from 20.32 cm from tip of acrimion to less than 11.43 cm below tip of olecranon	70
10.	Loss of a hand or of the thump and four fingers of one hand or amputation from 11.43 cm. below tip of olecranon	60
11.	Loss of thumb	30
12.	Loss of thumb and its metacarpal bone	40
13.	Loss of four fingers of one hand	50
14.	Loss of three fingers of one hand	30
15.	Loss of two fingers of one hand	20
16.	Loss of terminal phalanx of thumb	20
[4][16A.	Guillotine amputation of the tip of the thumb without loss of bone	10]
Amputation-Lower limbs		
17	Amputation of both feet resulting in end-bearing stumps	90
18.	Amputation through both feet proximal to the metatarso-phalangeal joint	80
19.	Loss of all toes of both feet through the metatarso-phalangeal joint	40
20.	Loss of all toes of both feet proximal to the proximal inter phalangeal joint	30

21.	Loss of all toes of both feet distal to the proximal inter phalangeal joint	20
22.	Amputation at hip	90
23.	Amputation below hip with stump not exceeding 12.70 cm. in length measured from tip of great trochanter	80
24.	Amputation below hip with stump exceeding 12.70 cm. in length measured from tip of great trochanter but not beyond middle thigh	70
25.	Amputation below middle thigh to 8.89 cm. below knee	60
26.	Amputation below knee with stump exceeding 8.89 cm. but not exceeding 12.70 cm.	50
27.	Amputation below knee with stump exceeding 12.70 cm.	*[50]
28.	Amputation of one foot resulting in end-bearing	*[50]
29.	Amputation through one foot proximal to the metatarso-phalangeal joint	*[50]
30	Loss of all toes of one foot through metatarso-phalangeal joint	20
	Other injuries	
31.	Loss of one eye, without complications, the other being normal	40
32.	Loss of vision of one eye without complications or disfigurement of eye-ball, the other being normal	30
[4][32A.	Partial loss of vision of one eye	10]
	LOSS OF A- Fingers of right or left hand Index finger	
33	Whole	14
34.	Two phalanges	11
35.	One phalanx	9
36.	Guillotine amputation of tip without loss of bone	5
	Middle finger	
37	Whole	12
38.	Two phalanges	9
39.	One phalanx	7
40.	Guillotine amputation of tip without loss of bone	4
	Ring or little finger	
41.	Whole	7
42.	Two phalanges	6
43.	One phalanx	5
44.	Guillotine amputation of tip without loss of bone	2
	B- Toes of right of left foot Great toe	
45.	Through metatarso-phalangeal joint	14
46.	Part, with some loss of bone	3

Any other toe		
47.	Through metatarso-phalangeal joint	3
48.	Part, with some loss of bone	1
Two toes of toes of one foot, excluding great toe		
49.	Through metatarso-phalangeal joint	5
50.	Part, with some loss of bone	2
Three toes of one foot, excluding great toe		
51.	Through metatarso-phalangeal joint	6
52.	Part, with some loss of bone	3
Four toes of one foot, excluding great toe		
53.	Through metatarso-phalangeal joint	9
54.	Part, with some loss of bone	3

*Substituted for the figures “40”, “30” & “30” against sl. nos. 27, 28 and 29 respectively by Act No. 29 of 1989.

Note: Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.]

Schedule III: List of Occupational Diseases

[Section 52A]

Part A

Sl. No.	**Occupational disease**	**Employment**
1	2	3
1.	Infectious and parasitic diseases contracted in an occupation where there is a particular risk of contamination	(a) All work involving exposure to health or laboratory work; (b) All work involving exposure to veterinary work; (c) Work relating to handling animals; animal carcasses, part of such. Carcasses, or merchandise which may have been contaminated by animals or animal carcasses; (d) Other work carrying a particular risk of contamination.
2.	Diseases caused by work in compressed air.	All work involving exposure to the risk concerned.
3.	Diseases caused by lead or its toxic compounds.	All work involving exposure to the risk concerned.
4.	Poisoning by nitrous fumes.	All Work involving exposure to the risk concerned.
5.	Poisoning by organophosphorus compounds.	All work involving exposure to the risk concerned.
PART B		
1.	Diseases caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
2.	Diseases caused by mercury or its toxic compounds.	All work involving exposure to the risk concerned.

3.	Diseases caused by benzene or its toxic homologues.	All work involving exposure to the risk concerned.
4.	Diseases caused by nitro and amido toxic derivatives of benzene or its homologues.	All work involving exposure to the risk concerned.
5.	Diseases caused by chromium or its toxic compounds.	All work involving exposure to the risk concerned.
6.	Diseases caused by arsenic or its toxic compounds.	All work involving exposure to the risk concerned.
7.	Diseases caused by radioactive substances and ionising radiations.	All work involving exposure to the action of radioactive substances or ionising radiations.
8.	Primary epithelomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.	All work involving exposure to the risk concerned.
9.	Diseases caused by the toxic halogen derivatives of hydrocarbons (of the aliphatic and aromatic series)	All work involving exposure to the risk concerned.
10.	Diseases caused by carbon disulphide.	All work involving exposure to the risk concerned.
11.	Occupational cataract due to infra-red radiations.	All work involving exposure to the risk concerned.
12.	Diseases caused by manganese or its toxic compounds.	All work involving exposure to the risk concerned.
13.	Skin diseases caused by physical, chemical or biological agents not included in other items.	All work involving exposure to the risk concerned.
14.	Hearing impairment caused by noise.	All work involving exposure to the risk concerned.
15.	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenol or by the salts of such substances.	All work involving exposure to the risk concerned.
16.	Diseases caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
17.	Diseases caused by cadmium or its toxic compounds.	All work involving exposure to the risk concerned.
18.	Occupational asthma caused by recognised sensitising agents inherent to the work process.	All work involving exposure to the risk concerned.
19.	Diseases caused by flourine or its toxic compound	All work involving exposure to the risk concerned.

20.	Diseases caused by nitroglycerine or other nitroacid esters.	All work involving exposure to the risk concerned.
21.	Diseases caused by alcohols and ketones.	All work involving exposure to the risk concerned.
22.	Diseases caused by asphyxiants; carbon monoxide and its toxic derivatives, hydrogen sulphide.	All work involving exposure to the risk concerned.
23.	Lung cancer and mesotheliomas caused by asbestos.	All work involving exposure to the risk concerned.
24.	Primary neoplasm of the epithelial lining of the urinary bladder or the kidney or the ureter.	All work involving exposure to the risk concerned.
PART C		
1.	Pneumoconiosis caused by sclerogenic mineral dust (silicosis, anthracosilicosis asbestosis) and silico- tuberculosis provided that silicosis is an essential factor in causing the resultant incapacity or death..	All work involving exposure to the risk concerned.
2.	Bagassosis	All work involving exposure to the risk concerned.
3.	Bronchopulmonary diseases caused by cotton, flax, hemp and sisal dust (Byssinosis)	All work involving exposure to the risk concerned.
4.	Extrinsic allergic alveolitis caused by the inhalation of organic dusts.	All work involving exposure to the risk concerned.
5.	Bronchopulmonary diseases caused by hard metals.	All work involving exposure to the risk concerned.

Questions for Test

1. Define the following terms as used in the employees' state Insurance Act, 1948-

   (a) Employment Injury (b) Employee (c) Principal employer and immediate employer (d) wages (e) seasonal factory (f) appropriate government (g) family (h) Temporary disablement?
2. State briefly with your comments and short notes about the establishment and constitution of the employee's state insurance corporation, the standing committee and the Medical Benefit Council and their powers and duties?
3. What are the powers and duties of the employees' state insurance corporation, the standing committee and Medical benefit Council?
4. What is the effect of Supersession of the employees' state insurance corporation or the Standing committee?
5. What are different types of benefits provided by the Employees' State Insurance Act, 1948?
6. How are the inspector appointed under the employees' state insurance at, 1948 and what are their functions and duties?
7. What are the provisions in regards to employees' state insurance corporation's right where the principal employer fails or neglects to pa any contribution?
8. Mention the circumstances under which an employees will receive benefit for occupation disease under the employees' state insurance Act, 1948
9. A notice of dismissal is given under the employer to A, an employee, during the period A is in receipt of sickness benefits under the Employees' state Insurance Act, 1948. Discus the effect of the notice of dismissal given to A by the employer?
10. Discuss the modes or recovery of amount due under the employees' state Insurance Act, 1948 from an employer, as inserted by the amendment Act 1989?

LESSON 35
THE MATERNITY BENEFIT ACT, 1961

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

What are the provisions of the Maternity Benefit Act 1961?

In reference to section in this chapter, unless otherwise indicated is to the Maternity Benefit Act 1961.

Scope and coverage of the Act (Sec. 2)

The Act applies, in the first instance—to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein person are employed for the exhibition of equestrian, acrobartic and other performance;

a) to every shop or establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment where in persons are employed for the exhibition or were employee, on any day of the preceding 12 months.

The state Government may extend all or any of the provisions of the Act to any other establishment or class of establishment, industrial, commercial, agricultural or otherwise. But the State government can do so only with the approval notification in the official Gazette, of its intention do so.

Save as provided in Secs. 5-A and 5-B nothing contain in the Act shall apply to any factory or other establishment to which the provisions of the Employee's state Insurance Act 1948 apply for the item being.

The Act prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits to be paid to women workers during the period when they are out of employment on account of their pregnancy. Further, the services of a woman worker cannot be terminated during the period other absence on account of pregnancy, except of gross misconduct.

Definition

Appropriate Government [Sect. 3(a)] it means in relation to an establishment being a mine or an establishment where in persons are employed for the exhibition of equestrian, acrobatic and other performance in 1973. Since these establishment move from place to place, it was considered that for the effective enforce of the Act in relation to these establishments, the appropriate government should be the Central Government instead of the state Government.

2. Child [Sec. 3(b)] 'Child' includes a still-born child
3. Deliver [Sec. 3(c)]. It means the birth of a child.
4. Employer [Sec. 3(d)] it means -

i) In relation to an establishment which is under the control of the government, a person or authority appointed by the Government for the supervision and control of employee or where no person or authority is so appointed, the head of the department;

ii) in relation to an establishment under any local authority, the person appointed by such authority for he supervision and control of employee or were no person is appointed the chief executive office or the local authority;

iii) in any other case, the person who, or the authority which, has the ultimate interested to any other person whether called a manager, managing director, or by any other name, such person.

1. Establishment [Sec. 3(ep)] means-

i) a factory;

ii) a mine;

iii) a plantation;

i) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

ii) a shop or establishment; or

iii) an establishment to which the provisions of the Act have been declared under Sec. 2 to be applicable.

iv) 'Factory' means a factory as defined in the factories act, 1948 [Sec. 3(f)]

v) 'Mine' means a mine a defined in the Mines act, 1952 [Sec. 3(k)]

vi) Miscarriage [Sec. 3(j)]. It means expulsion of the contents of a pregnant uterus at any period prior to or during the 26th week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code (I.P.C.), 1860.

'Wages [Section 3 (n)] it means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled. It includes—

b) Such cash allowance (including dearness allowance and house and allowance) as a woman is for the time being entitled to;

ii) Incentive bonus; and

iii) overtime earnings and any deduction or payment made on account of fines;

iv) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

v) any gratuity payable on the termination of service.

*) Woman [Sec. 3 90)] 'Woman means a woman employed, whether directly or through any agency, for wages in any establishment.

Prohibition of Employment

Employment of, or work by, women prohibited during certain periods (Sect.4) An employer is prohibited form knowingly employing any woman in any establishment during the 6 weeks immediately following the day of her delivery or her miscarriage. Likewise, a woman is prohibited Form working in any establishment during this period of 6 weeks. Further, is a pregnant woman makes a request, she shall not be given any work of the following nature during the specified period;

a) any work which is of arduous nature.

b) Any work which involves long hours of standing

c) Any work which in any way is likely to interfere with their pregnancy or the normal development of fetus or is likely to cause her miscarriage or otherwise adversely affect her health.

The specified period shall be -the period of 1 months immediately preceding the period of 6 weeks before the date of expected delivery; or

b) any period during the said period of 6 weeks For which the pregnant man does not avail of the leave of absence under Sec.

Maternity Benefit.

Right to payment of maternity benefit (Sec. 5)

Subject to the provisions of the Act, every woman shall be entitled to, d her employer shall be liable For, the payment of maternity benefit. Maternity benefit is a payment to a woman at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery and any period immediate wing that day.

Average daily wage. It means the average of the woman's wages able to her For the days on which she has worked during the period of 3 calendar months immediately preceding the date From which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948, or Rs. 10, which ever is the higher.

Condition for payment of maternity benefit. The following conditions must be fulfilled before maternity benefit becomes payable to a woman worker in an establishment:

Condition :

1. Work for not less than 80 days to have been put in. the woman must have actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery. this period of 80 days shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.
2. For the purpose of calculating the days on which the woman has actually worked in the establishment, the days for which she has been laid-off or was on holidays declared under any law for the time being in force to be holiday with wages during the period of 12 months immediate preceding the date of expected wages during the period of 12 months immediately preceding the date of expected delivery shall be counted towards the minimum 80 days required.
3. Maternity benefit for a maximum period of 12 weeks. The maximum period of which the woman shall be entitled to maternity benefit shall be 12 weeks of which not more that 6 weeks shall precede the date of her expected delivery.
4. Death. If the woman dies during this period of 12 weeks, the maternity benefit shall be 12 weeks period for which not more than 6 weeks shall precede the date of her expected delivery.
5. death if the woman dies during this period of 12 weeks, maternity where the woman delivers a child and then dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind the child, the employer shall be liable for payment of maternity benefit for that entire period. If the child also dies during the said period, the employer shall be liable for the payment of maternity benefits for the days up to on including the date of death of the child.

Notice of claim for maternity benefit and payment thereof (Sec.6)

Any woman employed in an establishment and entitled to maternity benefit under the provision of the Act may give notice to her employer, stating that her maternity benefit and any other amount to which she may be entitle may be paid to her or to such person as she may nominate in the notice. The notice shall be in writing and in the prescribed form. It shall also state the date from which she will be absent from work. This date will be earlier that 6 weeks form the date of her expected delivery. If she has not given the notice when she was pregnant, she may give such notice as soon as possible after the delivery.

Permission for absence. On receipt of the notice, the employer shall permit the woman to absent herself. Amount of maternity benefit for the period proceeding he employer- to her on production of such proof as may be prescribed that the woman employer to the woman to the woman within 48 hours of production of proof that the woman has delivered a child.

Payment of maternity benefit in case of death of a woman (Sec. 7) If a woman entitled to maternity benefit or any other amount dies before maternity benefit after the death of e woman, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given under sec. 6 In case there is no such nominee, the maternity, benefit will be paid to her legal representative.

Continuance of payment of maternity benefit if certain cases (sect. S-A)

Be so entitled until she becomes qualified to claim maternity benefit under sect. 50 of the Employees' State Insurance Act. 1948. This provision applies even where the employees' State Insurance Act. 1948 applies to the factory or other establishment in which the woman is employed.

Sec. 5-A clarifies an apparent conflict between the provision of the Act and the Employee's state Insurance act, 1948, in respect of benefits conferred. This section maes in clear that maternity benefit shall be paid to a woman worker under the Act until she becomes qualify to claim such benefit under the Employees' state Insurance Act which provides for a similar benefit. This is time the employer is not obliged to pay a double benefit.

Payment of maternity benefit in certain cases (sect 5-8)

Every woman who is employed in a factory or other establishment to which the provisions of the employee's State Insurance act, 1948 apply;

(b)whose wages (excluding remuneration for overtime work) for a month exceed Rs. 1,600; and

(d)who has worked for not less that 80 days in the 1 2 months immediately preceding the date of her expected delivery; shall be entitled to the payment of maternity benefit under the Act.

Sect. 5-b was introduced by the maternity Benefit (Amendment(Act, 1976. Prior to the amendment of the Act in 1976, a number of woman were employed in the factories or establishments which were covered under the employee's state Insurance Act, 1948, but such employees were not covered by that Act as they were in receipt of wages exceeding the amount specified in that Act namely Rs. 1,000 (Now it is Rs. 3,000) per nth. The provisions of the maternity Benefit Act, 1961 also did not apply to them as this Act specifically excluded form its purview factories or establishment to which the provision of the Employee's state Insurance Act. 1948 applied. Thus, the woman employees employed in factories or establishments covered by the Employees' State Insurance Act, 1948, or the maternity Benefit act, 1966. The Amendment Act, 1976 covered the above mentioned category of woman employees.

Forfeiture of maternity benefit (Sec. 18)

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provisions of sec. 6 for nay period during such authorized absence she shall forfeit her claim to the maternity benefit for such period.

Dismissal during absence of pregnancy (Sec. 12)

When a woman absents herself form work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence. Further it shall be unlawful for the employer eve to give notice of discharge or dismissal on such a day that the notice will expire during sub absence, or to vary to her disadvantage any of the conditions of her service. Any discharge or dismissal of a woman not in accordance with these provisions shall not have the effect of depreiving her of the maternity benefit or medical bonus. But where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus referred to in Sec .8 or both.

The following acts shall constitute gross misconduct;

A. Willful detraction of employer's good or property; assaulting any superior or co-employee at the place of work; Criminal offence involving moral turpitude resulting in conviction in a court of law; Theft, fraud or dishonest in connection with the employers business or property; and Willful non-observance of safety measures or rules or willful interference with safety device or with fire fighting equipment [Rule 8 of Maternity Benefit (mines and circus) rules, 1963]

Any woman deprived for maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence form the work in accordance with the provisions of this Act, may, within 60 days form the date on which order of such deprivation or discharged or dismissed, shall be final.

No deduction of wages in certain cases (Sec. 13)

No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of the Act shall be made for the reason that—

a) the nature of work assigned to her is nat a arduous nature, or that the pregnant woman has been give a different nature of work, or

b) specified breaks for nursing the child are allowed to her.

Medical bonus

Every woman entitled to maternity benefit under the Act shall also be entitled to receive form her employer a medical bonus of Rs. 250 if no prenatal confinement and post natal care is provided for by the employers free of charge.

Leave and Nursing Breaks

Leave for miscarriage (Sec. 9)

In case of miscarriage, woman shall on production of the prescribed proof be entitled to leave with wages at the rate of maternity .benefit, for a period of 6 weeks Immediately following the day of her miscarriage.

Other leave (Sec. 10)

A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a maximum period of 1 month. This leave is in addition to the, period of absence allowed to them under Sec. 6 or under Sec. 9

Nursing breaks (Sec. 11)

Where a woman, after having delivered a child, returns to duty after such delivery, she shall be allowed in the course of her daily work 2 breaks of the prescribed duration of nursing breaks shall be in addition to the interval for rest allowed to her.

Inspectors

The appropriate Government may, by notification in the official, Gazette, appoint such officers as it thinks fit to be Inspectors for the purposes of the Act and may define the local limits of the jurisdiction within which they shall exercise their functions under the Act (Sec. 14)

Powers and duties of Inspectors (Sect. 151 An inspector may, subject such restriction or conditions as may be prescribed, exercise all or any of following powers:

1. He may enter at all reasonable times with assistants, if any, any premises or place where women are employed or work is given to them in on establishment, far the purpose of examin-

ing any registers, records and notices required to be kept or exhibited by or under the act and require their production for inspection.

2. He may examine any person whom he finds in any premises, or place and who, he has reason to believe, is employed in the establishment. But he cannot compel any person to answer any question or give any evidence tending to incriminate himself.

3. He may require the employer to give information regarding the names and addresses of woman employed. Payment made to hem, and applications or notices received from them under the Act.

4. He may take copies of any registers and records or notices or any portions thereof.

Power of Inspector to direct payments to be made (Sec. 17)

Any woman claiming that-

a) maternity benefit or any other amount to which she is entitled under the Act and any person claiming that payment due under Sect 7 (which deals with payment of maternity benefit in case of death of a woman) has been improperly withheld.

b) Her employer has discharged or dismissed her during or on account of her absence from work in accordance with the provision of this Act, may make a complaint to the Inspector.

Inquiry by Inspector. The Inspector may, of his own motion or on receipt of a complaint, make an inquiry or cause an inquiry to be made. If he is satisfied that payment has been wrongfully withheld, he may direct the payment to be made in accordance with his orders. Further if the inspections is satisfied that the woman has been discharged or dismissed during or on account of her absence form work in accordance with the provision of this Act, he may pass such orders as are just and proper according to he circumstance of the case.

Appeal any person aggrieved by the decision of the inspector may appeal or prescribed authority within 30 days from the date of which the decision of the inspector is communicated to such person. The decision of the Inspector is made, the decision of the Inspector shall be final. Any amount payable under Section 5 shall be recoverable by the collector on a certificate issued for that amount by the inspector as a arrear of land revenue.

Inspectors deemed to be public servants (Sect. 16) Every Inspector appointed under the act shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code 1860.

Points to Remember-

THE MATERNITY BENEFIT ACT, 1961

The Act prohibits the working of pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of certain monetary benefits to be paid to women workers during the period when they are out of employment on account of their pregnancy.

Further, the services of a woman worker cannot be terminated during the period other absence on account of pregnancy, exceptof gross misconduct.

DEFINITION-

Appropriate Government [Sect. 3(a)]

Employer [Sec. 3(d)]

Establishment [Sec. 3(ep)]

'Wages [Section 3 (n)]

PROHIBITION OF EMPLOYMENT

An employer is prohibited form knowingly employing any woman in any establishment during the 6 weeks immediately following the day of her delivery or her miscarriage. Likewise, a woman is prohibited Form working in any establishment during this period of 6 weeks.

Further, is a pregnant woman a request, she shall not be given any work of the following nature during the specified period-

•any work which is of arduous nature.

•Any work which involves long hours of standing

•Any work which in any way is likely to interfere with their pregnancy or the normal development of fetus or is likely to cause her miscarriage or otherwise adversely affect her health.

MATERNITY BENEFIT -

Right to payment of maternity benefit (Sec. 5)

For, the payment of maternity benefit. Maternity benefit is a payment to a woman at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery and any period immediate wing that day.

Average daily wage. It means the average of the woman's wages able to her For the days on which she has worked during the period of 3 calendar months immediately preceding the date From which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948, or Rs. 10, which ever is the higher.

Condition :

the woman must have actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery

For the purpose of calculating the days on which the woman has actually worked in the establishment, the days for which she has been laid-off or was on holidays declared under any law for the time being in force to be holiday with wages during the period of 12 months immediate preceding the date of expected wages during the period of 12 months immediately preceding the date of expected delivery shall be counted towards the minimum 80 days required.

Continued…

The maximum period of which the woman shall be entitled to maternity benefit shall be 12 weeks of which not more that 6 weeks shall precede the date of her expected delivery.

Death. If the woman dies during this period of 12 weeks, the maternity benefit shall be 12 weeks period for which not more than 6 weeks shall precede the date of her expected delivery.

if the woman dies during this period of 12 weeks, the employer shall be liable for payment of maternity benefit for that entire period.

If the child also dies during the said period, the employer shall be liable for the payment of maternity benefits for the days up to on including the date of death of the child.

Questions For Test-

1. What are the leaves to which a woman is entitled in case of miscarriage / illness arising out of pregnancy?
2. Can any deduction be made from the normal and usual daily wages of a woman entitled to maternity benefit?
3. Write short note on:
   Forfeiture of the right to maternity benefit
4. define the term Employer

LESSON 36
INTRODUCTION TO THE WORKMAN COMPENATION ACT 1923

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

How did the evolution of the Workmen Compensation Act take place?

How is the calculation of compensation carried out and what are the deductions?

Students let me introduce to you The Workmens Compensation Act 1923 one of the most effective piece of legislation. The history behind this act is quite interesting It takes you the roots of the history existing during the British era. The story begins like this…..Before industrialisation, in England, people used to work **on** farms, handicrafts and small scale industries confined to their own villages. Since their activities were confined only to small village few laws were needed for them. But when the industrial revolution took its firm grip, the whole character of the society then change The Factories, large sized workshops and giant companies came for the first time. This gave a fillip to the need of plethora of Turning to India, she was then reeling under the British rule a hence she also was sailing in the same boat with Britain. The one: of the laws, on labour laws, India enacted, was the Payment Wages Act, 1936. It was undoubtedly by far the most advanced piece of legislation on labour laws in those days but by no chance it has lost its utility or importance even in twenty first century

(2) Evolution

The Government of India in 1926 addressed the Local Governments, with a view to ascertain (i) the position with regard to the delays which occurred in the payment of wages to persons engaged in industries and (ii) the practice of imposing fines on them. The investigation of the then Government of India revealed the existence of abuses in both directions. The said material collected by the Government of India was placed before the Royal Commission on Labour which was appointed in 1929. The Royal Commission collected further evidence on the subject and gave their Report and the recommendation to the then Government of India. The then Government of India re-examined the, subject in light of the Commission's recommendations and introduced a Bill in February 1933 embodying the conclusions then reached by the then Government of India. The Bill was first circulated for the purpose of eliciting the opinion and then a motion for the reference of the Bill to a select committee was tabled during the Delhi Session of 1933-34. But the Bill did not reach in that session and hence it lapsed. The new Bill was prepared on the basis of earlier Bill duly revised throughout in the light of criticism received when the original Bill was circulated (see Gazettee of India of 1935 part V - the Statements of Objects and Reasons). The Bill, this time, was passed and thus the present Act came to be enacted.

(3) Preamble

The Act in the preamble states that the Act was passed to regulate payment of wages to certain class of "employed persons" in "industry." Naturally, therefore, one may ask the meaning of terms (i) "employed person" and the (ii) "Industry".

The term "employed person" is undoubtedly defined in Section 2 (i) but it does not throw any light. The definition simply states that the "employed person" includes even the legal representative. One may, therefore, try to understand it with reference to the term "Employer" and one may look to the definition given in Section 2 (i a).But of no avail. It also states that the Employer includes even his legal representative. One is, therefore, back to square one. The terms "Employer" and "Employed person" are the two sides of the same coin-a relationship of "master and servant." The relationship of "master and servant" can be inferred from the express terms of contract between the two > parties agreeing to the relationship. But if there is no contract in writing to read such a relationship, it can even be inferred from the conduct of the parties, One is 'Employer' the other is "Employed Person'. This is the surest and perhaps the only way to understand the term "employed person" and to circumscribe the scope of the preamble of the Act.

Turning to the second term "industry", it can be seen that the term industry is not defined hi the Act. Whatever may have been the narrow meaning ascribed, it has now assumed far greater and wider meaning. Suffice to record here that like the term "employed person", the term "industry" too should be under-stood in relation to the "master and servant" relationship". The preamble, therefore, briefly speaking, lays down that wherever a person is employed but if he is not paid or there are some illegal deductions in his wages, the Act comes into operation.

(4) Application of the Act

Sub-section (2) states that the Act will be applicable to the whole of India. It may be noted here that since it is the Central Act and not the State Act, its applicability is not confined to the State only but it has applicability through out the country.

Sub-section (3) lays down that the Act shall come into force on such date as the Central Government may by notification in the official Gazette appoint. Accordingly, the then Government of India in the Gazette of 28 March, 1937 (part I) notified the date of its commencement.

Sub-section (4) lays down that the Act shall apply to :

(1) Persons employed in any factory. It is laid down in section 2 (i b) of this Act that the term 'Factory[1].

(a) means Factory as defined under the Factories Act, 1948 and

(b) it includes any place to which the Factories Act, 1948 is applicable under its section 85 (1).

(2) Persons employed (otherwise than in Factory) in Rail-ways directly or through an authorised sub-contractor and

(3) Persons employed in "industrial and other establishments." The terms "industrial" and other establishments" have been defined in the Act in Section 2. It states that it means :

(a) Transways service or Motor Transport service for passengers and/or goods for hire or reward.

(aa)Air transport service other than belonging to or exclusively employed in the Military, naval or air force of the Government of India.

(b)Dock, wharf or jetly.

(c) Inland Vessel mechanically propelled.

(d)Mine, quarry or oil field

(e) Plantation

(f) Workshop or other establishments in which articles are produced/manufactured/adopted for sale/use or transport

(g) Establishment carrying on

fl) construction / development/maintenance of Buildings / Roads / Bridges/Canals.

(ii) Navigation, irrigation or supply of water

(in)Operations connected with generation/trans-mission/ distribution of electricity or any other form of power.

Sub section (4) farther lays down that the Act may apply to any class or group of industrial establishments as may be notified by the State Government. However, the powers so conferred are curtailed by the Proviso to sub-section (5)1 By the said Proviso, the State Government can not issue notifications in respect of the establishments of the Central Government.

(5) Application of the Act Through Other Enactments.

(1) The Bombay Shops and Establishments Act, 1948 has extended the provisions of the Payment of Wages Act to specific industries (or to any class of employees) of a specific notified local areas. Accordingly, the Payment of Wages Act is extended by the State Government to certain large cities like, Mumbai, Pune, Kolhapur, Solapur, Nagpur etc.

(2) The Factories Act, 1948 provides the mode of recovery of unpaid wages. As such, the recovery has to be made under the provisions of the payment of wages Act. Apart from the fact that the Act is applicable to the factories under the Factories Act, it is independently laid down in the Factories Act that provisions of the payment of wages Act will apply.

(3) The Minimum wages Act, 1948 also has the similar provisions (section 22F)

(4) The Mines Act, 1952 : Section 55 also provides that the provisions of the payment of wages Act will apply.

(5) The Motor Transport Act, 1961 Section 25 extends the payment of wages Act.

Administrative Tribunals Act

In Karim Nagar Municipality v/s Auth. PWA, 1994 I CLR 756, it was held that although the municipality comes under the Administrative Tribunals Act, yet the authority under the payment of wages Act has the jurisdiction to adjudicate the claim for delayed wages.

In Ramswamy v/s Gemini Studios, 1968 Mad. 49, the AIR Petitioners moved the authority under the Act for a direction to their employer to pay their overtime wages. Their applications were dismissed by the authority on the ground that the Applicants were working in the wardrobe department and, therefore, they were not workmen under Section 2 (1) of the Factories Act. Their appeals were also dismissed by the small causes- court on the same ground. In revision, the High court held that for the purposes of the Act, they are the "employed person" who are entitled to apply for the delayed wages and they need not be workmen under the Factories Act. Further, to apply the Act, What is necessary is that the person should be employed in the premises of the Factory and need not be working in the manufacturing process. AIR 1957 M.B. 125

In Nagpur Central Co-operative Bank v/s Compt. Authority, 1994 FLR 209 it was held that it is true that the Act is not applicable to Banks on its own force but the same is-applicable under the minimum wages Act. Because under MWA it is provided that the provisions of the Act can be extended to scheduled notified industries. The State government by its notification under the MW Act had extended the provisions of the MW Act to the establishment under reference and hence the provisions of the Act to co-operative Bank were applicable in the case before the court.

In Baloo Husain vis N.P. Napry, 1979 I LLJ 103, it was held that the scheme of Section 1 (6) relates to contractual wages. As such overtime wages have not to be taken into account in deter-mining the question with regard to the applicability of the Act in the context of Section 1 (6).

In Srikant v/s Puttaswamy, AIR 1966 Mys. 133 the court held that it is clear from section 1 (4) that the Act is limited in its application. It applies to the payment of wages to persons employed in any factory. A dry-cleaner's shop will not come under the definition of the word "Factory" nor will it be an industrial establishment for the purposes of Section 1(5) as defined in Section 2 (ii) of the Act. Therefore, employees working here cannot take recourse to the provisions of the Act. Whereas in Hindustan Journalists v/s Dinesh Avasthi, AIR 1957 M.B. 125, it was held that merely because the Employer keeps his goods in factory, it can not be said the employees are working in the factory and mere proximity to a factory can not turn the work-place, the factory.

By, a notification under section 1(5) of the Act, the provisions of the Act can be extended to all the "industrial concerns" which have been or may be declared to be factories under the Factories Act. However, it would be manifestly wrong to interpreted the words "may be declared to be factories" as factories capable of being so declared and would fall within the

purview of the Notification already issued by the Government. (Albuquereque v/s Dist. Judge, AIR 1968 Mys. 84)

If a person is employed in work incidental to factory but not in the factory itself, the Act is not applicable and the claim of unpaid wages is not sustainable. 44 FLR 427. The Dock Labour is not a factory or an industrial establishment and hence the Act is not applicable 1982 LIC 657. The Act is not applicable in the following cases.

(1) Co-operative Society (1997) 75 FLR 356

(2) Co-operative Bank'1991 LIC 655

(3) Educational institute 1991IICLR 105

(4) Insurance Company 1991 LIC 1082

The Act does apply to the following

(1) Food Corporation of India (1997) 77 FLR 84

(2) Dock Labour Board 1982 LIC 657

(3) Khadi and Village Industries 1985 LIC 1534

As discussed above, it is sufficient if person is employed in the factory and he need not be employed in the manufacturing process. (AIR 1957 MB 125) But if he is not working in a factory -and if he is working in the work incidental to the factory, the claim of wages is not sustainable Maya Galranising v/s Amiya Singh (44 FLR 427). Yet another view is that if a person is working in the pricints of the factory, he is a person employed in the factory and hence Act will apply (1968 LIC 141)

(6) Summarisation

To summarise, it can be said that:

(1) When it was found that the Employers were :

(a) not paying wages on time,

(b)making unauthorised deductions

(c) not recording over time wages in wage Registers

(d) not paying Bonus, dearness allowance etc.

(e) not maintaining the registers etc.

the Act was passed in order to correct the defects and regulate the payment of wages (on time) without illegal deductions,

(2) it created a **'right'** in workers to receive wages on time and **'obligation'** upon the Employers to pay wages,

(3) a forum was created to enforce the legal "right and obligations" created under the Act.

(4) a pecuniary limit of Rs. 1600A is laid so that employed persons receiving contractual wages of Rs. 16007- or less in a month (not inclusive of other payments or statutory payments with wages) can take the recourse to the machinery created under the Act.

(5) the application of the Act was made to persons employed :

(i) in factories or deemed factories

(ii) in Railways and

(iii) in industrial and other establishments.

It means persons working below the land, above the land, sea and air, engaged in maintenance, production/manufacturing and sale, are all covered up under the Act.

Definitions

Definitions is an important part of every act because it tells you precisely what dose the word under the act stands for its precise meaning relating to that act. So I have made an attempt to deal with definitions separately . It becomes easier to understand the act as well so students all geared to read the definition. So here we go…..

Synopsis

(1) Employed Person : Section 2 (i)

(2) Employer : Section 2 (ia)

(3) Factory Section 2 (ib)

(4) Industrial or other Establishments : Section 2 (ii)

(5) Wages : Section 2 (vi)

(1) Employed Person Section 2 (i)

Section 2 (i), as a matter of fact, does not define the term 'Employed Person". It only includes the legal representative of the employed person. Necessarily, therefore, the meaning of the term "Employed person" is not clear from the definition given in the Act and one has to fall on the industrial jurisprudence. There, it is well settled, that the relationship of "master and servant" between the two persons will make one person, the employer and the other, the employed person." But one must clearly bear in mind that only if there exists a 'Contract of Service', the relationship of master and servant can be inferred. No such relationship can be inferred where there is a 'contract for service'. The terms (1) master and servant (2) Contract of service and (3) Contract for service have been dealt with fairly in details in Book 1 of this compendium and hence not repeated here. The courts have taken the view that in order to find out whether a person is an employed person" or not, one has to turn to the Industrial Establishments (Standing Orders) Act (AIR 1956 Mad. 59)

In Ramaswamy vis Gemini Studies, AIR 1968 Mad. 49, the court laid own that in order to find out as to whether one is the employed person' or not, the definition of some other enactment (the Factories Act), cannot be relied upon. As such, even if one is .not a workman, under the Factories Act yet one can be the employed person under the Act. In Raj Bahadur (Dead, through L.R.) v/s Union of India, 1998 I CLR 649 SC) the legal representatives claimed wages for the period during which time the employed person factually did not work. According to Employers the Employed person was transferred whereat he did not resume work. As against this, the case of the other side was that the transfer order was 'cancelled by the civil court. The apex court on the facts of the case directed the employers to pay 50% wages.

(2) Employer: Section 2 (ia)

The term 'Employer' is also not defined in section 2 (ia). It only includes the legal representative of the Employers. However, as aforesaid, the term can be understood with reference to the relationship of master and servant and contract of service. The contract for service, contract of service and relationship of master and servant can be read in Book 1 of this compendium. In Swadeshi Cotton Mills v/s Labour Commissioner, 1997 (76) FLR 491, the court held that it is always the principal Employer

who is ultimately responsible to pay the wages. The petitioner can hardly resist this proposition as this is an obligation in law. It is a matter between the contractor and the principal employer to arrange for the payment.

(3) Factory: Section 2 (ib)

Section 2 (ib) adopts the definition of 'Factory[1] as defined under the 'Factories Act', 1948. It is clarified that the places to which the Factories Act is made applicable (under Section 85 of the said Act), such places will also be treated as factories for the purposes of this Act. It means, one is driven to read section 2 (m) and section 85 of the Factories Act, 1948. Section 2 (m) of the Factories Act reads thus :

Factory means any premises including precincts thereof:

(i) Where ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which manufacturing process is being carried on **with the aid of power** or is ordinarily so carried on, or

(ii) Where on **twenty or more workers** are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on **without the aid of power** or is ordinarily so carried on.

But does not include a mine subject to the operation of the Mines Act, 1952 or railway running shed.

The words used in the above definition, like power, manufacturing process and workers, are defined in the Factories Act.

Section 85 of the Factories Act reads as under :

85. (1) The state Government may, by notification in the official Gazette declare that all or any of the provisions of this Act apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that;

(i) The number of persons employed therein is less than ten if working with the aid of power and less than twenty if working without the aid of power or

(ii) the persons working therein are not employed by the owners thereof but are working with the permission of or under or with the permission of or under agreement with or such owner.

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

Explanation : For the purposes of this section, owner shall include a lessee or a mortgagee with possession of the premises.

(4) Industrial or other establishment: Section 2 (ii) The definition takes into its fold the following.

(a) Tramway or motor transport services for public or for goods

(al)Air transport services other than military naval or air force.

(b)Dock wharf or jetly

(c) Inland vessel, mechanically propelled

(d) Mine, quarry or oil field

(e) Plantation

(f) Workshops and other Establishments in which articles are produced, adapted or manufactured for the use, transport or sale.

(g)(i) Establishment in which Construction, Development or Maintenance of Buildings, Roads, Bridges or Canals, or

(ii) Operations connected with Navigation, irrigation or supply of **water** or

(iii) Operations relating to the generation, transmission and distribution of electricity or another form of power is being carried on and or

(h) any other establishment or .class of establishments as may be notified in the Gazettee by the Central Government or the State Government as is needed to protect the persons employed therein.

The term "Establishment" is of a wider import than the term factory and includes place of business or office. Where a Newspaper was printed at one premises and composed at the other, the latter was held to be falling under the definition given in the Act. (AIR 1955 All. 702) Similarly the Civic Department concerned with construction and development of buildings, bridges, roads, etc. falls under the definition (1983 II BLR 713). So also PWD is covered under the Act, State of UP v/s PA., PWA (1992 LIC 1644) However, the Dock Labour Board is not covered under the Act - Calcutta Labour Board v/s PWA (1982 LIC 657).

In Food Corporation of India v/s Special Judge, (1997) 77 FLR 84) it was held that the term "adapt" includes to make suitable or fitted or adjusted meaning thereby adapted with a view to their use, transport or sale is covered within the definition in the Act. It is clear that foodgrains and other stuffs are adapted at the FCI godown and as such the FCI is covered under the Act. In Matbar v/s Bhola Dutta, 1980 LIC 393, it was held that whether the industrial establishment is "Temporary" or "Permanent" is wholly irrelevant. If it is an 'industrial establishment,' even for a temprary period, it is covered under the Act. In this case, the contractor undertaking the construction had set up an organisation for a temporary period. It was held that he was covered under the Act.

(5) Wages: Section 2 (vi)

The definition of the term "wages" given in the Act is very exhaustive. It is in **Three Parts. One** is, giving meaning to the word "wages". The **Second** is the list of what it includes and the third is the list of what it excludes or does not include. In the first part of its 'meaning', the definition lays down that wages means :

all remunerations, may be by way of

(h) Salary

(ii) Wages or

(iii)Otherwise

Capable of being expressed in terms of money. It is payable on the fulfillment of the terms of employment.

In the second part it lists out as to what it includes. It is laid down in the definition that .the term wages **includes :**

(a) What is payable under award of the court/Tribunal or Settlement between the parties (Employer and Workman).

(b) Overtime Wages, Leave wages and Wages in lieu of Holidays

(c) Additional remuneration payable under the terms of employment like the Bonus, by whatever name it is referred to.

(d) Terminal Dues or any sum payable **under Law, con-tract** or **instruments,** but where time is not stipulated for the payment.

(e) Any sum payable under any scheme framed under any law for the time being in force.

In the .third part of definition, it is laid down as to what is **not included** in the term of wages. It is as follows :

(1) Bonus - Not as part of wages under :

(a) terms of employment

(b) Award

(c) settlement or

(d) order of a court.

(2) House Rent Allowance

Light Bills

Water charges

Medical expenses

other amenities or

other service charges excluded by the State – Governments.

(3) Contribution towards PF and the interest thereon.

(4) Travelling Allowances or Travelling concessions.

(5) Special expense by nature of duties performed by the workman and

(6) Gratuity other than specified in sub-clause (d)

The definition, as seen above, is exhaustive. It lays down what the term "means", "includes" and "excludes". No other meaning than that laid down in the definition can be assigned to the term wages (AIR 1956 MB 152) As the definition is exhaustive, one can not look to some other statute to ascertain the meaning of the term wages while dealing with the case under the Act. (AIR 1959 Mys. 916, AIR 1957 AP 725)

In D.P. Kelkar v/s Ambadas K. Bajaj, AIR 1971 Bom 124, it was held that the definition of wages is not limited to the remuneration payable only under the contract. It includes all kinds of remuneration, whether payable under a contract, an award, a settlement or any statute. Further, merely because 'the wage period is a month, it can not be said that the payments made otherwise than on monthly basis cease to be wages under the Act (AIR 1960 Pat 33)

In Purshottam H Jadye v/s V.B. Poddar, AIR 1966 SC 856, the apex court came to consider the term "instrument" used in sub-section (d) of section 2 (vi). The apex court then came to the conclusion that the term "instrument" ordinarily would refer to documents executed within the parties. But in the Act, considering its context in which it is used, the term is used in a wider sense. As such, a very comprehensive interpretation must be placed upon it to include even the Awards passed by the Industrial Tribunals in the adjudication under I.D. Act. Thus, if the Industrial Court has passed an Award in adjudication under I.D. Act, whereby workman are entitled to receive gratuity or Bonus, the same would fall under the term wages' flowing from the "instrument" and hence can be recovered under the Act.

In B.K. Jobanputra v/s B.S. Kalelkar, AIR 1965 Bom 146, it was held that wages mean a sum payable by way of determination of employment and payable under any law, contract or instrument providing for such payments without any stipulation as to time.

Amendment of 1957 - effect of The amendment in the definition was only this that the previous words, "if the terms **of the contract** of employment were fulfilled." were substituted by the words" "if the terms of employment **express or implied** were fulfilled." By this amendment, the scope of the definition was enlarged rather than curtailed, Manager, General Motors Assn. V/s Wasim Md. Khan, Affi 1968 Bom 395 (Pull Bench)]

(a) House Rent Allowance : In Div. Engr. GIF Rly v/s Mahadev, AIR 1955 SC 295, the apex court held that if the rules (framed by the employer) make it compulsory to pay HBA to all the employees, without any condition, it would fall in the definition of wages. But if HRA is paid in lieu of service quarters or if paid to only those employees who are posted in specified areas or in costlier cities or where deductions under Section 7 of the Act is permissible then such HRAs do not fall under the definition of wages.

(b) Bonus : In Bala-Subramanya Rajaram v/s B.C. Patel, AIR 1958 SC 518, the apex court held that the Bonus is covered by expression "remuneration" in respect of his employment or of work done in such employments. Thus Bonus is payable if the terms of contract of employment are fulfilled. But it cannot be said to be payable if the Bonus is payable under the Award of Industrial Tribunal. Howevers, in the later case in Purshottam H. Jadye v/s V.B. Poddar, AIR 1966 SC. 856, the apex court held that it is true that some times the terms prescribed by .the Industrial awards are treated as terms of a statutory contract which governs the relationship between the Employer and employees. But the description of award as a statutory contract is merely intended to emphasis the fact that terms prescribed by the award are enforceable as though they were terms of employment evolved by industrial adjudication for the parties. Therefore, it would not be reasonably possible to hold that the award which frames a scheme of gratuity can be said to amount to a contract within the meaning of relevant sub-section. When the legislature amended the definition in 1957, it obviously intended to widen the scope of the expression "remuneration" payable under the awards and accordingly the remunerations under the Award have been included within the definition. Having regard to the object which

the legislature had in mind in widening the scope of the definition, it would not be unreasonable to hold that the word "instrument" has a wider denotation in the context and cannot be confined to documents executed within the parties. It would include even the
awards made by Industrial court of competent jurisdiction and thus Bonus as well as the Gratuity can be recovered under this Act. [see also Junior Labour Inspector v/s Authority Under PWA, 1976 LLJ 511 (Pull bench)

In Payment of wages Inspector v/s Surajmal Mehta, AIR 1969 SC 590, the apex court held that the workers have a statutory right to recover Compensation under Section 25 FF of IDA (on transfer of undertaking). So also the workers can recover Retrenchment compensation and the Closure, compensation.

(c) Minimum Wages Act : Section 20 : In Town Municipal Council v/s P.O. AIR 1969 SC 1335, the apex court held that the Minimum Wages Act is primarily concerned with fixing of rates of minimum wages, overtime wages and the rates of payment for
work on a day of rest - and is not intended to be an Act for enforcement of wages for which provisions are made in other laws, such as the Payment of Wages Act and the I.D. Act. The purpose of Section 20 of M.W. Act seems to be to ensure that rates
prescribed under the M.W. Act are complied with. But if not then authority under Section 20 of the M.W. Act can be moved. However, if there is no dispute as to the rates of wages (payable under the M.W. Act or otherwise) the remedy is available under Section 15 of the P.W. Act or of payments are delayed or if there is an
illegal deduction from the wages payable under M.W. Act or under any other law, the remedy is available either under P.W. Act or I.D. Act. If the remedy under these statutes (P.W. Act & ID Act) is not adequate then the remedy of raising an industrial dispute (under the I.D. Act) can be availed of.

(d) Subsistence Allowance : If a government servant is suspended pending descriptionary Inquiry, he is entitled to subsistence allowance under Rule 151 of Bombay Civil Service Rules. Such deductions are not illegal deduction [State of Maharashtra v/s Devidas Khursunge, 1975 Mah. L.J. 174]

(e) Dismissal declared illegal: Wages can be recovered 1968 Mad L.J. 119 (F.B) : **Wages revised by Award of Industrial Tribunal** can also be recovered under the Act, Mohammed Qasim v/s Md. Samshuddin, AIR 1964 SC 1699.

In Baboo Huseein v/s N.P. Nopeny, 1979 I LLJ 103 the Gujarat High Court held that it is spacious to argue that the petitioner is not entitled to claim OT Wages. The petitioner had to keep himself at the beck and call of the employer and make him-self available during all the three Shifts, he being the boiler attendant, he must therefore, be considered as being on duty even if may not actually be at work. However, in State of W.B. v/s BachnMondal, 1977 LIC 616, the workman stated in his application for wages that he was assured by the superintendent that he would be given extra wages for the same. However, there is no pleading that it was a term of his employment. There was no evidence. On facts, the court held that overtime wages would not fall in the term of wages.

The following are held to be not included in the term of wages.

(f) Lay off Compensation :

AIR 1960 M.P. 370 AIR 1960 Bom. 201

Affi.1959Ker.334 1971 LIC 1356

(g) Grain Allowance :• The Grain allowed to be purchased at concessional rate is not wages. AIR 1957 Raj 78.

(h) Maternity Benefit: It is not wages AIR 1958 Bom. 262.

(i) Retaining Allowance : The allowances paid to persons during off season as retaining allowance is not wages. AIR 1967 All 146

If no person is designated as owner of factory, the occupier shall be deemed to be the owner. Kamal Kishor Mujhmwala vis Prescribed Authority, 1976 LIC 95

Payments and Deductions

The word payment and deduction is an important concept in the workmens compensation act. Lets stat with what are we going to study under this concept so first comes the synopsis.

Synopsis

(1) Responsibility of Payment: Section 3

(2) Wage Period : Section 4

(3) Time of Payment: Section 5

(4) Terms cash : Section 6.

(5) Deductions

(i) Payments without Deductions: Section 7

(ii) What the term "Deductions' mean?

(iii) Good and sufficient cause - what it means?

(iv) "Not Deductions"

(v) Prescribed Deductions

(6) Deductions on account of Tines': Section 8 read with Section 7(2) (b)

(7) Constitutional validity of the Bombay Labour Welfare Funds Act, 1953, vis-a-vis Section 8 (8) of PW Act

(8) Deductions for absence from duty : Section 9

(9) Deductions for .damages or loss: Section 10 read with Section 7(2) (c) & (O)

(10) Deductions for services rendered: Section 11 read with Section 7(2) (d)& (e)

(11) Deductions for recovery of advances : Section 12 read with Section 7(2) (f)

(12) Deductions for recovery of loans : Section 12-A read with Section 7(2) (ffi)

(13) Deductions for Payments made to Cooperative Societies and Insurance Scheme :

Section 13 read with Section 7(2) (j) & (k)

(1) Responsibility of Payment: Section 3

The Section 3 fixes the responsibility upon the employer. However, as there are several persons who may be roped in as {Employer, the Section takes care of all such eventualities and clarifies as to who exactly will be treated as the 'Employer' and fixes up the responsibility upon such persons to pay wages. It is laid down in Section 3 that the following persons will be responsible for the payment of wages :

(1) Manager - in a factory and one who is appointed so under Section 7 (1) (f) of the factories Act.

(2) Person - Responsible for the control and supervision of the industrial establishment

(3) Person - Nominated by the Railway administration

These persons or the authorities or the Employers are not responsible if the contractor is deployed to employ the persons be-cause then the responsibility shifts to the contractor.

The material date to fix the responsibility of payment of wages is not the date when the wages accrued but when the application is made, G. Laxman v/s L. Holland, AIR 1955 Bom. 431. Section 3 of the Act casts a duty upon the Employer to pay all wages (required to be paid) to his workers. However, for any reason whatsoever, if workers remain unpaid and their unpaid wages are accumulated for a period of three years with the Employer, the same are required to be paid over to the Labour Welfare Fund in the State of Maharashtra under Section 3 of the Bombay Labour Welfare Fund Act, 1953. In Bombay Dyeing and Mfg. Co. Ltd. v/s State of Bombay AIR 1958 SC 328, the provisions of Section 3 of the Bombay Labour Welfare Fund Act were challenged. It was argued that Welfare Fund Act is given an over riding effect and a statutory obligation is cast upon all the Employers to pay unpaid accumulations (of a period above three years) to the Welfare Board. Although such an obligation is created, the Employer is not given a 'discharge' from the obligation of paying wages to his workers. As a result, workers can claim wages under Section 15 of the PW Act. It is because, the Welfare Fund Act does not contain any provision to that effect. The absence of any provision in the Welfare Fund Act giving discharge of obligation of payment of wages to the workers was relied upon by the Appellant Employer to show that no substitution of Creditors was intended and hence the workers remained creditors of the Employer to the extent of their wages. As against this, it was contended that Section 15 provides that workers can claim their unpaid wages within a period of one year. Whereas Section 22 provides that **no court** shall entertain any suit for any sum recoverable under Section 15 of the PW Act. It means if wages are not recovered within one year, the Employer is discharged from his obligation to pay unpaid wages to his workers. The unpaid wages accumulated for a period of three years, are to be paid to the welfare Board. In such eventuality, it will have to be presupposed that the PW Act and welfare fund Act are Co-extensive.

It was pointed out by the Appellant Employer that under proviso to Section 15 of the PW Act, on sufficient ground, delay can be condoned. Therefore, even after a period of limitation of one year, the worker can claim his unpaid wages from the Employer before the prescribed authority under the PW Act. Further, Section 3 of the Welfare Fund Act makes no distinction between claim for unpaid wages which are barred by limitation and those which are not. Still further, when a debt becomes time barred, it does not become extinguished but unenforceable in a court of law. It means, debt in the form of unpaid wages remains un-discharged. The result is that an employer gets no discharge from his workers even though; under Section 3 of the Welfare Fund Act, he has paid off wages to the Welfare Board

The apex Court held that Section 15 of the Bombay Labour Welfare Fund Act, 1953 is violative of Article 19 (1) (g) the Constitution of India. It means the Employer's liability under Section 3 of the PW Act continues and remains unaffected by payment in any other manner than provided under the PW Act.

In Girni Kamgar Sangharsha Samiti v/s Matulya Mills Ltd., 2000 II CLR 135, it was held that financial inability is no defence for non payment of wages of workers.

(2) Wage Period - Section 4

By Section 4, a statutory duty is cast the person responsible to first of all decide as to what be the measure of duration for paying the wages, Daily, weekly fortnightly, monthly or something else. A period can be longer or shorter than a month. Once, this is decided, the worker will have to be paid accordingly. In case, it can not be said that wages have to be paid for a period lesser than one month. It is clear from the Section which is a month only. [Bhinsen v/s Brijhnath, Air 1959 MP 401&Lanbanga Lata Devi v/s Azizullah, 1958 II LLJ 623.]

The apex court in D Casta v/s B.C.Patel,AIR 1955 SC 412 has noted that the wage period is a month. Necessarily it means that wage period can even be a month. Indeed in several cases, it was held that wage period can be even a month.

(3) Time of Payment: Section 5

Section 5 lays down the time of payment of wages as under:-

a. Factory Railway or other Industrial Establishment Employing:

Less than 1000 employees

On any working day before expiry of 7th day of wage period.

More than 1000 Employees

On any working day before expiry of 10day of wage period.

b. Dock, Wharf, Jetty or Mine

On any working day before the 7th day after Completion of final tonnage account of the Ship or Wagon loaded or unloaded.

c. On termination of service

On any working day before the 2° day of termination.

Sub-section (3) of Section 5 invest power in state government to exempt from the provisions of this Section to

(a) Railway - other than factory

(b) Public works Department in respect of daily wage earning workers. In case of State PWD, it can be only with the consultation with the central government.

It is needless to record that if the due date of payment of wages falls on a holiday, wages should be paid earlier and not on the first working day following the holiday.

(4) Terms Cash - Section 6

If a person "wants' rice, he has to find out one who offers him rice. There may be a person who has rice but he "wants' wheat in exchange. If the person having rice can offer wheat, the transaction between two can take place. It means, there must always be a **'double coincidence of wants'** and no transaction can take place without the wants of both parties existing simultaneously for each other's product. In **Economics,** it is called as a 'Barter System'. The modern world has left it long behind long before. The concept of money has come in. Money can resolve the difficulty of 'double co-incidence of wants' by acting as a medium of exchange. It bifurcates the buying and selling activities. In a money economy, you can buy with money selling anything and sell anything for money without buying anything at the same time. However, the term **'money'** is too wide to be, expressed, or explained in precise terms. But obviously, it means, currency -prescribed by law or by the government in power. In other words, it must be **a Legal Tender.** Indeed, now even cheque have come to be recognised as legal tender, as long as it is not dishonored.

Section 6 incorporates and translates the above concept of Economics into reality section 6, accordingly lays down that the wages must be paid in current currency. It is however, permissible, to pay wages by cheque or directly crediting the Bank account of the wage earners but only with the express written consent of the wage earner

(5) Deductions

(i) Payment without deduction: Section 7: It must clearly be understood first that Section 7 itself states that wages must be paid in full and without deduction of whatsoever nature. Only as an **Exception to** the general rule, it is provided that if not without deductions, wages must paid with deductions. But then in that case, only the deductions listed in section 7 can be made in the manner and method specified from Section 8 to 13 of the Act. Deductions made if not listed in Section 7 are treated as •unauthorised' or **illegal deductions.** In Mansukh Gopinath Jadhav v/s W.M. Bapat, 1982 I LLJ 144, it was held that Section 7 makes it clear that the employer can not deduct wages due to the employee but in certain circumstances such a deduction can be made with the consent of employee. In other words, Section 7 does not create a blanket ban on deduction but provides for deduction in certain cases Subject to the approval of the employees.

The one of the object of the Act is to prohibit improper deductions in wages. Section 7 read with Section 23 makes every deduction, whether under a contract, custom, usage or otherwise but not authorised by Section 7 to be illegal (1964 I LLJ 671). Further, a give-and-take relation between the Employer and Employees may exist but the Employer can not touch the wages for the recovery of his private dues from the employees. It is open to him to seek Civil remedy like any other claimant (1962 II LLJ 242)

The apex Court in Dilbag Rai Fairy v/s Union of India AIR 1974 SC 130 considered the meaning of the phrase **Deduction from wages'.** It held that the 'deductions from wages' is not defined in the Act. Some illustrations of such deductions are, however, given in Section 7. Nevertheless, the phrase Deduction from wages' means the same thing as the 'Deduction of wages'.

In Dinaram v/s Kakejan Tea Estate, 1963 I LLJ 267, the apex Court held that the adjustment in wages resulting in reducing in wages is no deductions. Whereas in Jankiram v/s Addl. (WC. 1978 LIC 551 workmen began to get low wages on rationalisation. The workmen thereupon contended that it amounted to an illegal deduction. The Madras High Court negatived it and held that it was no illegal deduction.

In S. Ghosh v/s Dulia, AIR 1967 Raj 145, its was held that the standing orders framed under Industrial Employment (Standing Orders) Act have the force of law. If, therefore, a deduction is validly made under standing order of the company as a result of certain disciplinary proceedings taken against the worker, it can not be said that the deduction was illegal on the ground that the standing order did not provide for the right of appeal against the penalty of withholding increment.

(ii) **What the term 'Deduction' means?** The **Explanation**

I to Section 7 gives the meaning of the term 'Deduction.' It says that -

- Every payment
- made by Employee
- to the Employer (to his agent) is deduction.

Thus if an Employee has to pay from his wages to his Employer, it is deduction, under Section 7 of the Act. Undoubtedly, what the Employer recovers or deducts from the wages of his employee, must be for 'good and sufficient cause' only.

(iii) **'Good and sufficient cause' — what it means?** In

Div Personnel Officer v/s Chhotey Lai Saxena, 1971 I LU 313, the expression **"for good and sufficient cause'** came to be considered by the Allahabad High Court. It held that the expression was added to show that the order of penalty must not be arbitrary. In any case, the prescribed authority is not empowered to sit in judgement over the order of the Employer. In Pest Control (I) Ltd. v/s C.D. Konah, 1998 H CLR 659 the Bombay High Court also took the similar view that without holding a full fledged domestic inquiry the Employer can deduct wages on account of unauthorised absence from duty. In the case before the Bombay High Court was not under the PW Act but it was under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. However, if deduction can be effected without holding a Domestic Inquiry under the MRTU Act it is

so even under the PW Act. But he Madras High Court in Pandian Roadways Corpn. Ltd. v/s D.C.L. 1997 (77) FLR 543 made it quite clear that no domestic inquiry need be proceeded for routine and normal deductions. In the case before Madras High Court was about deductions for absence from duty. The, court held that it is normal to make such deductions and an inquiry is not necessary. According to it Domestic Enquiry under the principles of natural justice is necessary only when deductions are-penal in nature.

In Bank of India v/s T.S Kelewala, 1990 I CLR 748 apex court held that standing orders or the service rules provide for proceedings for the lapse on the part of a particular individual or individuals when the misconduct is disputed. As things stand today, they do not provide a remedy for mass misconduct which is admitted or cannot be disputed. Hence, to drive the management to hold disciplinary proceedings even in such cases is neither necessary nor proper. The management should be deemed to have the requisite power to deal with them consistent with law and other service conditions. The case before the apex court was about the deduction arising from employees going on strike. The apex court therefore held that no disciplinary proceeding is necessary in such cases. However in the very same case the apex court was called upon to consider the requirement of holding disciplinary proceedings in case the employees resort to 'go - slow.'

The apex court held that by its very nature the proof of 'go-slow' particularly when it is disputed, involved investigation into various aspects such as the nature of the process of production, the stages of production and their relative importance, the role of the workers engaged at each stage of production, the pre-production activities and the facilities for production and the activities of workmen connected therewith and their effect on production, the factors bearing on the average production etc. The 'go-slow[7] further may be indulged in by an individual workman 'or only some workman either in one section or different section or in one shift or both shifts affecting the output in varying degrees and to different extent depending upon the nature of product and the production process. Even where it is admitted, go-show may in some case present difficulties in determining the actual or approximate loss, for it may have repercussions on production after the go-slow ceases. The court then held that proper inquiry in accordance with the principles of natural justice is necessary.

(iv) **Not Deductions : Explanation II** lays down that the following are not Deemed to be deductions from wages.

(i) Withholding of

- Regular increment
- increments at the efficiency bar
- promotion to higher post or scale

(ii) Reduction to

- Lower post or scale
- Lower stage in time scale and

(iii) Suspension.

(v) **Prescribed Deductions** : Sub-section 2 of Section 7 authorises the Employer to make the following (and no other) deductions from the wages of his workman. Those are DEDUCTIONS FOR.

(a) Fines

Clause (a) of Section 7 (2) has to the be read with Section 8. The detailed discussion is under the heading "Deductions" on account of Fines."

(b) Unauthorised absence/leave.

- Leave in excess of permissible limits
- Absence from duty. -

Clause (b) has to be read with Section 9. The detailed dission is under heading "Deductions for absence from duty".

{g) Loss of goods (or damage to it) expressly entrusted in the custody of the workman. Loss of money

For which workman is accounted, for But in both cases (Loss/ damage of goods / money) negligence/default has to be directly attributable to the employed person X Clause (c) has to be read with Section 10 and also clause (o) given below. The detailed discussion is given under the heading. "Deductions for damages or loss."

(d) House accommodation supplied by or on behalf of the Employer. Clauses (d) and (e) have to be read with Section 11. The detailed discussion is given under the heading "Deductions for service rendered".

(e) Supply of amenities /service other than tools and raw materials used for the work of the Employer.

(f) Recovery of advances including advances for TA. or CA.

- Interest on advances
- Adjustment for over payments of wages.

Clause (f) has to be read with Section 12. The detailed discussion is given under the heading "Deductions for recovery of advances"

(ff) Recovery of loans given from authorised (labour) welfare fund.

(fff) Recovery of loans

- given for building house
- for any purpose approved by the State Government.
- Interest on loans.

Clause (fff) has to be read with Section 12-A

(f) In**come Tax.**

(g) Recovery under the Court order or any competent authority.

(h) Dues of loan given for cooperative Society from

PF under PF Act

- PF as defined under I.T. Act
- PF as approved by or on behalf of government until continuance of such approval.

(j) Payments to

- Cooperative societies-approved by government
- Insurance premia of post office. Clause Q) has to be read with section 13. The detailed discussion is given under section 13.

(k) **With consent in writing**

- LIC premia
- purchase of Government Securities
- Post office savings account deposit payments

(kk) **with consent in writing** Contribution to

- **any fund created** by Employer or trade Unions **for the welfare of the employed person** approved by Government.

(kkk) **With consent in writing Registration fees of a** registered trade union.

(I) Insurance premia on fidelity Guarantee Bonds.

(m) **Recovery by railways** for loss on account of accepting **Counterfiet or base coins** or forged currency notes.

(n) **Recovery by railways** for loss on account of failure to

- (make) invoice
- (prepare) Bill
- Collect appropriate charges of
- Fares
- Freight
- Wharfage & carnage
- Sale of food in catering establishment.
- Sale of commodities in Grainshop

(o) Recovery by Railways for losses for

- Rebates or
- Refunds

incorrectly and negligently granted by the employed person clause (d) has to be read with section 10.

(p) **With consent in writing** ' Contributions made to:

- PM's National Relief Fund or
- the other notified funds

(q) **Contribution to** any Insurance Scheme framed by the Central Government.

(r) **Any amount payable** under any law for the time being in force by the workman.

No doubt the above deductions are legal under section 7 of the Act, yet the entire amount of wages can not be appropriated towards the above deductions because something must be left for the employed person to live on. As such, Sub-Section (3) clearly lays down that :

(1) deductions towards cooperative society in clause (j) can be only upto 75% of wages and/ or

(2) In any other case 50%

(3) But if sum total of all deductions comes to 75% as per clause (g) or 50% under other clauses, the balance can be deducted gradually or in the prescribed manner but not at a time. However, take a case of a worker who has resigned and the Employer adjusts his entire Salary towards loan taken by the worker for constructing a house. The worker can not take a resort to provisions of Payment of wages Act because after resignation there exists no relationship of Employer-employee and their relationship is governed under the Contract Act.

In some court proceedings, the court had awarded cost. The Employer sought to recover it from the wages of his employees. The Employee challenged it under the Act. It was held that not any cost can be recovered. Only that cost which is directed to be recovered from wages can be recovered under Section 7(2) (h) of the Act, (1962 IILLJ 2)

In Karnataka Bank Employees Association v/s Commissioner of Labour, 1981 LLJ 97 the Court was called upon to consider whether the management Bank can effect deduction for the Union subscription from the Salary of the employees. The court held that the deduction was for the betterment of the employees and as such, it can not be characterised as a deduction against the interest of the members of the association. (It was all the more so when section 7(2) (kkk) allows such deductions). The Court upheld the deductions.

(6) Deduction on account of fines': Section 8 read with section 7(2)(b)

Very briefly stated, Section 8 deals with

(i) Conditions under which fine may be imposed.

(ii) Mode of recovering Fines

(iii) Maintaining of a Register of fines and

(iv) Purpose for which fine can be utilized.

It should thus be clear that Section 8 deals with **Details of** Fines as under:

(1) No fine can be imposed upons person under the age of 15 years (clause 5)

(2) No Fine can be recovered in instalments and in any case, not after 60 days (sub-clause 6)

(3) Before any act of omission or commission is made penal, prior approval of the State Government or the prescribed authority in respect thereof if necessary (clause 1)

(4) After approval, a Notice of penal acts has to be displayed in prescribed manner in the premises (clause 2)

(i) on which employment is carried on &

(ii) in case of railway, at the prescribed place or premises.

(5) A show Cause Notice calling upon the employee to explain as to why Fine Should not be imposed has to be given before any Fine is imposed (clause 3)

(6) Fines can be imposed only in accordance with the laid down procedure (clause 3)

(7) Total Fine in one wage-period shall not exceed 3% of wages of that period (clause 4)

(8) The Employer has to maintain a Register of Fines and record in it all the Fines and Recoveries made by him (Clause 8)

(9) (i) All fines Recovered have to be paid over to Welfare Fund established under the Bombay Labour Welfare Fund Act.

(ii) If that Act is not applicable, the Employer should create a separate Fund for that with prior approval of the State Government and deposit it in that Fund (clause 8)

(iii) When the persons are employed in/upon railway / factory or industrial or other establishment, The Fines/Recoveries have to be credited to a common Fund (Explanation)

(10) All fines/recoveries from the employees must be applied to for the Welfare of the employees or only to such purposes as is approved., by the prescribed authority, (clause 8 Explanation)

(11) Every Fine is the Fine for the day on which the misconduct was committed for which the said Fine is levied.

(7) **Constitutional Validity of the Bombay Labour Welfare Fund Act, 1953 vis-a-vis. Section** 8(8) **of PW Act.**

As aforesaid sub-section (8) requires that all Fines and Recoveries from the Employees under the same Employer be credited to a Fund created (for the purpose) with the prior approval of the State Government. But where the Bombay Labour Welfare Fund Act, 1953 is applicable, the said Fines/Recoveries have to be paid over to the Labour Welfare Fund under that Act. The Employer, therefore **impugned** the (Bombay Labour Welfare Fund) Act. It was contended by the Employer that the impugned Act deprived him of h**is right** of being Trustee of the Welfare Fund especially created for the employees of his company and it then vests with the Labour Welfare Board. Further, while under Section 8 of the PW Act, the beneficiaries are his own employees only, under the impugned Act, even the other employees are in eluded. As such, **there is a substantial deprivation** of "property" which offends:

(A) Article 31 (2) of the constitution of India, (as was held in State of W.B. v/s Suboth Gopal, 1954 SCR 587 and Dwarkadas Shrinivas v/s Sholapur Spg and Wvg Co. t,td., 1954 SCR 674 **or**

(B) Article 19(1) (f) of the Constitution of India because there was an unreasonable interference with the "right to property".

The apex court did not agree with these arguments and took the view that the Trust under section 8(8) of the PW Act is the creation, not of the Employer, but of the Legislature which gave employees certain rights which they did not have before. What the Legislature can give, can take it away or can modify it. The Employers have no right in the Fund, they are merely trustees of that Fund. As such, the Employer does not stand to lose anything if the very same fund is given over to the Welfare Fund established under the impugned Act and the right of Employers are in no way infringed. [Bombay Dyeing & Mfg. Co. Ltd. v/s State of Bombay AIR 1958 SC 328]

In Mir Mohammed Haji Umar v/s Div Supt., AIR 1941 Sind. 191, it was held that the word Tine' is used in its ordinary meaning. As such "penally" is nothing but the Tine'. The court also held that every cutting of pay is not deduction of fine. It must be by way of penalty and if that be not so, no deduction can be made. In KP. Mushram v/s B.C. Pattt, AIR 1952 Bom. 235 it was held that the Fines permitted or deductions of Fines must be only those which are covered under Section 8 of the Act.

(8) **Deductions for absence from Duty: Section 9**

(1) Section 9 permits the Employer to make deductions for absence from duty and it lays down :

(a) Conditions in which deductions can be made for absence from duty.

(b) amount of such deductions:

(j) for ordinary absence and

(ii) for concerted absence.

(2) (a) Stay-in-strike,

(b) Refusal to work

(c) Not working for any other reason shall be "Deemed Absence'.

(3) Deduction shall be on **pro-rata** basis, means, if an employee is absent for a day, his wages will be deducted for that day. If employee, is on monthly basis his one-day's wages will depend upon the number of days in the month 30, 31, 28 or 29. Similarly deductions for late coming will be proportionate to the number of hours of Late coming. However in Prakash Chand Johari v/s In-dian Overseas Bank, 1987 II CLR 41 the employee came and worked for last day and on the another day he merely came and went away. The Employer deducted ways for two days and the Court upheld it on the principle of "No work NO pay."

In D. Badiah v/s Sec. Indian Detonators Ltd., 1976 II LLJ 247, it was held that even though section 9(2) does not provide for any notice being given before a deduction is made, deduction, if penal in nature, would require notice before affecting such deduction under the principals of natural justice.

In Bank of Indian v/s T.S. Kalewale & Ors., 1990 I CLR. 748 before the apex court were two appeals involving one common question of law, viz. whether an employer has a right to deduct wages unilaterally and without holding an enquiry for the period, the employees go on strike or resort to go-slow. The first appeal was a case of strike and the second appeal was a case of Go-slow. In the first appeal Bank employees were on strike for four hours and their one day's wages were deducted, while in second appeal, the workmen resorted to go-slow during a month and wages for the entire month were not paid. Since the Bank was a nationalised Bank and-a 'State' within the meaning of Article 12, the action of the Bank was directly challenged in the High Court under Article 226 of the Constitution of India.

The High Court took the view, firstly that neither regulations nor awards nor settlement empower the bank to make the deductions, and secondly in justice equity and good conscience the bank could not, by the dictate of the impugned circular, attempt to stifle the legitimate weapon given by the law to the workers to ventilate their grievances by resorting to strike. The High Court further took the view that since strike and demonstrations were not banned in the country and despite the inconvenience that they may cause, they were recognised as a legislate form of protest for the workers, the circular acted as a deterent to the employees from resorting to a legally recognised mode of protest. According to the high court the circular even acted as an expedient to stifle the legitimate mode of protest allowed and recognised by law. The deductions were thus held

to illegal. **Apex court considered the decided cases cited at the Bar on the point and stated as follows.**

Where the contract standing orders or the service rules/ regulations are silent on the subject, the management has power to deduct wages for absence from duty, when the absence is a concerted action and the absence is not disputed. Whether the deduction will be pro-rata for the period of absence or will be for a longer period will depend upon the facts of each case, such as whether there was any work to be done in the said period, weather the work was in fact done and wheather it was accepted and acquiesced in, etc.

It is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for the mere attendance that the wages/salaries are paid. For the same reason, if the employees put in the allotted work but do not, for some reason may be even as protest, comply with the formalities such as signing the attendance register, no deduction can be effected from their wages. When there is a dispute as to' whether the employees attend the place of work or put in the allotted work or not, and if they have not, the reasons therefore etc. has to be investigated by holding the inquiry into the matter. In such cases no deduction from the wages can be made without establishing omission and/ or commission on the part of the concerned employees.

When the contract, standing orders, or the service rules regulations are silent but the enactment such as PW Act providing for wage cuts for the absence of duty is applicable for the establishment concerned, the wages can be deducted under the provisions of such enactment

A legal strike may not invite disciplinary proceedings, an illegal strike may do so, it being a misconduct. However whether the strike is legal or illegal the workers-are liable to lose wages for the strike period. The liability to lose wages does not make the strike illegal as a weapon or deprive the workers of it. When workers resort to it they do so knowing fully well its consequences. During the period of strike, the contract of employment continues but the workers withhold their labour consequently they cannot expect to be paid.

By it very nature, the proof of go-slow, when it is disputed, involved investigation into various aspect such as the nature of process of production, the stages of production and their relative importance, the role of workers engaged at each stage of production, etc.

The deduction of wages for go-slow may therefore present difficulties which may not be easily resoluble when therefore wages are sought to be deducted for go-slow, the quantum of deduction may become a bone of contention in most of the cases leading to an industrial dispute to be adjudicated upon by an independent machinery, statutory or otherwise. It is necessary to emphasis this because unlike in the case of a strike where a simple measure of a pro-rato deduction may provide a just and fair remedy, the extent of deduction of wages on account .of a go-slow action may in some cases raise a complex question. Once go-slow is proved those guilty of it have to face the consequences which may include deduction of wages or even dismissal from service.

In National Textile Workers Union v/s Shree Meenakshi Mills, 1951 II LLJ 516 it was held that when the workers absented themselves en-bloc, the fact that they become suspicious and panicky would not be a reasonable cause in the eyes of law if they stay away from work. The absence will be covered under section 9 of the PW Act.

In Jerry Sebastian Perreira v/s Badshah, 1960 II LLJ 99 the court held that if the employer declare a lockout, the employees are entitled to make a claim under this Act if their wages are deducted by the employer.

In Pandian Roadways Corporation Ltd v/s DCL, 1997 (77) FLR 543 the court held that a prior opportunity need not be given to an employee before making deductions from wages under section 9 for absence from duty. The court further held that the deduction from absence is normal deduction and not a penal deduction and hence principles of natural justice are not applicable to the normal deduction of wages under Section 9 (1) of the Act.

In Chattisgarh Kkadon Karkhana Mazdoor Union v/s Union of India, 1997 (75) FLR 806 the employees were on strike for two days but the management deducted wages for 8 days under Section 9(2). This conduct of the management was challenged as deductions were made without hearing the employees and that the Section 9(2) is **ultra vires.** The division bench of the Madhya Pradesh High Court remanded the matter and kept the issue of ultra vires open.

In G.M. India Cements Ltd. v/s N.S. Subbramanian, 1998 I CLR 93 it was held that there are two pre-requisites for invoking provisions of section 9(2). One is that there must be a strike without notice and the second is that the strike must be without reasonable cause.

In Assam SRTC v/s Nalini Ranjan Aditya, 1992 II CLR 266, the employee had resigned. But his resignation was not accepted. Nevertheless, the employee did not resume his duty and claimed wages. It was held that since relationship of master and servant had continued to subsist until resignation was accepted, the employee was entitled to has salary. However, as the employee did not report, the Employer was entitled to deduct wages but only upto 50% for absence from duty. See also Pest Control (I) Ltd. v/s C.D. Konale, 1998 II CLR 659 and Pandian Roadways Cor-poration Ltd. v/s D.C.L., 1997 (77) FLR 543.

In Municipal Corporation of Greater Bombay v/s N.L. Abhyankar, 1979 II LLJ 258, it was held that while it is correct that no deduction can be made from the wages other than those which have been set out in section 2 of the P.W. Act, Sub clause (b) of
sub-section (2) of section 7 clearly allows deductions required to be made by orders of the court. It cannot be denied that the Labour Court and Industrial court are competent to make the order for deduction. In the instance case, the union wanting the Employer
to collect levies from the Employees and remitting the same to it. When the Employer refused, the union moved the Labour Court which ordered such collections by the Employer. The said order of tie Labour Court was impugned before the Industrial

Court. But it was confirmed by the Industrial Court. Hence the orders of the two Courts below were challenged in the High Court in Writ Petition in which the above ruling was given.

In Dharam Singh Rajput v/s Bank of India, 1979 LIC 1079 the employer deducted wages for the whole day for the absence of duty for a part of the day. The court held that under Section 16 of Punjab Shops and Commercial Establishments Act read with Sections 7(2) (b) & 9 of the P:W. Act, the employer is entitled to deduct wages for the whole day.

(9) **Deductions For Damages or Loss: Section 10 read with Section** 7(2) (c) & (o)

While section 7 permits deduction for damage to goods or loss of money, Section 10 lays down the conditions under which the deductions for the said damages or loss can be mode. The conditions are:

(a) Deduction shall not exceed the amount of damages or loss caused to the employers.

(b) Deduction shall be made only after issuing show cause notice calling upon" the employee to explain as to why deduction should not be effected.

(c) Employer has to maintain a register as may be prescribed and record the deductions made by the employer in the said register.

It must be borne in mind that Section 10 can not be read in isolation of Section 7(2) (c) and (o) of the Act.

In Southern Roadways v/s Satyanarayanan Raja, 1970 LIC 1470, it was held that the deduction under section 10 has to be proceeded by an opportunity afforded to show cause against the proposed deduction.

Goods Expressly Entrusted I or the Custody

Section 10 read with section 7 makes it abundantly clear that no deductions can be made unless goods are expressly entrusted to the employed person for custody and he loses it or damage is caused to the goods. It is therefore necessary to understand the term 'Expressly Entrusted' for custody. The two sections (7 & 10) lay down that in order to deduct wages, the goods must have been entrusted in the custody of the employee. Necessarily therefore if goods are not expressly entrusted; the employee cannot be held responsible for the loss or damage. So is the case with money. Once the entrustment is proved another ingredient which is necessary is that the "damage or loss should be directly attributable to the employee's neglect or default. Indeed, if there is no neglect or default, no deductions can be effected even if goods have been expressly entrusted for the purposes of custody. So is the case with money.

In Rampur Engineering Company Ltd v/s City Magistrate, AIR 1966 All, 544, it was held that when the employed person is given equipment & tools there is no entrustment for the custody. In State of Madras v/s Ramaswamy, AIR 1958 Madras 585 the court explained the terms "expressly entrusted" and stated that if it is clear or apparent that there is an entrustment it is an ex-pressed entrustment for the purpose of clause (C). In this case a bus was placed in the charge of the driver for the purpose of being driven. As such it was express entrustment to the driver.

In Sri Jagannath Bank v/s Khadi & Village Industries, 1995 LIC 923 the employee was found guilty of misappropriation of huge amount. The court held that since employee was responsible to account for the amount coming in his hands, provision of Sec-tion 7(2) of the Act was applicable and the Employer was entitled to deduct 50% wages on account of misappropriation.

(10) **Deductions for services rendered: Section 11 read with Section** 7(2) (d) and (e).

We have seen in section 7 above that the employer is permitted to make deductions from the wages of his employee for :

(d) House accommodation supplied by or on behalf of the employer and

(e) supply of amenities service, other than tools and raw materials used for the work of the Employer.

Section 11 now states that mere giving of such house accommodation or the amenities or service is of no consequence unless the employee takes the benefit of the same. Further the value of such supplies made by the Employer can not be more than the actual value. In other words the Employer can not charge more from the employee and pay or spend less and thereby derive profit in the process. Still further Section 11 lays down that it can be done on such conditions as the State Government may impose. It thus brings control on deduction under clause 7(2) (d) and (e) of the Act. Indeed and in no case, sub-section 3 of section 3 can be over looked which says that the Employer cannot deduct more than 50% of the employees wages. However, in Manager Rajapalayan Mills Ltd v/s Labour Court, 1987 II CLR 40 the employee resigned from service. The Employer adjusted salary towards house buildings loan. The court held that after resignation, relationship as Employer and Employee ceases and parties are governed by Contract Act. As such Section 7(3) will not apply and hence the Employer can adjust the entire amount.

In M. Balusundaram v/s Financial Adviser, S. Rly., 1981 I LLJ 414, the Employer deducted profession tax. It was held that condition precedent for the exercise of the power conferred on the Employer under Section 11 of the PW Act, as applicable to Madras State is that there should be a requisition in writing by the local authority. As no such requisition was given, the deductions were held not tenable. However, on the facts of the case, no relief was granted to the petitioner.

In Divisional Engineer GIF Railway v/s Mahadeo Raghoo, 1955 I LLJ 359-362, the Railway Employee was not given House Rent allowance. As such contending that non payment of HRA amounted to an illegal deductions. The employee claimed the same under the Act. The apex court had that the grant of house rent allowance does not create an indefeasible right in the employee at all places wherever he may be posted and in all circumstances, irrespective of whether or not he has been offered Government Quarters. The rules which must be included in the terms of contract between the employer and employee contemplate that an employee posted at one of the specified place would be entitled to HRA, but as soon as he is offered Quarters for his accommodation, he ceases to be so

entitled, whether he actually occupies or does not occupy the Quarter offered to him.

The HRA is admissible only so long as an employee is stationed at one of the specified places and has not been offered Government Quarters. The rules distinctly provide that allowance will not be admissible to those to who occupy Government Quarters or the those to whom such Quarters have been offered but who have refused to take advantage of the offer. Once an employee of the description given above has been offered suitable accommodation and he has refused it, he ceases to be entitled to the HRA and that allowance thus ceases to be "wages" within the meaning of definition in the Act because it is no more payable under the terms of the contract. Sub-section (2) of section 7 categorically specifies the heads under which deduction may law-fully be made from wages. Clause(d) of this sub-section has reference to deduction for house accommodation supplied by the Employer and Section 11 provides that such a deduction shall not be made unless the house accommodation has been accepted by the employee and shall not exceed the amount equivalent to the value of such accommodation.

The definition of wages also excludes value of house accommodation referred to in SS 7 and 11 as aforesaid. The Legislature has used the expression "value of any house accommodation'' in the definition of wages as denoting something which can be deducted from wages. The one excludes the other. It is thus clear that the definition of wages under the Act can not include the value of any house accommodation supplied by the Employer to the Employee otherwise it would not be legally permissible deduction from wages. It is equally clear that HRA which may, in certain circumstances, be included in "wages' is not the samething as the value of any house accommodation referred to in the Act. That being so, there is no validity in the argument that Rule 3(1) of the Railway is inconsistent with the provisions of Ss. 7 and 11 of the Act.

(11) Deduction for recovery of advances: Section 12 read with Section 7(2) (f)

Clause (f) of sub-section (2) of Section 7, as is seen above, refers to recovery of **advances,** including T.A. or C.A., interest on advances and adjustment for over-payments'. Whereas, Section 12 gives **Conditions** upon which these recoveries can be made. Those (conditions) are as under :

- Recovery of an **advance given before employment**

  No recovery can be made of advances given for travelling expenses.

- Recovery of an **advance given after employment**

  Recovery can be on such conditions as the State Government may impose.

- **Recovery of an advance against future wages**

  Recovery can be subject to the rules made by the State Government. The Rules made should relate to :

(1) The extent to which advances may be given and

(2) Instalments by which advance can be recovered.

In Chandrashekhar Banerjee v/s Union of India, 1995 LIC 1305, a loan was given for the construction of a house. However, no construction was raised. In the loan agreement between the employer and employee, it was provided that the entire amount of loan will be recoverable from wages in case of non-utilisation of the loan. As per this clause, the company started recovering the loan through salary giving only Rs. 5/- p.m. to the Employee towards his salary. This was challenged by the employee. It was held that the impugned conduct of the company was unreasonable because entire salary was taken away and it was almost denied to the employee. The court then permitted 50% deduction from the wages. Whereas in The Manager,Rajapalayam Mills Ltd. v/s L.C., 1987 II CLR 40 the employee resigned from service. The employer adjusted salary towards house building loan. Claim was made by the Employee for payment of the Salary. It was held that after resignation, relationship as Employer and Employee ceases and the parties are governed by Contract Act. Provisions of PW Act will not apply and as such, the employer can adjust the entire amount due on account of wages.

In Spun Silk Mills v/s Parathasathy, 1997 LIC 1431 certain employees of the Petitioner agreed with the financial company to purchase the consumer durable on **"Hire-purchase"** and that instalment of purchase money would be deducted from wages by the Petitioner and would be paid to the Financial Company. As per that agreement, the employees had purchased T.V. sets, and seven instalments were deducted from their wages. However, later on, they contended that such deductions were illegal. It was held that the deduction by the management Squarely fell under Section 7(2) (f) of the Act and not illegal.

(12) **Deductions for recovery of loans: Section 12-A read with Section 7(2) (fff)**

Section 12-A has to be read with section 7(2) (ffi) which relates to recovery of loan granted for house building or for other purposes. This immediately calls for consideration of clauses (f) (ff) and also clauses (d) (e) (i) and (j) because all these clauses are related to housing loans. These clauses are set out as under to take a stock of all these provisions.

(d) Deduction for House accommodation supplied by

(1) Employer

(2) Government

(3) Housing Board set up under any law or

(4) Authority engaged in subsidised house accommodation.

This clause refers solely to an accommodation and not to any loan or advances for that.

(e) Deductions for amenities services supplied by Employer (and employer alone)

This clause does not restrict itself to loans, advances or accommodations only but also includes other things which can fall in the term amenities/ services.

(f) Deductions for recoveries of advances of whatever nature.

Advance taken by the Employee may be for house or may not be for it.

(ff) Deduction for recovery of loans made from Labour Welfare fund (only and none else) (may be for House, may not be for it).

(fff) Deductions for recovery of loans granted for

(1) House building or

(2) any other purpose.

Loans may be for any purpose but it is specifically stated to be for house building.

(i) Deductions (for payments to cooperative societies) of advances from any

(2) P.F. recognised under IT Act

(3) P.F approved by State Government.

This clause refers to deductions for payments to cooperative societies and none else for payment of loan. Further, loan should have been paid from any one specie of provident fund of the employee.

(j) Deductions for payment to cooperative society or to Insurance Scheme of Post Office.

This clause refers to deductions for payment to cooperative societies (and Post Office Insurance Scheme) but these deductions are not for repayment of loans.

(13) Deductions for payments to cooperative societies and insurance scheme: Section 13 read with Section 7(2) **(j) and(k)**

While deductions are authorised in section 7(2) (j) and (k), only the conditions of deductions are referred to in Section 13 but the same have not been set out. The Legislature, however, has left it to the Executives or the Government. This is called as Delegated legislation' under the administrative law. In 'delegated legislation, although the rule making power is vested with he Sovereign State (Legislature) it is, however, delegated to Sub-or-dinate authority (the executives or the government).

In Majoor Sahakari Bank v/s Jasmat Gopal, AIR 1966 Guj 67 the Company started deducting wages for the cooperative societies when it requested the company to recover their loan from its employees. The court held the deductions illegal on the ground that a mere claim by the cooperative society is not enough and that the debt should have been adjudicated by the Registrar of the Cooperative societies under the Co-operative Societies Act.

Notes -

LESSON 37
PROCEDURES AND PENALTIES UNDER THE ACT

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is the procedure and rules of the Workmen Compensation Act?
- What are the penalties provided under the Act?

Procedure and Powers-

What could be the procedures one has to follow under the act is what this sub topic deals with and of course what powers who has the powers. But before that here is the synopsis.

Synopsis

1. Introduction.
2. Display of abstract of the Act and Rules : Section 25
3. Maintenance of Registers & Records : Section 13-A

(i) Every Employer

(ii) What registers?

4. Inspectors : Section 14 (a) & 14-A (i) Generally

(ii) Functions and Duties of Inspectors appointed under Section 14

(iii) The Employers to afford facility to the Inspectors (iv) Any person (v) Who can appoint Inspectors?

5. Application for Wages : Section 15

(i) Generally

(ii) Who can make application: Sub-section (2) of Section 5

(iii) What can be claimed: Sub-section (3) of Section 15

6. Jurisdiction of the Authority

(i) Generally

(ii) Jurisdiction to decide age

(iii) Complicated questions of Law and Facts

(iv) Payment of Bonus Act

(v) Industrial Disputes Act Section 33 C (2)

(vi) Bombay Co-operative Societies Act

(vii) Award of the Court

(viii) Civil Court vis-a-vis Authority under PW Act

(ix) Dismissal/Termination

(x) Overtime

(xi) Broad Jurisdiction

(xii) Narrow Jurisdiction

7. Mode of recovering the claim : Sub-section (5)

(i) Jurisdiction Generally

(ii) Order of Compensation Bonafide dispute

8. Period of Limitation
9. Powers of the Authority : Section 18
10. Civil Suit barred : Section 22
11. Jurisdiction not barred
12. Protection of action taken in good faith : Section 22-A
13. Contracting out: Section 23

(i) Genuine Compromises not affected

(ii) Agreements with unions

14. Same unpaid group : Section 16
15. Appeal: Section 17

(i) Generally

(ii) Revision lies against the appellate order

(iii) Limitation in Appeal.

(iv) Limitation Act if applies

(v) No power to condone delay

(vi) Services avoided - Exparte order.

16. Attachment Before Judgement (ABJ) of property: Section 17-A.

(i) Generally

(ii) What is attachment

(iii) Requirements of ABJ.

17. Power of Central Government: Section 24.
18. Undisbursed wages on death of employee : Section 25 A.
19. Rule making Powers : Section 26. .

(i) Rules : If Part of the Act.

(1)Introduction

The legal system functions in two directions. One is called as the **Substantive Law.** It informs the person as to what exactly is the law. In its second part, it informs the person as to what procedure is required to be adopted for its implementation, non-implementation and the penal consequences, if any. The second part is called as the **Procedural Law.** The PW Act, in its one part has dealt with the substantive law of payments of wages and the deductions, if any. In its second part, it deals with the procedural law. In this chapter, the procedural law is dealt with.

(2) Display of abstract of the Act and Rules: Section 25

Section 23 requires that the person responsible under the Act should by a notice display.

(a) an abstract of the Act and

(b) Rules formed thereunder;

The Section further lays down that the Notice should be in English and in local language. This provision applies only to the factories. The purpose of this provision appears to be to

enable the employed persons to know the provisions of the Act so that they can take advantage, when necessary.

(3) Maintenance of Registers & Records: Section 13-A

Section 13 A imposes a condition upon the Employer which is mandatory in nature. It requires the Employer to maintain the Prescribed Registers and. Records. It must be born in mind that the mandatory condition is imposed upon the employer and not upon the Employees. Therefore, if an Employer takes up a defence that the claimant is not his workman, he will have to adduce the evidence to show that the claimant is not his employee by producing the registers required to be maintained under this Section. Further, not only in these types of cases but also in all cases of disputes, the registers under Section 13-A will be primary evidence and also the **conclusive evidence.** Thus the courts will accept the registers maintained under this Section as evidence against the claimant and the Employer will be discharged from his 'burden of proof. But as is settled law, once the burden of proof is discharged by one party, it shifts heavily upon the rival party. Thus it will be for the rival party to show as to why the primary evidence is not acceptable or should not be accepted. Indeed the needle of "Burden of Proof" keeps on Swinging like the pendulum until the balance is struck. Therefore, failure of the Employer to maintain the registers will lead to **adverse inference** against the Employer and hence the need to maintain the register contemplated under section 13-A the Act.

(i) **Every Employer** : Section 13-A deploys the phase 'every Employer". It shows that no exception is given to anyone who is the Employer and irrespective of any class or type of the Employer, it is necessary to maintain the registers required to be maintained under this Section.

(ii) **What registers** ? Section 13-A inserted by the Amending Act of 1964 which came into effect from 1-2-1965, requires such registers and records as may be prescribed. The Act requires that the Employer has to main the following registers (as per the rules under this Act)

(1) Register of wages hi Form II

(2) Register of deductions for Damages or loss in Form III under Section 10 (2) of the Act.

(3) .Register of Fines in Form I under Section 8(1) of' the Act.

Section 13-A lays down that the following particulars must be provided in the register/records maintained by the Employer.

(1) Particulars of person employed by him (name, sex, age, address etc)

(2) Work performed by employed person (mechanic, clerk, peon etc.)

(3) Wages paid to them. If any scale is applicable, the same should be shown, over tune wages etc.

(4) Deductions made from the wages

(5) Payment Receipts.

(6) Other particulars ad may be prescribed

The Government of Maharashtra has laid down that

(1) At the beginning of the Register of Fines, the list of penalties should be shown. No doubt the penalties should have the prior approval as laid down in section 8(1) of the Act.

(2) Voucher or Receipts of expenditure for the funds will be required to be produced for scruitiny of the Inspector appointed under the Act. But no such separate register is required to be maintained if a composite register in form II is maintained.

In Jitendra Chandra Ghose, v/s S. Bhattacharjee, 1977 LIC 138, it was held that no criminal liability under Section 20(3) is attracted under the Act (as applicable to Assam) if the registers required to be maintained under Section 13-A are not maintained and not produced as required under Section 14 before the Inspector. It may be made clear here that a condition may be mandatory but it may not be penal because unless it is expressly stated that a breach or contravention of any condition is penal, no penalty is

attracted. But if the legislature uses the term 'shall' in the section, it becomes mandatory and necessary to fulfill that condition. The breach or violation of the same may be fatal but not necessarily penal. As aforesaid, non compliance of Section 13A will lead to adverse inference which can be fatal to the Employer. The employer's non-compliance of Section 13A will be a "conclusive proof" against the Employer that he has not complied with Sections 4, 5(4), 6 and or 8(4) which attract penalty. The Employer will be held guilty of criminal offence for breaches of those provisions rather than non compliance of Section 13-A, In the case before Gauhati High Court, under the Assam Payment of Wages Rules of 1937, the industrial establishments were not required to maintain certain register and hence the ruling. But otherwise under Section 20(3) failure to maintain registers and record and refusal to give such information (to the Inspector) attracts the penalty.

Limitation - Sub-Section (2) of Section ISA

While it is true that Section 13-A requires the prescribed registers and records to be maintained but such registers and records are not required to be retained perpetually and for ever. Sub-Section (2) fixes the upper limit to 3 years. After 3 years, the Employer is free to destroy the record and registers, if he so wishes. By reason of sub-section (2), the Employer is let free not to produce the record as these were not retained by him after three years without inviting the adverse inference stated above.

(4) Inspectors: Section 14 (a) : 14-A

(f) Generally : As aforesaid, the law, takes upon itself to see that the substantive law in its true sense is carried into action. Accordingly, as a first measure, the legislature has imposed a mandatory duty upon the Employer to maintain certain registers and records. As a second measure, it requires, the appointments of Inspectors to be made who will also enforce the maintenance of such registers. Under sub-section (1), the Factory Inspectors under the Factories Act are invested with that powers under PW Act for the factories of the local limits for which the factory Inspector is appointed. For the rest, the State Government has to make the appointments by necessary notification in the Official Gazette.

(ii) Functions and Duties of Inspectors Appointed under Section 14 : Section 14 requires the Inspectors invested : with powers under this Act to exercise checks and prevents prescribed

under the Act. As such, necessarily, it is one of the duties and perhapes the primary duty to see that the Employer faithfully makes compliance of this Act including the maintenance of records / registers to be maintained under the Act. Sub-section (4) of Section 14 requires that the Inspectors should:

(a) see that rules and the provisions of this Act are complied with by the Employers and for that purpose, he is free to make such inquires and examination as he may think fit and proper.

(b) enter, inspect and search the premises upon the following conditions.

(i) he is free to take assistance of anyone (including police)

(ii) entry, inspection and search has to be at the reasonable time, usually after sun set and before sun rise, it is not to be done. But if necessary, he is not prevented also.

(iii) entry, inspection and search must be for the purpose of , carrying out the objects of this Act. Necessarily, therefore the PW Inspectors are not given a License to cause their entry, inspection or search for any other purpose or for an exterior purpose or with ulterior motive.

(iv) for entry, inspection and search the Inspectors can act under the provisions of Code of Criminal Procedure, 1973 so far as may apply to this aspect. The Search Warrant under Section 94 of Cr. P.C. may be applied, if circumstances so require.

(v) The PW Inspector, for this purpose is treated as "public servant".

(c) Supervise the payment of wages to employed persons by 1 the Employers if necessary.

(d) (i) require production of registers/records, if necessary, by written orders at a specified time and place.

(ii) call upon any person to make a statement on the spot. (iii) take the registers and records, he had required to be produced

(iv) record the Statement (he had called upon anyone to make it) on the spot.

(v) production of registers/ records and recording of statements must be for carrying out the purpose of this Act and it is no licence given to the PW Inspectors to use his powers for any purpose other than this.

(e) (i) Seize the registers/ records. The inspectors are charged with the powers under the provisions of the Criminal Code of Procedure, 1973 so far as it may have application to the facts of the case. The search warrant under Section 94 of Cr. P .C. may be applied if circumstance so require, so as to effect the seizure of registers/records from the persons/ premises. '

(ii) The Inspector for this purpose is treated as public servant.

(iii) Take the copies of Registers/records. Either of all - register/records or any part thereof.

(iv) The seizure and taking copy must be for carrying out the purpose of this Act and it is no licence to misuse it.

(f) exercise the prescribed powers.

(iii) The Employers to afford facility to the Inspectors: While Section 14 charges the Inspectors with powers, Section 14-A casts a legal obligation upon the Employer to allow the Inspectors to carry out his functions smoothly. Indeed, an Inspector surcharged with powers cannot Act illegally or in excess of powers vested in him. An employer is always protected under Article 20(3) of the Constitution of India as well as under Sections 315(1) of Cr. P .C. It may be noted here that Article 20 falls in the fundamental rights enshrined in the Constitution of India. There is no gain saying that an Inspector has any power vested in him either under this Act or under any law for the time being in force to violate, infrenge and breach the fundamental rights of any citizen of India. Article 20(3) says that no person accused of any offence, shall be compelled to be a witness against himself. Thus, an Inspector cannot force an Employer to make any statement which hits Article 20(3) although he has a power to compel the Employer to make the statement. But while an Inspector can force him to make the statement yet he cannot force him to make such a statement which can compel him to be a witness against him- self. As such, sections 14 and 14-A will be so read as to have the restrictions laid down under Article 20(3) of the constitution of India.

As aforesaid, Cr. P .C. has so much application as it may be necessary. Therefore, sections 315(1) and 316 of Cr. P.C. would necessarily have the application in respect of recording of statements. Section 315(1) of Cr. P.C. lays down that an accused can give evidence in his favour and therefore, he is a competent wit- ness. While Article 20(3) protects a citizen or a accused not to give evidence against him, section 315(1) of Cr. P.C. gives a right to give evidence in his own favour. Section 316 of Cr. P.C. goes further and lays down that even by threat or promise, an accused can not be forced to make any disclosure.

Thus Sections 14 and 14A of the PW Act will have to be read with the restraints and contraints laid down by Criminal Procedure Code of 1973 and the Constitution of India. With these restraints and constraints, an Employer is under duty of obligation to afford facilities to the Inspectors for the

(a) Entry

(b) Inspection

(c) Supervision

(d) Examination or

(e) Enquiry under the Act.

(iv) Any person: Section 14 and 14A refers to 'any person'. However, it is a settled law that a person may be natural born as well as artificial person. In other words a person may be a living body or the corporate body. In Sharma vIs Satish, AIR 1954 SC 300 the apex court had held that the Constitutional protection under Article 20(3) of the Constitution of India are available to the corporations also. Thus under the Act, Employer may be "any person", real or artificial, living body or corporate body. The rights and obligations under the Act of any person will apply to the corporate bodies also and there is no gain saying that only

natural born persons are referred to and not the artificed persons in the Act.

(v) Who can appoint Inspectors? Section 14 clearly lays down that it is the State Government which can appoint the Inspectors under the PW Act, even for the railways. In State v Is Mansharam, AIR 1965 Raj 168, it was laid down that Section 14 can not be read in isolation and must be read with Section 24. As such, an Inspector appointed by the Central Government is also competent to perform the functions of the Inspector under the Act.

(5) Application for wages: Section 15

(i) Generally: The substantive law relating to (1) Deductions and (2) Payment of delayed wages has been dealt with in the earlier provisions of the Act. Now, in Section 15, the legislature has dealt with the Procedural law. It provides the mode, manner, method and the Authority (forum) before whom the claims under the Act can be made. It starts with the appointment of the Authority (court) which can hear the claims under the Act. The legislature confers the jurisdiction on it to decide the claims arising under the Act. Needless to state that jurisdiction can be divided into two. One, a territorial jurisdiction and, Two, jurisdiction on the basis of subject matter. In the first part of Section 15, the territorial jurisdiction is dealt with.

The State Government is vested with powers to appoint the Authority by a Notification in the official Gazette to decide the claims under the Act. The Authority can be :

(1) judge of a labour court under I.D. Act.

(2) Presiding officer of an Industrial Tribunal under I.D. Act.

(3) Presiding officer of a Tribunal under State laws relating to industrial disputes, such as BIR Act or the MRTU and PULP Act.

(4) Commissioner appointed under the workmen's compensation Act.

(5) Any Officer with experience of a judge of a Civil Court. or

(6) Stipendiary Magistrate.

The Authority can be so appointed for any specified area but if necessary, the State Government can appoint more number of persons as the Authority under the Act.

In Matbar Singh v / s Bhole Datta, 1980 LIC 393, the court held that the liability of payment of wages would arise at the place where wages are paid or payable. In G.M.N.E. Rly v/s Jamaitram Khatnani, 1976 LIC 98, it was held that the jurisdiction of the Authority depends upon the place of employment where employee may be posted or where his salary may be paid to him. In Saru Smelting (P) Ltd. v / s Authority, PWA, 1994 I CLR 728 the exercise of power by regional conciliation officer was challenged. It was held that there was no notification under Section -15 (1) and hence he exercised the powers illegally.

If the order is passed by an Authority, not validly appointed! -t under Section 15(1) of the Act is nullity (Safdar Husain v/s Ananthramayya, 1964 II LLJ 419).

Subsequent Notification cannot confer jurisdiction which authority initially lacked (1958 II LLJ 31)

(ii) Who can make application? : Sub-Section (2) of Section 15

- Aggrieved employed person
- Any legal Practitioner on behalf of the employed person. - Official of a trade union on behalf of the employed person – Any Inspector appointed under this Act or
- Any other person so authorised with the permission of the Authority may apply for the claims under the Act.

(iii) What can be claimed? Sub-section (3) of Section 15 - Deductions made from the wages which are illegal under the Act.

- Payment of delayed wages or payment of unpaid wages and/or
- Compensation as may be deemed fit by the Authority but not ten times the deducted amount and not exceeding twenty five rupees in case of non payment of wages.

Can be claimed under the P. W. Act. However, no directions for compensation shall be made, if the Employer satisfies the Authority that deduction/non-payment was due to

(a) Bonafide Erorl dispute of payable amount

(b) circumstances beyond control of the Employer

(c) Failure to accept the amount by the employed person.

(6) Jurisdiction of the Authority

(i) Generally: The jurisdiction of any court can be examined with regard to subject matter and the territory. As stated in the first proviso to Section 15, the State Government is vested with powers to decide the local jurisdiction of the Authority. The State Government as such can appoint more than one Authority for any specified area and provide for the distribution or allocation of work. This aspect has been dealt with in the very beginning of the I discussion of Section 15. As for the jurisdiction on subject matter, I it is made fairly clear under the title "what can be claimed" in the earlier part of this discussion. However, it is not clear that if a remedy is available under some other provisions of the enactment, then what happens. In Mohammed Abdul Waheed v/s Karnataka Road Transport Corporation, 1987 II CLR 42, it was held that the employee can lose either of the two remedies available to him. In U.P. S.B Corpn. Ltd. v I s Christopher Fonseca, 1998 I CLR 1248, also it was held that even if claims arise under the Minimum Wages Act, the Authority under the PW Act has the jurisdiction to entertain the claim. In Union of India v/s Punnilal, 1997 I CLR 134, the apex court held that the Authority under the Act has no inherent jurisdiction in the matter to entertain the claim for payment of back wages.

(ii) Jurisdiction to decide age: In Nagarpalika Ghazipur v/s P.A, 1992 II CLR 134, the prescribed authority was required to decide the date of retirement. It was held that determination of the age is not alien to the enquiry. That question is undoubtedly incidental and auxiliary to the main question as to whether the wages were deducted from the legally due and payable wages.

(iii) Complicated questions of law & facts: The Authority under section 15 has no jurisdiction to decide complicated questions of law or facts.

(1) D.P. Kelkar v/s Ambadas Keshav, AIR 1970 Born. 124

(2) Mohammed Ayub v/s Mohammed and Son, 1995 II LLN 478.

(3) E. Hill & Co. (P) Ltd. vIs City Magistrate, 1980 II LLN 378

(4) Union of India vIs Surendra Mohan Sinhar, 1976 LIC 26.

(5) Abdul Wahid vis Authority PWA, 1995 II LLJ 1079.

(6) Vijay Singh Sankhda vIs Rajashthan SEB, 1998 I CLR 566

(7) Athani Municipality vIs L.C., AIR 1969 SC 1335.

The apex court has held that for deciding the claims regarding deductions or delays in payment of wages, the Authority is competent to consider incidental question. In Some cases a question may arise whether the contract which was subsisting at the time had ceased to exist and the relationship of master and servant had come to an end at the relevant period. In regard to illegal deductions, a question may arise whether the lockout is legal or illegal. In regard to contracts of service, it may be necessary to enquire which contract was in existence at the relevant time. Ambika Mills Company Ltd. v/s S.B. Bhatt, AIR 1961 SC 970.

See also AIR 1963 SC 1936 & AIR 1965 Bom. 185, Anglo , India Jute Mills Co. Ltd. vIs Authority under PWA. 1976 LIC 946.

(iv) Payment of Bonus Act: Section 22 of the payment Bonus Act is complementary to section 15 of PW Act. But section ; 34 of the payment of Bonus Act excludes operation of PW Act.

(1) D.P. Kelkar v/s Ambadas Keshav, AIR 1970 Bom. 1965. Bonus is wage and the Authority under PW Act has jurisdiction to entertain the application for calculation of amount of Bonus. Section 22 of the payment of Bonus Act comes into play only when some dispute exists. In this case there was no such dispute.

(1) Mohd. Haneef Bidi Manufacturer v/s State of M.P,. 1998 I CLR 76.

(2) Junior Labour Inspector v/s Authority, PWA, 1976 I LLJ 511 (F.B.)

(v) Industrial Disputes Act: Section 88 C (2) : In Krishnaswami Reddiar v/s L.C., 1976 II LLJ 218, it was held that there is no machinery provided specifically for computing the allowances of a workman in terms of money. Section 15 of PW Act cannot be invoked for the purpose because its scope is confined to deductions or delay of payment of wages. The Authority can not be called upon to ascertain the money value of allowance. This is not incidental to the question of delay in payment of wages. As such, the computation is competent under section 33 C(2) of the ill Act only. That provision is wide enough to cover the relief and there is nothing in common between the scope of Section 15 of PW Act and Section 33 C(2) of ill Act. Whereas in Sri Bharti Vain Bus service v/s P.O. L.C., 1977 LIC 320 the Bus driver was tried for accident but he was acquitted in that trial. It was held that claim for wages was not maintainable under section 33C(2) of ill Act but it can be made only under Section 15 of the PW Act.

In D. T.M. v/s D.D. Gupta, 1978 I LLJ 122, the Delhi High court held that there in no repugnancy between Section 15 of the PW Act and 33 C (2) of ill Act if claims are admitted because they give two possible remedies to a workman see also :-

(1) Pascal D'souze v/s BMC, 1980 Mah LJ 416.

(2) Mandegam Radha Krishna Reddy v/s Shri Bharti Velu Bus Service, 1987 II CLR 41

(8) Md. Abdul Waheed vIs Karnataka Road Transport Corprn., 1987 II CLR 42.

The company was closed down without prior notice to all of its 14 workmen. The workmen claimed wages for the period they were kept out of employment. The court held that it is not a case of (closure) compensation but that of wages and as such the Authority has the jurisdiction. Banjarwala Tea Estate v/s District Judge, 1981 LIC 370.

Retrenchment Compensation: Section 25F of m Act.

In G.M.O. Assn v/s Mohamood khan, AIR 1968 Bom. 365, an order. of retrenchment in contravention of section 25F of ill Act would be illegal but not nonest, that is, the order exist, but it is - not valid. Therefore, a workman so discharged can not claim wages until the retrenchment is set aside by a competent authority and reinstatement ordered with right to back wages. J.M. Melby D'Cruz. v/s. Trav. Minerals Ltd., AIR 1968 Ker. 121. Without an order of reinstatement, the authority under the PW Act has no jurisdiction to order payment of wages.

In Tromboo Joinery (PJ Ltd, v/s Authority, PWA, 1997 LIC 2754, it was held that it is clear from Section 2-A of the I.D. Act, that an action of reinstatement of Respondent No 2 is an industrial dispute and the authority under PW Act has no jurisdiction to entertain and deal with the dispute of retrenchment. See also Payment of Wages Inspector vIs Surajmal, AIR 1969 SC 590.

Minimum Wages Act.

Withholding payment also amounts to deduction. But when payment is made as per term of employment but is less than minimum wages, there can not be any question of withholding wages which can be adjudicated under section 15 of PW Act. The remedy in such case is under minimum wages Act. Brij Kishore Teware v/s J.B. Iron & Steel Industries, 1996 (74) FLR 2349.

The Minimum wages Act is primarily concerned with fixing of rates -rates of minimum wages, overtime rates, rate for payment for working on a day of rest and is not really intended to be an Act or enforcement of wages for which other laws (like PW Act) are made.

(vi) Bombay Cooperative Societies Act: Claim for wages by a servant of cooperative society against it can be preferred either under section 54 of the Bombay cooperative Societies Act or under section 15 of the Act. Section 54 of the Bombay Act to the extent it imposes bar on proceedings under PW Act is repugnant to Section 15 of the PW Act. As such, section 15 of PW Act prevails over Section 54 of the Bombay Act. Farkandali

Nanhay v Is V.B. Potdar, AIR 1962 Bom. 162. Section 33(2) (b) of ill Act

Where an employer's application under Section 33(2)(b) of ill Act is allowed to be withdrawn, the authority under the PW Act has the jurisdiction to entertain an application under Section 15 for back wages.

(1) Kumar Engineering Works v/ s Dinbandhu, AIR 1970 Cal. 343.

(2) Sunil Kumar Dey v/s Naithati Electric Supply Co. Ltd., - 1967 II CLR 41.

(vii) Award of the Court: In a dispute referred to the Industrial Tribunal, the Tribunal passed its award. The award was confirmed with some modifications by the Appellate Tribunal. A further appeal by employer was dismissed by the apex court. The labour Inspector then made an application for a direction to the Authority for payment of certain amount for short payment made to the workman. The Employer challenged the application alleging that there was neither any deduction nor delay in payment of wags. The High Court held that wages includes any remuneration under the Award and therefore the Application was competent. B.C. Mills v/s S.D. Magistrate, AIR 1965 Raj II.

Under ill Act, before Industrial tribunal, it was considered that workmen were not governed by the factories Act and cannot claim overtime wages, and it was accordingly awarded. So long as the award remains in force, PW Authority can not reconsider the matter on the plea that the question of law was not properly considered by the industrial tribunal. If this were permissible then it would mean that PW Authority can practicality sit in appeal over the awards of the industrial tribunal. It would, however, be different if subsequent to award, the conditions of service have changed. Bombay Gas Co. Ltd. v/s Shridhar Bhau Parab, AIR 1961 SC 1196.

A Claim for recovery of wages can not be validly made under the Act, if it can be shown that the deduction is authorised or justified. Once there is an order of the Court or a competent authority statutorily empowered to make the order and in pursuance of that order, a deduction is made, the deduction would fall under Section 7(2) (h) and would be permissible. The order may be valid or invalid, regular or irregular but that would not be I for the Authority under PW Act to enquire whether the Authority which passed the order was competent to pass the order or not Gopichand v/s W. Rly, AIR 1967 Guj 27.

See also Bombay Chronicle Ltd. v/s V.B. Podder, AIR 1962 Bom 87, Purshottam vIs V.B. Poddar, AIR 1966 SC. 856.

Administrative Tribunal Act.

An appeal against an order of the Authority under the Act lies to the District Court. Whether such appeal is required to be transferred to the Central Administrative Tribunal in case of rail- way employee. Held: PW Act is to be regarded as law "corresponding" to ID Act. So also, the appeal under PW Act is to be regarded as law "corresponding to ID Act. In any case, the appeal under PW Act is not a suit so as to attract Section 29 of Administrative Tribunds Act. Administrative Tribunal's jurisdiction is not attracted to the appeals under PW Act. R.B. Shukala v/s Union of India, 1991, II CLR 339.

(viii) Civil Court vis-a-vis Authority under PW Act: The statutory authority hearing an application under the PW Act is not a 'court' but a 'persona-designata'; the appellate authority under Section 17 is however, a civil court subject to the revisional jurisdiction of the High Court under Section 115 of C.P.C. Rameshwarlal v/s Jogendradas, AIR 1970 Orissa 76.

Civil court is not competent to entertain a suit for recover of wages filed after expiry of period of limitation under. The Act or after the authority has refused to condone the delay. Kevalram v/s Ram Manohar, AIR 1965 Bom. 220.

Authority under PW Act is not a Civil Court and is not, therefore, amenable to the jurisdiction of High Court under Section 115 of C. P.C. G.H. Rasool Wani v/s G. H. Mohammod Wani, 1980 LIC 835.

(ix) Dismissal Termination: The Authority under the Act held that Respondents 4 to 29 were employees and directed the Employer to pay wages. The Employer had contended that they were the Employees of the contractor and they were not his employees. The High Court following the decision of supreme Court in payment of wages Inspector v/s Surajmal Mehta, 1969 SC 590 held that the issue of relationship is not an incidental question which can be decided under the PW Act and hence the Authority had no jurisdiction to give inpugned directions. D.C.M. Ltd. v/s Prescribed Authority under PWA, 1997 I CLR 370.

The authority under the Act has no jurisdiction to enter into the question whether the employee's dismissal was or was not lawful. Lakpatrai v/I s Om Prakash, AIR 1966 Raj 99.

Ordinarily deduction of wages takes place on the date of reinstatement. However, when the order of reinstatement states that decision regarding wages will be taken later on then the deduction will take place on the date of decision [Dilbagh Rai v Is Union of India AIR 1974 SC 130.] See also (1) M/s E. Hill Co. v/s City Magistrate 1980 LIC 873. The full Bench in Manager, General Motor Owners Assn. V/s Mohammed Khan 1968 Mah. L.J. 119 over ruled the ruling that Once the dismissal is held to be illegal the claim for wages is maintainable given in Namdevo – v/s Chis C. and M. Ltd on the ground that authority dismissal order was held illegal but there was no order or reinstatement.

(x) Overtime: Following the ruling of apex Court in Central Bank of India v/s. Raj Gopal, AIR 1964 SC 743, the claim of overtime was disallowed, The Court also considered the ruling of apex court in Altani Municipality v/s. L.C., AIR 1969 SC 1335 and held that in the case before the apex Court there was no dispute regarding payability but in the instant case, it is. [Orissa Police Co-operative v/s. Binoy Kumar Bose, 1979 II LLJ 360] [See also, Authority, PWA v/s W.B, 1977 LIC 1228]. But M.S.R.T.C. v/s. Aziz, 1976 Mah. L.J. Note 15, it was held that O.T. can be claimed under Section 15 of the Act.

(xi) Broad Jurisdiction: The employees filed claim in respect of alleged illegal deductions before the Authority under the PW Act. There was a genuine settlement between the Employer and employees. However, the Authority did not accept it and held it to be an illegal deduction. Bombay High Court held that a genuine compromise is permissible under the Act. Rashtriya Mill Mazdoor Sangh v/s B.A. Egbote, AIR 1971 Bom. 31.

Money payable under chief Minister's award is wages and as such can be recovered under the Act. East Coast Commercial Co. Ltd. v/s Parkash Rao, 1971 I LLJ 18.

The Recovery officer accepted an illusory offer of Rs. 200/- p.m. when a large amount was directed to be paid by the '

Authority. Held that the recovery officer should recover the balance amount. Sakharan Savlaram v/s State of Maharashtra, 1981 LIC 905.

The Employer denied the liability to pay wages in part or -I whole. However, the Employer did not dispute the employees right to the same. It is a case of delayed wages and hence Authority can decide the claim. Delta Forging Works vis Manik Karmarkar,

1977 I LLN 259.

A transport company accepted minimum wages fixed by the Government and also paid accordingly. But later it transferred the employees and started paying less. It was held that the Employer cannot reduce the wages and the Authority was right in granting the claim R.M. Transport v/ s Authority, AIR 1968 AP 44. Failure to pay wages on the ground that the employee was suspended amounts to delay in payment of wages. If the Employer has not framed the rules, he cannot refuse to pay and the claim of wages can be entertained by the Authority under the Act. Doraikannu vis Pro. Hotel Savoy, AIR 1960 Mad. 201. It was urged that ex-gratia payment can not be treated as wages. But the Court disagreed and granted the claim of retired employees. Laxmi Vishnu Textile Mills v/s Ab. Aziz Imamsaheb Sutar, 1998 I CLR 299.

(xii) Narrow Jurisdiction: Where service condition of an employee is not proved, the doctrine of Factum valet can not apply. The condition of service is either contractual or statutory. The statutory authority (or the Authority under the Act) is not empowered to say what the wages should be [Imperial Tobacco v/s State, AIR 1971 Call09.]

When the Authority permits amendment of the application, but the party even after a long time does not carry out the amendment, the Authority can refuse to allow amendment on analogy of Order VI, R.-18 of C.P.C. Dil Bagh Rai vis Union of India, AIR SC 130.

The Authority can determine if any deductions have been made. Also it can determine whether a worker is paid wages in accordance with the contract of service but it cannot determine his claim for wages on the footing that he should have been placed in higher scale. (1) GIP Rly v/s B.C. Patel, AIR 1955 SC 412.

The officer commanding Engineer Stores Deport v/s Authority, 1977 LIC 1228.

Failure to pay wages according to doctrine of Equal pay for Equal work can not be said to be the unauthorised deduction. It can not even be said to fall under the class of delayed wages. As : such, it is beyond jurisdiction of the authority to apply the doctrine. Administrator, Krishi Upaj Mandi, Samiti v/s Gauri j Shankar, 1997 I CLR 527.

A claim for wages by a reinstated railway worker for the period of absence can not be awarded by authority under Section 15(3) of the Act where it is shown that deductions are authorised. Ganeshiram v/s Dist Magistrate, AIR 1467 SC 365.

The employee claimed wages asserting that he was reporting :, for duty daily but he was not given work. The Employer asserted that he was asked to work in carding department where he refused, to work on the ground that he was confirmed in reeling department. The employee's claim was granted. It was held that the Employer had raised bonafide dispute and the Authority had no jurisdiction to grant the employers claim. .

In Hasan v/s Mahmood Shamsuddin, 1951 II LLJ 6, the court held that the Authority appointed under Section 15 of the Act is a court which is subordinate to the High Court for the purposes of section 115 of CPC., whereas, in Kishan Chand v/s City Magistrate, 1973 LIC 716 it was held that it is a quasi-judicial one and it must give reasons to its order.

Sub-section (4A) and 4(B)

The Act makes the order of the Authority final and conclusive. Although an appeal is provided against the order of the Authority, nevertheless, the order is rendered final. It means that the order of the Authority does not require any sanction or approval of any authority. It may be pointed out that under the provisions of Industrial dispute Act the Labour Court and the Industrial Tribunals have to forward the Award to the appropriate government. After the Award is accepted by the government, the Award is rendered final. No such formalities are laid down and the order of Authority is by these provision treated as final. As a corollary, it is laid down that the order of the Authority is 'deemed' to the judicial proceedings under Sections 193, 219 and 228 of IPC. By this, the proceedings are the given necessary protection available to the court proceedings.

(7) Mode of recovering the claim: Sub-section (5)

! Undoubtedly, the Employer is bound to honour the order of ~ the Authority. However, for any reason whatsoever, if the Employer fails and neglects to pay the claim ordered by the Authority then sub-section (5) lays d own that it may be recovered as 'Fine' imposed by the magistrate in a Criminal trial. It may be pointed out that normally, in other Land Revenue Code which is also coercive method of recovery. But the recovery of fines imposed by Magistrate is rather more coercive than the arrear of land revenue and this mode is prescribed for the Employer not responding to the orders of the Authority under the Act.

(i) Jurisdiction Generally: The right to payment during suspension during departmental inquiry is called as subsistence allowance. Such payment does not "amount to

deduction much- less the "illegal deduction" under the Act State of Maharashtra v/s Devidas Phulsunghe, 1975 Mah.L 74.

A clerk in the employment of MSRTC while issuing instructions to the running staff wrongly mentioned the time at which 1 vehicle was made available. Drivers and Conductors accordingly reported for duty. They were therefore required to pay overtime wages. The management recovered the amount from the clerk.

The court held that such deductions are not permissible because deductions are permissible only if an employee has to render the account to the Employer in respect of some money and the loss is due to negligence or default of employee. As such, the Court directed the management to pay back the amount so deducted. MSRTC vIs Uttam Gangaram, 1981 Mah, L.J. 191.

Merely because the order of condoning delay was passed as preliminary issue, that would not take the case outside the purview of Section 15(2) of the Act. The section itself is clear and there is no ambiguity on that aspect. The petitioner was wrongfully advised to file a revision petition before the District judge. The said authority thus rightly rejected the same. Chhetriya Sahakari Samiti Ltd. vIs I Add Judge, 1992 II CLR 940.

Sub-section-3

It is incumbent upon the Authority to give a full opportunity of being "Heard" to the Employer and Employee. Indeed no statute worth its Salt can overlook the principles of natural justice. As such, what is otherwise implicit is made explicit. it is laid down in sub-section (3) that parties will be heard before any order is passed. In Purshottam Das Goel v/s Prabhakar Pandey, 1996 II LLJ 940 it was further made clear that the Authority is bound to record its 'reasoning' in its order. Thus after "Hearing" the parties, the Authority should proceed to pass the appropriate order supported by its 'reasons'. The Authority under this sub-sec- tion is empowered to pass the following orders:

(1) Refund (to the employed person) the amount deducted.

(2) Payment of delayed wages

(3) Compensation. But no compensation if the delay, or deduction is on account of :

(a) Bonafide-error/dispute on amount payable to employed person

(b) Emergency or exceptional circumstances beyond the control of Employer.

(c) Employee failed to receive to accept the wages.

(4) (a) Penalty upon Employee, if the has filed any vexations or malicious application.

(b) Penalty upon Employer if an employee was forced to take recourse to this Act. -

(ii) Order of compensation -Bonafide dispute: In Muir Mills v/s Appellable Authority, 199611 CLR 5 the court held that the grant of compensation is not automatic and the Authority has to take a rational decision on the facts and circumstances of each case.

For deciding compensation, factors like

(1) earning interest on amount if paid in time,

(2) sufferance on account of non payment and

(3) deduction to which the employee was subjected to, are all to be taken into account. Mohd. Bux v/s District Megistrate, 1996 II CLR 651.

The Employer did not allege that non payment of wages was on account of bonfide dispute but asserted that the employee had no right to claim wages. The Employer then did not even contest the case before the Authority at the time of hearing but allowed the case to be decided uncontested. Held that it was not a case of bonafide dispute but malafide dispute. Delta Forging Work vis Manik Karmarkar, 1977 LIC 207.

The Employer paid delayed wages only when the employees resorted to the proceedings under. this Act and the proceedings were pending before the Authority. Held that the Authority can direct the payment of compensation.

But if the Employer did not make payment of wages on account of non-availability of funds, the proviso to sub-section (3) is not attracted and it is sufficient ground to delay the payment. Kesturchand v/s Civil Judge, 1960 NLT Note 120.

Where authority has already condoned the delay it will not be proper to take away benefit of that condonation from workman. The case must be contested on merits and not on technicalities. Indian Statistical Institute v/s State of W.B. 1994 I LLR 353.

An application for setting aside an expert order was styled as one under order 9 rule 13 of CPC. As such, the authority rejected the said Application. The Court held that the Authority should have entertained the Application on merit rather than rejecting it on hyper technical ground Kiran Sizing v / s Iqbal Ahmed Kam ruddin, 1992 I CLR 999.

(8) Period of Limitation

The proviso to Sub-section (2) of section 15 lays down that the claim Application shall be made within twelve months. However, in the very next proviso it says that on sufficient ground, the application can be made even after the prescribed limitation.

The apex court held that the firs proviso to section 15(2) ex- faci indicates two alternative terminii-a-quo for limitation, namely,

(i) the date on which deduction from wages was made or

(ii) the date on which the payment of wages was due to be made.

The expression "deduction of wages" and "delay in payment of wages" are two distinct concepts. If both these terminii were always relatable to the same point of time then there would be no point in mentioning terminus-a-quo(i) and the legislature could have provided that limitation under section 15(2) would always start from the date on which the wages fall due or accrue. Since two distinct starting points of limitation referable to two distinct concepts have been stated in the proviso, the legislature has visualised that the date of deduction of wages and the due date of delayed wages may not always coincide. The conjunction "or" and the phrase "as the case may be" are clinching indicia of this interpretation. They are not mere Surplusage and must be

given all effect. The legislature is not supposed for indulge in totology. It would, therefore, be contrary to this primary canon of interpretation to held that the two expressors "wages deducted" and "wages delayed" carry the same meaning though used in the alternative.

Where an employee was reinstated, after dismissal, the deduction of wages may synchronies with the act of recistatement. But where the order of reinstatement expressly stated that the question regarding payment of wages for the interim period would be taken later on it would mean that "deduction" will coincide with the decision (impliedly or expressly) of deduction of wages.

Therefore, the limitation under the first part of the first proviso will commence from the date on which it was decided to treat the period of dismissal as leave-due which meant leave without pay, and not from the date of reinstatement. Hence the application for claim under section 15(2) within six months (before the amending Act 13 of 1964 giving limitation of twelve months w.e.f 1.2 1965) , from the date of that decision was held to be in time D.R. Jerry v/s Union of India, AIR 1974 SC 130 See also Dilbagh Rai v/s , Union of India AIR 1974 SC 130.

The first proviso lays down that the application shall be presented within twelve months from the date on which the payment was due. The legislature has deliberately said that this period would start from the date on which payment accrues due.

In a case, where an employee is suspended, removed or dismissed, I wages become due to him only when such action is declared void and the employee can not have cause of action before the date of such declaration a.M. N.E. Rly. V/s Surajnath Dubey, 1979 LIC 1427.

The filing of Application for claim was delayed but no order : condoning delay was passed. The parties fully participated in, proceeding without raising objection as to limitation. The court held that the delay must be deemed to have been condoned by implication. Officer Commanding Engineer Stores v/s Authority. PWA, 1977 LIC 1228. See also Sitaram Ramcharan v/s M.N. t Nagrashana, AIR SC 260.

The decision of the Authority to condone the delay is a discretionary matter and it can not be questioned before the High Court or the supreme court. Div. Supdt N. Rlyu v/s Pushakar Octta Sharma (1967) 49 FLR 204.

(9) Powers of the Authority: Section 18

By section 15, the legislature has created an Authority : : under the Act to hear and decide claims arising out of (a) , Deductions and (b) Delays in payment of wages. Undoubtedly, the claims have to be decided as expeditiously as possible but never with the police force or with the military force or arbitrarily or by giving go-by to the principles of natural justice. It must be done constitutionally after hearing the adversory party. This means that the claims are to be decided like any other civil suit. In other words for hearing the claims under the Act, provisions of Civil Procedure Code must be followed and adhered to. So, the section 18 lays down that:

(1) the Authority under the Act will exercise the power under the civil procedure code for the purposes of :

(a) taking evidence

(b) enforcing the attendance of witnesses and

(c) compelling the production of documents and

(2) the Authority under the Act shall be "Deemed" to be a Civil Court only for the purposes of

(a) section 195 and

(b) Chapter XXVI of Criminal Procedure Code of 1973.

It must be clearly borne in mind that the Authority under the Act is given a status of "Deemed" Civil Court. There is a marked difference between the "Civil Court" and "Deemed Civil Court." In Noorali v/s Omnibus Service Ltd., AIR 1955 All, 707, the court held that because certain powers are enjoyed by the Authority under the Act, it should not lead to an error of equating
the status of the authority with that of a Civil Court for all purposes. Section 18 in no unclear terms lays down that it is the Civil Court for all purpose only for (a) section 195 of Cr. P .C. and (b) provisions contained in chapter XXVI of Cr. P .C.

It will be useful to briefly note here that:

(A) Section 195 of code of Criminal Procedure refers to prosecution-for contempt of court for offences against public justice and for offences relating to documents given in evidence whereas.

(B) Chapter XXVI of Cr. P .C. relates to provisions as to offence affecting the administration of justice. It has sections from 340 to 352.

Section 340 -refers to procedure mentioned is Section 95

341 -refers to appeal

342 -refers to power to order cost

343 -refers to procedure for taking cognizance

344 -refers to summary trial for giving false evidence

345 -refers procedure for contempt of court

346 -refers to procedure if case is not to be dealt with under Section 345

347 -refers to when Registrar or sub-registerer be deemed to be civil court.

348 -refers to discharging offender upon apology.

349 -refers to imprisonment for refusal to produce documents.

350 -refers to procedure for punishment for non-attendance by a witness

351 -refers to Appeal from conviction and

352 - refers to judges not to try offences committed before them.

The relevant provisions of CPC, briefly, stated are as unde, sections:

30 - power to order discovery and the like.

31 - summons to witnesses

32 - penalty (for default)

-arrest warrant can be issued

- property can be attached and sold
- fine upto Rs. 500/- can be imposed
- security can be asked to be furnished.

Order XVII -Examination of witness.

Rule 16 -power to examine witness immediately

Rule 17 -recalling and examining the witness

Rule 18 -Court can inspect property at any stage

Order XVI -Summoning and attendance of witness

Rule 1 -parties to give list of witnesses and obtain summons to such witnesses.

Rule I-A -parties can produce witnesses without summons

Rule 2 -Expenses of witnesses to be deposited in court

Rule 3 -Witness can be paid directly

Rule 4 -When insufficient sun is paid, Court can direct to pay more amount.

Rule 5 -time, place and purpose of attendance must be specified in summons

Rule 6 -Without requiring to give evidence, any person can be summoned to produce documents.

Rule 7 -Any person present in court can be called upon to give evidence or produce documents.

Rule 7-A -party can get the summons to be served upon the proper person (Hum-dast service)

Rule 8 -procedure for serving summons (if not Hum-dest) is laid down.

Rule 9 -time for serving summons is laid down.

Rule 10 -Procedure when witness fails to comply with summons.

Rule 11 -If attachment is issued for non-attendance, it can be withdrawn when witness appears. Rule 12 -Procedure if witness fails to appear.

Rule 13 -Mode of attachment.

Rule 14 -Even strangers (to suit) can be called to give evidence.4:

Rule 15 -Duty to produce documents and/or give evidence.

Rule 16 -Witness can not leave the court without permission of the court. .

Rule 17 -rule laid down in case witness goes without leave of the court.

Rule 18 -Procedure where apprehended witness fails to give evidence or document.

Rule 19 -attendance can be ordered only if witness is within certain limits.

Rule 20 -consequence of refusal to give evidence.

Rule 21 -If party himself is a witness, same rules to apply.

Order XI -Discovery or Inspection

Rule 12 -Party can apply for discovery/inspection of document.

Rule 13 -for discovery/inspection affidavit has to be filled.

Rule 14 -Court can require the documents to be produced.

Rule 15 -Party is required to give inspection of documents in his possession/power.

Rule 16 -Party can give notice of document he requires to le produced/inspected.

Rule 17 -When notice is given, time of inspection is to be set out. Rule 18 -Court if necessary can order inspection/production of documents.

Rule 19 -Court can require verified copies to be produced I (instead of original documents)

Rule 20 -in case, certain rights are required to be decided, no j inspection can be ordered.

Rule 21 -Non-compliance of order of discovery/inspection.

Order XXVI- Commissioner (any independent person can be appointed) to examine witness.

Rule 1 -cases in which commissioner can be so appointed.

Rule 2 -order can be made to appoint (any fit person as) the commissioner.

Rule 3 -Local person to be appointed as the commissioner.

Rule 4 -For persons living outside jurisdiction of court etc. the commissioner can be appointed.

Rule 5 Commissioner for witnesses outside India.

Rule 6 -(some other) court can also examine the witness.

Rule 7 -Commissioner to record evidence and return it to the court.

Rule 8 -When deposition can be read in evidence.

Rule 9 -Commissions can even make the local inspections

Rule 10 -Procedure for commission

Rule 11 -Commission can adjust the accounts

Rule 12 -Court can instruct the commissioner.

Rule 13 -Commission make partition of property.

Rule 14 -Procedure of commissioner.

Rule 15 -expenses of commissioner to be deposited in the court.

Rule 16 -Powers of commissioner are laid down.

Rule 17 -attendance and examination of witnesses before the commissioner.

Rule 18 -Parties too, must appear before the commissioner.

Rule 19 -High Court (when) can appoint commissioner.

Rule 20 -A party can apply to High Court for commissioner. .

Rule 21 -To whom commission may be issued.

Rule 22 -Issue, execution and return of commissions and transmission of foreign court.

Order XIX -Affidavits -1

Rule 1 -(instead of evidence) a point can be proved by affidavit.

Rule 2 -(if affidavit is filed) the person making affidavit can be called for cross examination.

Rule 3 -affidavit must confine to facts known to the person making the affidavit.

(10) Civil Suit barred: Section 22

Traditionally, King has to impart justice. But when it became too difficult for the king to administer the justice himself, he created a system whereby, the powers of King were delegated to

a body that dealt with King's Justice. This body is called as a Court. A Court of Law is a part of judicial system. But the traditional judicial system proved inadequate to decide all the disputes requiring resolution. It was slow, costly, inexpert, complex and formalistic. Further it was already over burdened and it was not possible to expect speedy disposal of even very important and urgent matter like non-payment of wages to wage earners. The modern legislature have, therefore, found out a device. They now establish a Forum and give it a similar powers to decide cases urgently and expeditiously but on the line of courts. Once such a forum is invested with the obligation of settling the claims, the civil courts are asked not to bother itself with the types of matter laid before the especially created forum and concentrate itself to other routine matters of its field. Section 22 is the glaring example of the same. Section 22, thus bars the jurisdiction of the civil court in case of:

(i) recovery of wages

(ii) deduction of wages in case of a claim

(a) filed before the authority under the Act or appellate court, under section 15 and 17 respectively

(b) it is already a past of the subject matter of direction or it having been adjudged in any proceedings under Section 15 or

(c) which could have been recovered under the Act.

(11) Jurisdiction not barred

The firmly established law is that the jurisdiction of ordinary civil court is never ousted unless, of cource, ousted by statute, expressly or implically. Further, if any statute ousts the jurisdiction, it is ousted only to that extent and not more than that, unless it is completely outside. Thus, if jurisdiction under Section 22 is not barred, the jurisdiction of Civil Court is not barred. If the employer has lent some money to his employee which can not be recovered under the payment of wages Act, the Employer can recover it by resorting to ordinary civil court. In that case the jurisdiction of civil court is not barred under Section 22 of the Act. In Mohd. Ismail v/s P.O. CGIT, 1980 LIC 112, it was held that application under Section 33C (2) of ill Act is not barred by Section 22 of the Act.

In Farkandali Naneh v/s V.B. Poddar, AIR 1962 Bom. 162, it was held that the proceedings before Register under the Bombay Co-operate societies Act is not a suit. As such Section 22 of the PW Act does not bar the Proceedings under the Cooperative Societies Act. In MSRTTG v/s Raoji Hari Lad, 1978 Mah. L.J. 88, the plaintiff obtained a declaration that he was continuing in service. Subsequently, the plaintiff filed a suit to recover the arrears of salary etc. The Court held that such a suit was not barred by Section 22 of the Act. In Ram Prasad Agnihotri v/s Union of India, 1967 II LLJ 358, it was held that if wages are not paid, between dismissal and reinstatement treating the same as delayed it would be a case of deduction under Section 7 and as I such recoverable under Section 15 of the Act. A suit to recover the said amount would be barred under Section 22 of the Act.

In a suit for recovery of wages for the period between dismissal and reinstatement, the railway was treating the period "dias-non" meaning thereby that no wages could be paid to the worker for the days he did not work, the court held that the, deduction was unauthorized and the remedy was under Section 15. The suit was therefore not maintainable in view of the bar of Section 22, Ram Prakash v/s Union of India, AIR 1967 All. 228.

(12) Protection of action taken in good faith: Section 22.A

Section 22-A provides immunity to all persons against legal proceeding in a court of law whether by way of suit or prosecution or otherwise for all acts done in good faith. .

In Madhav Rao Narayan Rao v/s Ram Krishna, AIR 1958 SC 767, the apex court considered the meaning of the term "good faith". It held that a lack of diligence which an honest man of ordinary prudence is accustomed to exercise, is a want of good - faith in law. The liability of person acting under this Act is just the same as that of the ordinary individual. As such, these persons have no immunity in crime and/or tort. Nevertheless, the good faith depends upon the "mens-rea" or intention and if no criminal liability arise in absence of mens-rea, anyone so acting is protected even under this Act.

(13) Contracting out: Section 23

This Section discourages an unscruplus employer from snatching away the right Conferred by this Act by his control over the employed persons or by his undue influence on them. The same way this Section also protects the illiterate, poor and ignorant Employed persons from falling prey to their Employers; evil design of snatching away their benefits form them. This Section bars anyone from preventing any person from enforcing his right flowing from the provisions of this Act. It is called as bar on contracting out. In Union of India v/s Kundan Lal, AIR 1957 All 363, it was held that when, by any agreement, if an employee is debarred from making an application under Section 15 of the Act, such an agreement is null and void under Section 23 of the Act. However, Section 23 does not prevent employer from knocking out a contract advantages to them.

(i) Genuine Compromises not affected: Section 23 makes only those contracts or agreements invalid or void or unenforceable in law by which the employees have to relinquish their rights and there is no blanket ban on all the agreement or settlement between he Employees and Employers. In F. V. Heligers & Co. v/s Nageshchandra Chakraworthy, AIR 1949 F.C. 142 the full court had laid down that Section 23 makes contract which has the effect of depriving an employee of any right, conferred by this Act. But it does not prevent an employee from entering into an advantages contract In Rashtriya Mill Mazdoor Sangh v/s B.A. Ekbote, AIR 1971 Bom. 31, there was dispute between the Employer and employees on illegal deductions. The parties arrived at a genuine agreement on their dispute. The authority under the Act did not accept the agreement and passed its order accordingly. It was challenged by the union in which it was held that it can not be said that agreement amounted to relinquishment of right or that it was null and void. [See also Maharaja Mills v/s Collector of Pali, 1960 II LLJ 364 J].

The apex court held that when there is no absolute right to receive the house rent allowance then the question of relinquishment does not rise and section 23 of the Act is not applicable. [Div. Engineer, GIP Rly, v/s Mahodeo Raghoo, AIR

1955 SC 295]. The apex court also held that it cannot be said the labour Com- promise its dispute, during industrial adjudication, it amounts to relinquishing a part of their right. Unless, the decision has become final, there is no question of the rights accruing under the decision. Section 23 postulates certain definite rights which are not likely or liable to be modified or reversed in any pending judicial proceedings [Swadeshi Cotton Mills v/s Rajeshwar Prasad, .AIR 1961 SC 429].

(ii) Agreements with Unions: In Karnataka Bank Employees Association v/s Commissioner of Labour, 1980 I LLJ 97, the Banks entered into an agreement with the Union that on behalf of union that it will recover Union Subscriptions by effecting deductions in the Salary of members employees. The deduction was challenged on the grounds that the Agreement by Bank with the union was hit by Section 23 of the Act. The court held that Section 23 was not hit by the said agreement.

The representative union under the provision of Bombay Industrial Relations Act, 1946 wanted the Bombay Electric supply & Transport Undertaking (briefly called as BEST), (the Employer) to Collect certain levies from employees and remit the same to it. The BEST declined to do so. Therefore, the said union moved the Labour Court under the BIR Act and obtained the orders of the court. The BEST therefore, had to recover the said amount from salary of the employee members under the order of the Labour Court. The appeal field by the BEST was unsuccessful before the Industrial Court. Hence the Writ petition. It was held that it is difficult to see how the BEST being compelled to make the deduction by virtue of impugned orders can be equated to having arrived at a contract or agreement with the Union so as to attract the provisions of Section 23 [Municipal Corporation v Is N.L. Ab- hayankar, 1974 II LLJ 258.]

(14) Same unpaid Group: Section 16

Section 16 first proceeds to explain the phraseology "same unpaid Group". According to it, if employed person are borne on the same establishment, they from one group. If their grievance I refers to the same wage period about the (a) deductions for wage) or (b) delay in payment of wages, they are treated as the same funpaid group. In other words, if the Employees have same cause of action and they all belong to one employer only, they from a group of unpaid employees. No doubt they can or, on their behalf, some authorized person can make the application individually, .nevertheless, a facility is extended to these unpaid employees to make one common application for the claims arising under the Act. In other words, it is left to the sole discretion of the employees either to file application individually or file a common application and there is no compulsion on them to make a joint or common application.

It was held in Laxman Kundu v/s Engineer, W. Rly, AIR 1955 Bom, 283. that this Section authorises claims from an unpaid group of employees to be consolidated and presented in a Single application with a view to avoid multifariousness. But the claims of each employee are separate and distinct and the authority has to give direction under Section 15(3) of the Act separately for each individual employee.

In Bennett Coleman & Co. v/s Pathak, AIR 1960 SC 619 the apex court upheld the consolidation of separate applications of persons who constitute the "Same unpaid group" and held that one trial in respect of such applications is valid.

(15) Appeal: Section 17

(i) Generally: As a general principle of law, appeal is not a matter of right. A litigant can file an appeal only when a right of appeal is conferred by the statute. Thus appeal is a statutory right. It is conferred under Section 17 of the Act. The appeal has to be field before the Small Causes Court in the Presidency town.

The right of appeal is limited and all orders passed under section 15 of the Act are not appealable. Criteria are laid down in the Section 15 only. The Employer can file appeal:

(a) if the total sum directed to be paid exceeds Rs. 300/- or

(b) the direction imposes a financial liability exceeding in Rs. 1000/-

The Employee can file appeal:

(a) if he is individual then the total wages claimed exceeds Rs. 20/- or

(b) if appeal is" in respect of the 'unpaid group', the total wages claimed exceeds Rs. 50/-.

The Employer can file appeal only after he has deposited the ordered or decretal amount. The appellate court can order withholding of the deposited sum. But if no such order is passed, or if such order is refused, the employee can withdraw the deposited amount with the permission of the appellate court.

The appellate court can submit any question of law to the High Court for its decision.

The order of the Authority is rendered final if appeal is not allowed but if it is allowed the order of the Authority stands correct and the corrected order gets finality.

Subsection (1) itself lays down the period of limitation for filing the appeal. It states that the appeal may be preferred within 30 days of the date on which the order or direction was made.

In Mahadev Prasad Jagannath Prasad v/s Dist Judge, 1987 II CLR 42 it was ruled, that no appeal would lie unless the memo of appeal is accompanied by certificate by the authority (not the appellate authority) that ordered amount has been deposited.

Section 17 of the Act requires the deposit of the awarded amount before tiling an appeal. The intention in making the provision is that the awarded amount should be with the authority before an appeal is preferred so that in case the appeal is dismissed the awarded amount can be released and paid over to the claimant. Now the question is whether the awarded amount has to be deposited or it would be sufficient if the amount is at the disposal of the Authority. So long as the Authority has control over the amount, the requirement of Section 17 stands complied with. [Radham Krishan Bhatt v/s Mohd. Tahir, 1997 LIC 9001.

The condition precedent to the maintainability of appeal is that the Appeal memo should be accompanied with certificate from PW Authority that the employer has deposited the amount, that condition was fully fulfilled in the present case and

therefore appeal was maintainable. Vijay Singh Sankhla v/s R.S.E.B., 1998 I CLR 566.

An appeal, was filed before the Industrial Tribunal which was entertained by the tribunal. It was held that jurisdiction to entertain appeal is the court of District judge or Small Cause. In dustrial Tribunal is not the appellate Court under Section 17 of the Act. Fida Husain Naqushbandi v/s P.O., 1996 I CLR 928.

(ii) Revision lies against the appellate order: Relying on a decision of the Bombay High Court, in the case of C. T. Dhone vis Manoges, Ahmedabad Spg. & Mfg. Co. Ltd., AIR 1955 Bom.

460, it was held that a revision petition under section 115 of the Civil Procedure Code lies against the appellate order under the PW Act. Assam State Transport Corpn. v/s Nalin Ranjan Aditya, 1992 II CLR 266.

In Rajasthan Co-operative Dairy Federation v/s Amarchand Jat, 1995 (71) FLR 1124, the appeal was dismissed because the ordered amount was not deposited within 30 days. It was held that only the filing of the appeal has to be within 30 days and no where it is prescribed that even deposit should be within 30 days. Marudhar Kshatriya Gramin Bank v/s Bhagwan Ram, 1997, CLR 160, Bhilai Steel Industries v/s L.C. 1999 (82) FLR 443.

The word 'final' occuring in Section 17 (7) prohibits an appeal, and not the revision under Section 115 of CPC (1956 I LLJ 519).

If the Subordinate court erroneously finds that an appeal is not barred by limitation, its findings will lead either to failure to exercise jurisdiction or wrong assumption of jurisdiction. In either case, High Court Can interfere under Section 115 of CPC 1963 LLJ 327.

An order under Section 15(2) admitting an application after I the prescribed period of limitation, can be challenged in appeal. N. Rly. v/s Hukumchand, AIR 1967 All. 459.

The District Court hearing appeal acts as civil court subordinate to High Court and not as a ersona -designata', and the bar of regular civil suit under section 22 would not affect the nature of power under which the District Judge when he hears an appeal when it comes before him under Section 17 of P. W. Act. N.E. Rly v/s Parasnath, AIR 1967 All. 576.

Although in Jamait Ram v/s H.G. Shukla, 1977 (35) FLR 320, it was decided that the district judge cannot decide the appeal for default of appellant, however, it was reversed by the Division Bench of the same High Court (Allahabed High Court). Jamait Purswami v/s H.G. Shukla, 1977 LIC 1499.

If the application is made by a single employee, an appeal can be preferred if total sum directed to be paid exceeds Rs. 8001- 1, But if single application is made for same unpaid group, the test - to be applied is not whether a direction has been made that employer should pay Rs. 3001- to each one of them, the test clearly is whether a direction has been made on the said single application to pay R8':- 3001- or more, J.C. Jain v/s R.A. Pathak, AIR 1960 SC 619.

(iii) Limitation in appeal: The concept in the words "date of order" must be construed liberally to mean the date of communication or knowledge of the order. Where an order is made in absence of the parties and without previous intimation to them, the date of order is the date on which they receive information or knowledge of that order.

(1) Dashrathchand v/s R.M., S.R. Corpn., 1978 (36) FLR 104. -

(2) Madanlal v/s State of U.P., AIR 1975 SC 2085.

(3) Gram Panchayat Committee v/s Goddam Lingaiah, 1997 (3) LLN 811 & 1998 I CLR 231.

(iv) Limitation Act if applies: In Gram Panchayat Committee v/s Gaddam Lingaiah, 1997(3)LLN 811, the Allahabad High Court held that Section 5 of Limitation is not excluded to appeals under the PW Act. But in Vijay Kumar Bholla v/s (District) Judge, 1999 II LLJ 216, the Allahabad High Court took the view that Section 5 of limitation can not be made applicable to filing of appeals under the Act.

(v) No power to condone delay: A comparision of the language used in Section 15 and Section 17 of the Act clearly indicates that for the purpose of section 15, the power is provided categorically for entertaining an application even after the period prescribed for filing such application. But in case of appeal, under Section 17, such provision for condition of delay has been omitted. Such specific omission on the part of the legislature has to be interpreted as withholding the power of condonation of delay from the appellate a authority. This conclusion is supported by the decision of the supreme court in the case of Anwari Basawraj Patil, J. T. 1993 I Page 328, Hind Mazdoor Sabha v/s State, 1999 I CLR 733.

Review of the Appellate order

In Div. Suptdt N. Rly v/s Addl. D.J., 1997 (77) FLR 358, the Allahabad High Court took the view that the ordinary appellate jurisdiction of the District Judge under civil Procedure code has been extended by Section 17 of the Act. The appeal under Section 17 is thus to an ordinary court under Civil Procedure Code and as such a review is competent of the appellate order under Section 17 of the Act.

(vi) Service avoided-Ex-parte Order: The Employer challenged the award on the ground that the notice of proceeding in which ex-parte award was passed was never served on him. The record, however, showed that the Employer had refused to accept notice on 19.7.88. Such Notice was refused even on previous occasion. High Court therefore, refused to interfere with the award. Surajram Gujrani v / s Authority, PW A, 1999 LIC 1796.

Refusal to condone delay if appealable

In Mahadeshwara Lorry Service v/s Muniappa, 1970 I LLJ 546 it was held that order refusing to condone delay is an order. dismissing the application itself. The appeal against such an order will lie.

(16) Attachment Before Judgement (ABJ) of Property: Section 17-A

(i) Generally: The Order 38 of the C.P.C. deals with the attachment before judgement and ordinarily, the proceedings of such nature are briefly, called as the ABJ proceedings. The whole purpose of such proceedings is to prevent and preempt the person from running away from his liability when finally

determined. Section 17-A of the Act does not permit a blanket order of attachment in as much as if the amount to be recovered from the Employer is worth Rs. 100/- the property of Rs. 1000/- can not be attached.

(ii) What is attachment: Attachment is the prohibitory order of the competent court whereby a party is restrained from disposing of or selling of or creating any interest in the property. Needless to state here that property may be movable or immovable. Both these kinds of properties are amenable to the order of attachment of the court. No doubt, the movable properties may create some practical difficulty because one may not be able to locate and find out the exact value of the movable property. How- ever, the Bank accounts and Bank lockers are mostly targeted in the ABJ proceedings. Once the order of attachment is issued by the Court in respect of immovable property, no dealings in respect of said property can be lawfully made and the property remains under the order of the Court. Similarly, the attachment of Bank accounts and Bank Lockers, Deposits etc will result in freezing the farther dealing of the same and thus the Property is saved and protected.

It may clearly be noted that ABJ order can be obtained only .) against the specified properties. It means it will be necessary to give the list of property with full description of the property a of course the value of each item of property. The Attachment must be proportionate to the amount to be recovered.

(iii) Requirements of ABJ :

(1) Application under Section 15(2) should have been filed or

(2) Appeal under Section 17 should have been preferred.

(3) The Authority should be satisfied that the Employer or person responsible to make payment is likely to evade payment when ordered.

(4) The Authority should form the opinion that the ends of justice would be defeated by the delay.

(5) After hearing the Employees the order of ABJ can be passed. Undoubtedly, what is called as ad-interim order (of ABJ) can be temporarily passed even without hearing the Employer.

(6) The provision of CPC will apply even in the proceedings under Section 17 A of the Act.

In (1) Vania Silk Mills Ltd v/s Silk Mills Workers Union, 1998 I LLR 173 it was held that no order under section 17 -A can be mads unless the necessary requirement of the conditions of the section are satisfied.

(17) Power of Central Government: Section 24

The Act is the enactment of the Central Government or what is called as the Central piece of legislation. It has application to the whole of India as is clear from sub-section (2) of Section 1. However, it can be noticed that all powers are invested with the State Government, perhaps for the simple reason that the Act can be more effectively enforced even to the remotest place of the country. Be it as it may be. But the question may crop up as to what should happen to the organisation of the Central Government like

(1) Railway

(2) Air transport service

(3) Mines and

(4) Oil-field

Section 24 resolves this riddle. It lays down that in relation to the above, the powers of the state government shall be exercised by the Central Government.

In State of Rajasthan v/s Mansharam, AIR 1965 Raj 168 it was held that the Inspector appointed under the Act can also be legally appointed (as Inspector) by the Central Government.

(18) Undisbursed wages on death of employee: Section 25A

Section 25-A lays down the Rules for payment of wages which could not be paid off because of

(a) death of the employed person and

(b) Whereabouts of the employed person are not known, before his death.

Further it is provided that the payment can be made to a nominated person of the deceased employee. Although no specific provision is made for making nomination by the employee but by necessarily implication it can be done by the employee to safeguard his own interest. However if there is no nomination and also if whereabouts of the legal heirs of the deceased workman are - not known or if they do not come forward, the section requires the employer to deposit the unpaid wages with the local welfare board. The legislatures could not have done anything better than this, because if not the deceased employee or legal heirs, atleast his fellow employees can take the benefit rather than leaving it to the employer to appropriate this amount to himself.

(19) Rule Making Powers: Section 26

The state government is conferred with the powers to make necessary rules in this respect. In the administrative law it is called as Delegated Legislation. It means that it was the duty of the legislature to make a complete law. However for well defined reasons the legislature delegates it to the Executives-the government. The legislature has laid down the list of the subject matter on which the Executive or Government can make the rules and the said list is given in the Bare Act. For the sake of avoiding repetition the same are not copied out here. It may also be noted here that no rules can be framed which can run contrary to the main Act.

(i) Rules: If Part of the Act: As aforesaid the legislature itself ought to have completed the Act by laying down the rules also but it had left it to the Executives to make the rules suitable to the locality. But the rules are very much part of the Act itself. However the validity of the Act cannot be made to depend upon the rules made thereunder. (State of Bombay v Is United Motors Ltd., AIR 1953 SC 252) It necessarily means that if rules are in- consistent with the Act the rules will be null and void and not the -section or the Act. In P.C. Bhat v/s K.R. Nath, AIR 1954 Bom, 518, the Bombay High Court held that in case, there is difficulty in construing the provisions of the Act, the rules can be beneficially used to interpret the Act or the Section.

Penaties and Other Provisions-

Of course when an act brought put it has too be implemented and to be watched care fully weather it is been implemented or

not and if the act is not implemented the culprit has to be punished.

1. Penalties under the Act: Section 20

2. Wilfully: Mens-rea

3. Procedure in Trials (i) Show Cause Notice

(1) Penalties under the Act: Section 20

Section 20 deals with the penalties for offenses under the Act. The following are treated as offenses under the Act and the following punishments, depending upon the nature of offence, are prescribed for the same.

Offences

(1) Contravention of:
(i) Section 5 Except sub-section (4)

(ii) Section 7

(iii) Section 8, Except sub-section (8)

(iv) Section 9

(v) Section 10, Except Sub-section (2)

(vi) Section 11

(vii) Section 12

(viii) Section 13

Punishments - Fine -Not less than Rs. 200/-

But can be extended upto Rs. 1000/-

(2) Contravention of
(i) Section 4

(ii) Sub-section (4) of Section (5)

(ill) Section 6

(iv) Sub-section (8) of Section 8

(v) Sub-section (10) of section 25

Fine, upto Rs. 500/-

(3) (a) Failure to maintain Registers and Records under the Act

(b) Wilfully refusal or without lawful excuse neglect to furnish

(i) information

(ii) returns

(c) Furnishes (i) information or

(ii) records which are known to be false

(d) Refusal to answer or willfully gives a false answer necessary for obtaining any information

Fine -Not less the than and Records under the Act Rs. 200/
May be extended upto Rs.1000/-

(4) (a) Wilfully obstructs entry to Inspector discharging his duty

(b) Refuses or wilfully neglects to afford facility to Inspector to

(i) Entry

(ii) Inspect

(ill) Examine

(iv) Supervise or

(v) Inquire

Under this Act

(c) Wilfully refuses to produce on demand before the Inspector any

(i) Any Register or

(ii) Document

Maintained under this Act

(d) Prevents or attempts to prevent

or likely to prevent any person

(i) appearing before or

(ii) being examined f by the Inspector under the Act.

Fine -Not less than Rs. 200/- which may extend to under the Act

Rs. 1000/-

(5) Failure to pay wages on the date fixed By the Authority.

Without prejudice to any other action Additional fine upto Rs. 100/- per day of default.

(6) Subsequent commission of offence. not [Subsequent relates to the offence for which conviction was made Not more than Two years before the Second offence came to light]

(a) Imprisonment. For a term, and less than ONE month. But may be extended upto SIX months AND

(b) Fine Not less than Rs. 500/- But may be extended upto Rs. 300/-

(2) Wilfully: Mens-rea

The Act freely uses the tend wilfully but does not define it. The connotation of the term, however, resembles with the definition of the tend "voluntarily" under Section 39 of the Indian Penal \ Code. The illustration to Section 39 can be beneficially deployed here.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery, and thus causes death of person. Here A may not have intended to cause death and he may \)., even be sorry that death has been caused by his act yet he know that he was likely to cause death. The. act was done wilfully.

The tend 'wilfully' in turn, calls for consideration the mens- rea. The apex court in Natural v/s State of M.P AIR 1966 SC 43 held that the mens-rea is an essential ingredient of a criminal offence unless the statute expressly. or impliedly excludes it. Similarly, there is no criminal liability of the principal for any act or omission of his agent or servant because the Legislature does not intend to punish A for the fault of B. It should thus be clear that by using the terminology "wilfully" the legislature has made it clear that unless there is a mens-rea or intention to act or un- less the act complained of is committed, the accused can not be convicted under this Act.

Past Employees if included

In Wakefield Estate v/s Maruthan Uchi, 1959 II LLJ 397 it was held that the summary remedy provided in Section 20 is not available to the past employees. However, in Murgan Transports v/s Radhakrishan, 1961 I LLJ 283 a contrary view was taken. It was held that in order to give full effect to the intention of the Act, it would be necessary to bring within its scope even the past employees. In Chacko v/s Varkey, 1962 I LLJ 341, the Kerela High Court followed the ruling given in Murgan

Transport case and held that ex-employee are included whereas, in Malabati Tea Estate v/s Smt Budhi, AIR 1959 Tri 16 the ruling given in the case of Wake field Estate was followed,- and it was held that remedy provided under Section 20 is not available to the past employees. So also in the case of Municipal Committee v/s Sham- lal Kaura, 1966 I LLJ 676, the court held that the term employee defined in Section 2(i) of the Act does not include ex-employee and therefore only the employee who is in actual employment is competent to make the application complaint. The view to exclude ex-employee can be justified also on the principle that penal clauses must be given strict interpretation. In Jitendra Chandra Ghose v/s S. Bhattacharji, 1977 LIC 138, the court held that the provision in Section 20 is penal and therefore should be given a strict interpretation.

(3) Procedure in Trials

The complaint can be filed with the sanction of the:

(a) Authority under section 15 or

(b) Appellate authority under section 17

(c) Inspector, in certain cases, when matter is not in court (before the Authority or appellate authority.)

(i) Show cause Notice

Before according sanction for the prosecution, it is incumbent upon the Authority to first issue Show Cause Notice to the proposed accused persons and the Court issuing the Show Cause Notice should consider:

(i) bonafide error

(ii) bonafide dispute

(iii) occurrence of an emergency

(iv) existence of circumstance beyond the control of the Employer

(v) exercise of reasonable diligence in making payments and

(vi) failure of employee to accept wages.

and if satisfied, no sanction should be accorded.

It may be noted here that the Act does not lay down or state the forum before which the criminal trial can be conducted. It is under this circumstance, it is necessary to fall on the provisions sub-clause (b) of section 26 in chapter III of the Code of Criminal Procedure, 1973. It lays down that when no court is mentioned in the statute, in which the offence is punishable, the trial can be before the High Court or by any other Court by which such of- fence is shown triable in the first schedule of the said code. Al- though it is shown that the offence can be tried by the High Court, nevertheless, the High Court, as a sound judicial policy, does not try any case under its original Criminal jurisdiction. In- spite of this, the High Court continues to be referred to in the section 26, so as to enable it to exercise it extra ordinary criminal jurisdiction (as and when required) in cases of extreme rarity. This brings us back to the question as to which court should try, the offence. As is laid down in section 26, it is the court of (any) magistrate (Not necessarily the first class magistrate). One can find the above in the last portion of the second part of the first schedule.

The offence is treated as “Non-cognizable” and “Bailable” in the schedule appended to the Cr. P.C. “Non-cognizable” means that the police authority can not take cognizance of the offence if reported to it. Further, if a complaint is made to the Police, the police can register the complaint as Non-cognizable (complaint) (referred to as N.C.) under Section 155 of Cr. P.C. The complaint being non-conginzable, the police can not investigate without the order of the trying magistrate. As is clear from the definition of Non-cognizable offence under Section 2(1) of Cr. P .C. the police can not arrest the offender unless the trying magistrate issues the arrest warrant. In case, the offender is arrested, as is provided in Section 50(2) of Cr. P .C., the offender can seek Bail immediately on arrest because the offence is treated as ‘Bailable’.

Notes-

LESSON 38
EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT,1952

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What are the provisions under the EPF Act?

Introduction

So, Students this word provident fund is not new to you. Provident fund is like an old mans walking stick. Old age as one can envisage is that stage in a mans life were he is bereft of hope to earn for his living. In such time this investment he makes during his life time helps him is of immense help. So let us know in details the laws applicable to this provident fund. Provident Fund Schemes for the benefit of the employees had been introduced by some organizations even when there was no legislation requiring them to do so. Such schemes were, however, very few in number and they covered only limited classes/ groups of employees. A statutory obligation for institution of provident funds scheme for workers in the coal mines was created by the coal mines provident fund act an bonus schemes act of 1948. In 1952 , the Employees provident funds Act was enacted to provide institution of Provident fund for workers in six specified industries, Provision was also made for gradual extension of the act to other industries / classes of establishments. The act is now applicable to employees drawing pay not exceeding Rs. 5000 per month. The act extends to whole of India except Jammu and Kashmir. The term "pay" includes basic wages with dearness allowance, retaining allowance (if any), and cash value of food concession.

The following three schemes have been framed under the act by the central government:

a) The employees provident funds schemes, 1952;

b) The employees family pension scheme, 1971; and

c) The employees deposit-linked insurance scheme; 1976.

The three schemes mentioned above confer significant social security benefits on workers and their dependants. Application of the act - According to section 1(3), the act, subject to the provisions of section 16, applies;

a) to every establishment which is a factory engaged in any industry specified in schedule I and in which twenty or more persons are employed; and

b) to any other establishment employing twenty or more persons or class of such establishments which the central government may, by notification in the official gazette, specify in this behalf:

Provides that the central government may, after giving not less than two months notice of its intention to do so by notification. In the official gazette, apply the provisions of this act to any establishment employing such number of persons less that twenty as may be specified in the notification.

The central government can extend the provisions of this act to any ~ establishment [including the co-operative society to which under section 16(1) the provisions of the act are not applicable] by notification in official Gazzette when the employer and the majority of employees in relation to any establishment have agreed that the provisions of this act should be made applicable to them [section 1 (4)J. Once an establishment falls within the purview of the act, it shall continue to be governed by this act notwithstanding that the number of persons employed therein at any time falls below twenty {section 1 (5)], where an establishment to which act applied was divided among the partners, the act would continue to apply to the part of each ex-partner even if the number of persons employed in each part is less than twenty (1986 2LLJ137).

The constitutional validity of this act was challenged on the ground of discrimination and excessive delegation. It was held that law lays down a rule which is applicable to all the factories or establishments similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group: Delhi Cloth and General Mills v. R.P.F. commissioner-A.I.R.. 1961 All 309. the act does not confer uncontrolled and uncanalised power on the central government and is not valid on the ground of excessive delegation. Basant kumar v. Eagle Rolling Mills ltd. AIR 1964 S.C. 1260.

The main purpose of the act is to bring all kinds of employees within its fold as and when the central government might think fit after reviewing the circumstances of each class of establishment. In the case of Mohammed Ali v. Union of India (1963) 1 L.L.J.. 526, it was observed that the government is in a position to have all the relevant and necessary information's in relation to each kind of establishment enabling it to determine which of such establishments can bear the additional burden of making contribution by way, of provident fund for the benefit of its employees.

The act applies to every factory in which 20 or more persons are employed and which is engaged in any industry in schedule I. If the dominant and primary industry falls under schedule I, the fact that the subsidiary industries do not fall under schedule I, will not exclude it: Associated industrials. v. R.P.F.C. AIR 1964 S.C. 314. Thus if with a view to carry out *primary* activity it is incidentally engaged in something else, it will not alter its primary character, Madras Pencil Factory v. R.P.F.C. AIR 1959 I ad 235. In the case of RP.F.C Bombay v. Shri Krishna Metal Mfg. Co.

Bhandara, AIR 1962 S.C. 1536, the supreme court held that the composite factories are covered by the act on the ground that the construction of section 1(3) (a) is not confined to factories exclusively engaged in any industry speicified in schedule I. Thus, the act applied to a company which has glass manufacturing section, lantern and safety stove section, enamel section etc.

Union of India v/s . ogale glass works. AIR (1971) S.C. 2577. Establishment manufacturing carpets comes under the schedule. (1190 II LLJ 27 SC).

The liability to contribute to the provident fund is created the moment the scheme is applied to a particular establishment. In the case of Nazeena traders (p) Ltd. V. R.P.F.C. Hyderabad, AIR 1965 A.P. 200, it was observed that the application of the act does not depends upon the vigilance of the authorities and the issue of notice, nor does it give option to the employee to become or not to become a member of the fund. The moment the scheme is put into operation, the liability of the employer to make the requisite contribution comes into being. The Act applies if statutory conditions are satisfied. Its Operation is not depend on a decision by the authorities in respect of the particular unit (1987 1 LLN 341)

On the question whether casual or temporary workmen should be included for the purpose of ascertaining the strength of workmen in terms of Section 1(3) it was held by Rajasthan High Court that persons employed in the normal course of the business of the establishment should be considered as the persons employed for the purposes of Section 1(3) (a) and persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular feature of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to the applicability of Section 1(3) (a) : Bikaner Cold Storage Co. Ltd. V. Regional P.F. Inspector v. Hariharan, AIR 1971 S.C. 1519. the Supreme Court held that casual workers are not covered under Section 1(3).

Section 1(3) (b) empowers the Central Government to apply the apply the Act to trading or commercial establishment whether, such establishments are factories or not.

Section 16(1) of the act provides that the act shall not apply to certain establishments as described under section 16(1) of the act. Such establishments include (a) establishments registered under the co-operative societies act, 1912, or under any other law for the time being in force in any state relating to co-operative societies, employing less than 50 persons and working without the aid of power; or (b) to any other establishment belonging to or under the control of the central government or a state government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the central government or the state government governing such benefits; or (c) to any other establishment set up under any central, provincial or state act and whose employees are entitled to the benefits or contributory provident fund or old age pension in accordance with any scheme or rule framed under that act governing such benefits; or (d) to any other establishment newly set up until the expiry of period of three years from the date on which such establishment is, or has been set up.

It is explained that mere change of location does not make the establishment a newly set up one. [Expl. To section 16(1)].

According to section 16(2), if the central government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the official Gazette, and subject to such conditions as may be specified in the notification, exempt that class of establishments from the operation of this act for such. period as may be specified in the notification.

It was held In Sutarla Automobiles v. Regional Provident Fund

I. Commissioner (Mysore): 1976 lab. I.C. 278, that mere change of ownership does not shift the date of business which was being carried on by the company does not entitle the exemption under the section. Further, the period of infancy should be calculated from the first day of the establishment of the factory and not from the moment of time when the figure of 20 or more workmen is first reached; State of Punjab v. Satpal, AIR 1970 S.C. 655. But where a consulting clinic was changed to a hospital the period of infancy would run from date of such change (1987 lab IC 1139).

The date of establishment of factory is the date when the factory starts)f ; its manufacturing process. A change in the ownership does not shift the date of establishment. A mere change in the partnership deed, does not mean that a new business has come into existence for the purpose of section 16(1); P.G. Textile Mills v. Union of India (1976) 1 LU 312.

2. Important Definitions

To understand the meaning of different sections and provisions thereto, t is necessary to know the meaning of important expressions used therein. Section 2 of act explains such expressions which are given below;

i) Appropriate Government [section 2(a)]

Appropriate government means

i) in relation to those establishments belonging to or under the control of the central government or in relation to an establishment connected with a railway company, a *major* port, a mine or an oil field or a controlled industry or in relation to an establishment having department or branches in more than one state/ the central government; and

ii) in relation to any other establishment, the state government.

ii) Basic wages [Section 2(b)]

Basic wages means all emoluments which are earned by an employee while on duty or on leave or on holiday with wages in accordance with the terms of the contract of emoluments and which are paid or payable in cash to him, but does not include:

i) the cash value of any food concession;

ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee an account of a rise in the cost of living) house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

iii) any presents made by the employer.

On the question what constitutes “Basic wage” the Delhi High court in Burmah Shell oil storage and distributing

Co. Ltd. v. Regional provident fund commissioner Delhi, 1980 lab I.E. 1129 observed that emoluments to constitute "basic wage" must be earned by an employee while on duty. It it is a payment made to anyone who was not on duty and not paid to some who were on duty, it cannot be regarded as basic wages. Basic wages are those which are paid to all the employee of a concern and are generally paid to employees of all concerns. The payment for additional working hours is not basic wages ITC LTD. v. RPEC (1978 71 FJR 298).

It further held on the question whether and hoc payment made on the basis of settlement comes under 'basic wages', that the ad hoc payment would being the nature of a present made by the employer. The ad hoc payment is not an allowance of any kind and as such then ad hoc payment cannot be regarded as basic wages.

Whether special allowance paid by the employer as a result of an agreement entered into between the employer and the employee form part of dearness allowance held that the definition of basic wages in section 2(b) excluded a number of allowances grouped in sub-clause (ii) of the section. However, under section 6 dearness allowance and retraining allowance are taken into consideration for calculating the contribution. In the instant case, the special allowance was paid as a result of an agreement and they had not agreed too treat it as part of basic wages of dearness allowance and hence it could not be included for computation of contribution by the employer: Regional Commissioner, EPF, Tamil Nadu and pondicherry v. Management of Southern Alloy Foundaries (P) Ltd. 1982-I (Labour Law Journal 28 (DB) (Mad).

iii) Contribution [Section 2(d)]

"Contribution" means a contribution payable in respect of a member under a scheme or the contribution payable in respect of an employee to whom the insurance scheme applies.

iv) Controlled Industry [Section 2(d)]

"Controlled Industry" means any industry the control of which by the union has been declared by the central act to the expedient in the public interest.

v) Employer [section 2(e)]

i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the factories act, 1948, the person so named; and

ii) in relation to any other establishment, the person who or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director, or managing agent, such manager, managing director or managing agent.

vi) Employee [section 2(f)]

"Employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the establishment; and engaged as a apprentice, not being an apprentice engaged under apprentices act, 1961 or under the standing orders of the establishment.

The definition is very wide in its scope and covers persons employed or clerical work or other office work in connection with the factory or establishment. The inclusive part of the definition makes it clear that even if a person has been employed through a contract in or in connection with the work of the establishment, he would yet fall within the description of employee within the meaning of the act.

The dominant factor in the definition of employee in section n2(f) of the act is that a person should be employed in or in connection with the work of the establishment. In case of doubt whether a particular person is an employee or not both the parties should be heard by the commissioner before deciding the issue [1976-II Labour law Journal, 309 (Kant.)]

The definition 'employee' in section 2(f) of the act is comprehensive enough to cover the workers employed directly or indirectly and therefore, where ever the word 'employee' is used in this act, it should be understood to be within the meaning of this definition: Malwa Vanaspati and Chemical co. Ltd. V. Regional provident fund commissioner, M.P. region, indore, 1976-I labour law journal 307 (db) (MP).

In another case it was observed that the definition of employee, includes a part-time employee, as also an employee who is engaged for any work in the establishment and where a co-operative bank engaging sweeper working twice or thrice a week, a night watchman keeping watch on other shops in the locality also and gardener working for ten days in a month, held, they are employees; Railway employees cooperative banking society ltd. v. the union of India; 1980 lab. IC 1212. (DB) (Raj). The government of India, by certain notification extended the application of act and EFP scheme to beedi industry. It was held that the workers engaged by beedi manufacturers directly or through contractors for rolling beedi at home subject to rejection of defective beedies by manufacturers directly or through contractors for rolling beedi at home subject to rejection of defective beedies by manufacturers; were employees (1986 1 SCC 32). But working partners drawing salaries or other allowances are not employees.

vii) Exempted Employees [Section 2(ff)]

It means an employee to whom a scheme or the insurance scheme as the case may be would, but for the exemption granted under section 17, have applied.

viii) Exempted establishment [section 2(fff)]

It means an establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provision of any scheme or the insurance scheme as the case may be whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein.

ix) Factory [section 2(g)]

It means any premises including the precincts thereof in any part of which manufacturing process is being carried on or ordinarily so carried on, whether with the aid of power or without the aid of power.

In the case of D.C.M.v.R.P.F.C. AIR 1961 All. 309, it was held that sugar factory confectionery and distillery located within one common compound wall will be one factory. A company engaged in the manufacturer of grinding wheels and transporting them for sale is a factory; state v. Jagraj, A.I.R. 1961 All 556.

x) Family Pension Fund [Section 2 (gg)]

It means the family pensions fund established under the family pension scheme.

xi) Family Pension scheme [section 2 (ggg)]

It means the employees family pension scheme framed under section 6A.

xii) Fund [Section 2(h)]

It means provident fund established under the scheme.

xiii) Industry [section 2(i)]

It means any industry specified in schedule 1 and includes any other industry added to the schedule by notification under section 4.

xiv) Insurance fund [section 2(I-al]

It means deposit linked insurance Fund established under sub-section (2) of section 6-C.

xv) Insurance scheme [section 2(I-b)]

It means the employees deposit linked insurance scheme framed under sub-section (1) of section 6-C.

xvi) Manufacture or manufacturing process [section 2(I-c)]

It means any process For making, repairing, ornamenting, Finishing, packing, oiling washing cleaning, breaking up, demolishing or otherwise, treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

xvii) Member [section 2(j)]

Member means a member of the Fund.

xvii) Occupier at a factory [section 2(kl]

It means the person, who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the Factory.

xix) Scheme [section 2(1)]

It means the employees provident Fund scheme Framed under section 5. Different departments or branches of an establishment:

Where an establishment consists of different departments or branches situated in the same place or in different places, all such department or branches shall be treated as parts of the same establishment (section 2A).;

3. Schemes under the act

In exercise of the powers conferred under the act. The central government has Framed the Following three schemes:

A. Employees provident fund scheme

In exercise of the powers conferred by section 5, the central government has Framed a scheme called employees Fund scheme. A total of 99.98 lakh employees subscribe to employees provident Funds under the scheme as on 31.03.1989. The Fund vest in and is administered by the central board constituted under section 5A.

The validity of section 5 was challenged on the ground that it infringes articles 14 and 19(1)(FI of the constitution (Hindustan electric co. Ltd. v. R.P.F.C. Punjab, AIR 1959 Pun. 27). But it was held that section 5 does not infringe any of these articles of the constitution. The act has laid down the principles and policy For the guidance of discretion by the government in the matter of selection or classification. The government may delegate its power to any officer, but the Fact that power of delegation is to be exercised by government itself, it a safeguard against the abuse of such power. It was further held that section 5 cannot be struck down on the ground that it is an unreasonable restriction on the fundamental right to carry on the business of a company.

In the case of R.P.F.C. v. Laxmi Engg, works, AIR. 1962 Punj, 50 it was held that section 5, does not give wholly unrestricted and unguided discretion to the central government to frame a scheme. The act is full of carefully laid down principles to guide the central government.

For the purpose of the income tax the fund shall be deemed to be a recognized provident fund within the income-tax act. However, nothing contained in that act shall operate to render ineffective any provision of the scheme under which the fund is established which is repugnant, to any of the provisions of that act or of the rules made there under.

Administration of the fund

a) Board of trustees or central Board (Section 5A); Section 5A provides for the administration of the fund the central government may by notification in the official gazette constitute with effect from such date as may be specified therein, a board of trustees, for the territories to which this act extends, consisting of the following persons, namely;

a) a chairman and vice-chairman to be appointed by the central government;

aa) the central provident fund commissioner, ex officio;

b) not more than fifteen persons to be appointed by the central government from amongst its officials;

c) not more than fifteen persons representing government of such states as the central government may specify in this behalf appointed by the central government.

d) Ten persons representing employers of the establishment to which the scheme applies, appointed by the central government after consultation with such organizations of employees as may be recognized by the central government in this behalf;

e. Ten persons representing employees in the establishments to which the scheme applies, appointed by the central government after consultation with such organization of employees as may be recognized by the central government in this behalf.

The employees provident fund scheme contains provisions regarding the tems and conditions subject to which a member of the central board may be appointed and of procedure of the meetings of the central board. The scheme also lays down the manner in which the board shall administer the funds vested in it however subject to the provisions of section 6AA and 6C of the act. The board also performs functions under the family pension scheme and the insurance scheme.

Section 5B provides for the constitution of a state board of trustees for a state.

"Executive Committee -[Section 5AA); The central government may, by notification in the official gazette, constitute on executive committee to assist central board and which shall consist of the following members, namely:

a) a chairman appointed by the central government from amongst the members of the central board;

b) two persons appointed by the central government from amongst the persons referred to in clause (b) of sub-section (1) of section 5A'

c) three persons appointed by the central government from amongst the persons referred to in clause (C) of sub-section (1) of section 5A;

d) three persons representing the employers elected by the central board from the amongst the persons referred to in clause (d) of sub-section (1) of section 5A;

e) three persons representing the employees elected by the central board from amongst the persons referred to the clause (e) of sub- section (1) of section 5A;

f) the central provident fund commissioner, ex officio.

b) Board of trustees to be a body corporate (section 5C): Section 5C provides that every Board of Trustees constituted under section 5A and 5B shall be a body corporate under the name specified in the notification constitution it, having perpetual succession and a common seal and shall by the said name sue and sued.

c) Appointment of officers (section 5D): Section 5D provides as follows for the appointment of officers for carrying out the objectives of this act.

1. The central Government may also appoint a central provident fund commissioner as the chief executive officer of the central board but subject to the general control and superintendence of the board.

2. The central government may also appoint a financial adviser and chief accounts officer to assist the central provident fund commissioner in the discharge of his duties.

3. The central board may appoint, subject to the maximum scale of pay, as may be specified in the scheme, as many additional central provident fund commissioners, Deputy provident fund commissioners, Regional Provident fund commissioners, Assistant provident fund commissioners and such other officers and employees as it may consider necessary for the efficient administration of the scheme under the act.

4. No appointment to the post of the central provident fund commissioner or on additional central provident fund commissioner or a financial adviser and chief accounts officer or any other post under the central board carrying a scale of equivalent to the' scale of pay of any group 'A' or group 'B' post under the central government shall be made except after consultation with the union public service commission.

But no such consultation is necessary for appointment:

a) for a period not exceeding one year; or

b) if the person to be appointed is at the time of his appointment

i) a member of the Indian administrative service, or

ii) in the service of the central government or a state government or the central board in a group A or group B post.

5. A state board may, with the approval of the state government concerned, appoint such staff as it may consider necessary.

6. The method of recruitment, salary and allowances, discipline and other conditions of service of the central provident fund commissioner, the financial adviser and chief accounts officer shall be specified by the central government. Their salaries and allowances shall be paid out of the fund.

7. The method of recruitment, salary and allowances, discipline and other conditions of service of the additional central provident fund commissioner, deputy provident fund commissioner, Regional proficient fund commissioner, Assistant provident fund commissioner and other officers and employees of the central board shall be specified by the central board in accordance with the central government drawing corresponding scales of pay. If the central board wanted to effect any change in the scale of pay of officers and employees, it shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such similarly placed officers and employees under the central government and in case of any doubt, it shall refer the matter to the central government whose decisions there on shall be final.

8. In case of a state board the method of recruitment, salary and allowances, discipline and other conditions of service of officers and employees shall be decided by that board with approval of the state government.

Any act or/and proceedings of central board/or its executive committee or the state board is not to be invalidate on the ground of vacancy in the board/ committee or defect in their constitution (section 5DD)

d) Delegation (section 5E): Section 5E provides for delegation of powers, or functions of the chairman and or any of its officers by the central board with the approval of central government and by state board with the approval of state

government. Such delegation of powers and functions will be subject to such conditions and limitations as the respective board may deem necessary for the sufficient administration of this scheme, the family pension scheme and the insurance scheme.

Class of employees entitled and required to join provident fund

Every employee in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the date of joining the factory of establishment.

The term 'excluded employee' has been defined in para 2(f) of the employees provident funds scheme. 1952 as follows:

'Excluded employee' means

i) an employee who, having been a member of the fund, withdraw the full amount of his accumulations in the fund under clause (a) or (c) of sub-paragraph 69;

ii) an employee whose pay at the time be is otherwise entitled to become a member of the fund, exceeds three thousand and five hundred rupees per month.

Explanation: "Pay" includes basic wages with dearness allowance retaining allowance (if any) and cash value of food concession admissible therean.

iii) An apprentice.

Explanation: An apprentice means a person who according to the certified standing orders applicable to the factory or establishment is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate government.

Contributions

Section 6 of the act provides that contribution which shall be paid by the employer to the fund shall be 8-1/3% of the basic wages, dearness allowance and retaining allowance if any for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him an amount not exceeding 8-1/3% of his basic wages dearness allowance and retaining allowance if any. Employees, if they desire may make contribution exceeding this amount subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable under the act. Further central government may by notification specify contribution to be 10% in certain industries/class of establishments. The central government has already notified with effect from 1st June, 1989, 98 industries/class of establishments employing 50 or more persons to which the enhanced rate of 10% is applicable.

Each contribution shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than Fifty paise to be ignored.

Dearness allowance shall include the cash value of any food concessions allowed to an employee. Retaining allowance is the sum to be paid to an employee for retaining his services, when the factory is not working.

The provident fund scheme has made the payment of contribution mandatory and the act provides for no exception under which a specified employer can avoid his mandatory liability (state v. S.P. Chandani, AIR 1959 pat. 9) In the case of Nadir Ali Khan v. Union of India AIR 1958 Pun. 177, it was held that asking the employer for contribution to the fund does not amount to deprivation of property and hence it does not violate article 31 of the constitution.

Investment : The amount received by way of provident fund contributions is invested by the Board of Trustees in accordance with the investment pattern approved by the government of India. The members of the provident fund get interest on the money standing to their credit in their provident fund accounts. The rate of interest for each financial year is recommended by the board of trustees and is subject to final decision by the Government of India.

Advances/withdrawls: advances from the provident fund can be taken for the following purposes subject to conditions laid down in the relevant paras of the employees provident fund scheme;

1. Non-refundable advance for payment of premia towards a policy or policies of life insurance of a member.
2. Withdrawal for purchasing a dwelling house or flat to for construction of a dwelling house including the acquisition of a suitable site for the purpose; or for completing/continuing the construction of a dwelling house, already commenced by the member or the spouse and an additional advance for additions, alteration or substantial improvement necessary to the dwelling house;
3. Non-refundable advance to members due to temporary closure of any factory or establishment for more than fifteen days, for reasons other than a strike or due to non-receipt of wages for 2 months or more, and refundable advance due to closure of the factory or establishment for more than six months;
4. i) Non-refundable in case of:

a) hospitalization lasting one month or more, or

b) major surgical operation in a hospital, or

c) suffering from T.B., Leprosy, Paralysis, cancer, Metal derangement or heart ailment, for the treatment of which leave has been granted by the employer.

ii) Non-refundable advance for the treatment of a member of his family, who has been hospitalized or requires hospitalization, for one month or more:

a) for a major surgical operations; or

b) for the treatment of T .B., Leprosy. Paralysis, cancer, mental derangement or heart ailement;

5. Non-refundable advance for daughter/sons r s marriage, self-marriage, the marriage of sister/brother or for the post matriculation education of son or daughter.
6. Non refundable advance to members affected by cut in the supply of electricity;
7. Non-refundable advance in case property is damaged by a calamity of exceptional nature such as floods, earthquakes or riots;

8. Withdrawals for repayment of loans in special cases; and
9. Non-refundable advance physically handicapped members for purchasing an equipment required to minimize the hardship on account of handicap.

Final withdrawal: Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuating, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement, certain discharges from employment under industrial disputes act, 1947, transfer to an establishment/factory not covered under the Act.

In other cases, with permission of commissioner or any subordinate officer to him, a member is allowed to draw full amount when he ceases to be in employment and has not been employed in any establishment to which the act applies for a continuous period of at least 2 months. This requirement of 2 months waiting period shall not apply in cases of female members resigning from service for the purpose of getting married.

B. Employees Family pension scheme

By an amendment of the act in 1971, a new section 6A was inserted empowering the central government to frame a scheme to be called the employees family pension scheme, for the purpose of providing family pension and life assurance benefit to the employees of any establishment or class of establishment to which the act applies. In exercise of this power the central government made the employees pension scheme, 1971, vide notification No. GSR315 dated the 4th March, 1971.

Membership of the employees family pension scheme

Initially the scheme applied to every employee who was member of employees provident fund or of provident fund of factories and other establishments exempted under section 17 of the act on or after the first day of march, 1971. Employees who were members of the provident fund immediately before the commencement of the scheme on first day of March, 1971, were given an option to join the scheme or not.

Retention of membership: A member of the family pension shall continue to be a member till he attains the age of 60 years or he retires or quits the service and withdraws or becomes entitled to withdraw the benefits to which he is entitled under this scheme or dies during the period of reckonable service whichever is earliest.

Family pension fund : From and out of the provident fund contributions payable by the employer and the employee in each month a part of the contribution representing one and one and 1/6 per cent from and out of employees contribution is remitted by the employer to the family pension fund.

The central government has accordingly framed the employees deposit linked insurance scheme 1976 it came into force on the 1st August, 1976.

C. Employees Deposit-linked Insurance Scheme (section 6C)

The act was amended in 1976 and a new section 6C was inserted empowering the central Government to frame a scheme to be called the employees deposit linked Insurance scheme for the purpose of providing life insurance benefit to the employees of any establishment or class of establishment to which the act applies.

The central government has accordingly framed the employees deposit linked insurance scheme. 1976 it came into force on the 1st August, 1976.

1. Application of the scheme: The employees Deposit linked insurance scheme. 1976 is applicable to all factories / establishment to which the employees provident funds and miscellaneous provisions act, 1952 applies.

All the employees who are members of the provident funds in both the exempted an the unexempted establishments are covered under the scheme.

2. Contributions to the insurance fund: The employees are not required to contribute to the insurance fund. The employers are required to pay contributions to the insurance fund at the rate of 0.5% of the total emoluments, i.e. Basic wages, dearness allowance including, cash value of any good concession and retaining allowance, if any,. The central government also contributes to the insurance fund at the rate of 0.25% of the total emoluments as described above.

3. Administrative expenses : The employers of all covered establishment are required to pay charges to the insurance fund, at the rate of 0.01% of the pay of the employee-members for meeting the administrative charges, subject to a minimum of Rs. 2 per month.

The central government also meets the expenses in connection with the administration of the insurances scheme by paying into the insurance fund, an amount of the rate of 0.005% of the pay of the employee-members subject to a minimum of Rs. 1/- per month.

4. Nomination : The nomination made by a member under the employee provident fund scheme 1952 or in the exempted provident fund in treated as nomination under this scheme.

5. Benefit payable under the scheme: On the death of an employee while in-service, who is a member of the employees provident fund or of the exempted provident fund, the person (s) entitled to receive the provident fund accumulations, is paid an additional amount, equal to the average balance in the provident fund account of the deceased during the proceeding three years or during the period of his membership, whichever is less if the average balance was not below Rs. 1,000 during the said period.

The maximum amount of benefit payable under this scheme is Rs. 10,000.

6. Exemption from the scheme: factories/establishments, which have an insurance scheme conferring more benefits than those provided under the statutory scheme, may be granted exemption, subject to certain conditions, if majority of the employees are in favour of such exemption.

4. Determination and recovery of Moneys due from and by employers

i) Determination of Money due (section 7 A)

Section 7 A vests the powers of determine the amount due from any employer under the provisions of this act and deciding the dispute regarding applicability of this act in the

central provident fund commissioner, additional provident fund commissioner, Deputy provident fund commissioner, or regional provident fund commissioner. For this purpose he may conduct such inquiry as he may deem necessary. The injury will be held drawing powers of a court under the civil procedure code, 1908 for trying a suit in respect of the following matters:

a) enforcing the attendance of any person or examining the discovery and production of documents:

b) requiring the discovery and production of documents;

c) receiving evidence on affidavit;

d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the earning of sections 193 and 228 and for the purpose of section 196 of the Indian penal code. The section is only attracted when the employer fails in its al obligation to make contribution.

The employer shall be given a reasonable opportunity of representing his se before the order is passed under this section.

In the case of Delhi iron and steel stockers (CS Assn Pvt. Ltd. v. RPFC 1977) Lab, Ic, 1908, it was observed that when under. section 7 A after enquiry, a company is made liable to pay certain amount, the company is entitled to know the basis on which such amount was calculated.

Provisions for review, determination of escaped amount and constitution of tribunals (sections 7B to 7O)

Section 7B provides for review of orders passed under section 7 A(i) where no appeal has been preferred under the act, on the ground of discovery of new and important matter or some mistake or error apparent on the face of record or for any other sufficient reason. No appeal shall lie against the order rejecting the application for the review. Section 7C provides for determination of escaped amount due from employees within a period of five years from the date of communication or order under section 7A or 7B and to reopen the case and pass necessary orders redetermining the amount due from the employer.

Central government may constitute employees provident fun appellate tribunal, consisting of a presiding office who is qualified to be high court judge. The term, service conditions and appointment of supporting staff are mentioned in section 7E to 7h. Any person aggrieved by order / notification issued by central government. Authority under section 1(3), 1(4), 3, 7A(1), 7C, 14B or 7B (except an order rejection an application for review) may refer an appeal. The tribunal shall prescribe its own procedure and have all powers vested in officers under section 7A.

The proceedings before the tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for section 196 of Indian penal code, it shall be deemed to be a civil court for all purposes of section 195 and chapter xxvi of code of criminal procedure code, 1973. The appellant can take assistance of legal practitioner and the government shall appoint a presenting officer to represent it. Any order made by the tribunal finally disposing of the appeal cannot be questioned in any court. Further central government can transfer pending applications under section 19A (before its repeal) to the tribunal.

ii) Mode of recovery of moneys due from employers (section 8)

Section 8 prescribes the mode of money due from employers by the central provident fund commissioner or such officer as may be authorized by him by notification in the official as may be authorized by him by notification in the official Gazette in this behalf in the same manner as an arrear of land revenue. The amount from the employer recoverable under this section shall relate to following categories:

a) Amount due form employer in relation to an establishment to which this scheme or the insurance scheme applies in respect of any contribution payable to the fund or as the case may be, the insurance fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section (2) of section 15, or under sub-section (5) of section 17 any charges payable by him under any other provisions of this act or of any provisions of the scheme or the insurance scheme; or

b) Any amount due from employer in relation to an establishment in respect of any damages recoverable under section 14B or any charges payable by him to the appropriate government under any provisions of this act or under any of the conditions specified under section 17 or in respect of contribution payable by him towards family pensions scheme or the insurance scheme under section 17.

iii) Recovery of Moneys by employers and contractors (section 8A)

Section 8A lays down that the amount of contribution that is to say the employers contributions as well as the employees contribution and any charges for meeting the cost of administering the fund paid or payable by an employer in respect of an employee employed by or through a contractor, may be recovered by such employer from the contractor either by deduction from amny amount payable to the contractor under any contact or debt payable by the contractor.

A contractor from whom the amount mentioned above, may be recovered in respect of any employee employed by or through him, may recover from such employee, the employees contribution by deduction from the basic wages, derness allowance and retaining allowance, if any, payable to such employee. However, notwithstanding any contract to the contrary, contractor shall be entitled to deduct the employers contribution or charges referred to bove from the basic wages, D.A. and retaining allowance payable to an employee employed by or through him or otherwise to cover such contribution or charges from such employee.

In the case of Malwa vanaspati v. R.P.F.C. (1976) 1 L.L.J. 307, it was held that under section 8A, the employer can recover the amount from the contractor either from the moneys payable to him or as a debt due to him. The employer cannot argue on the ground that he is unable to realize the money from the contractor or he cannot deduct it from wages of the employees as their wages are not directly paid by him.

Measures for recovery of amount due from employer (section 8B to 8G)*

The authorized officer under this act shall issue a certificate for recovery of amount from employer to the recovery officer. The recovery officer has got the powers to attach/sell property of

employer, call for arrest and detention of employer etc. for effecting recovery. The employer cannot challenge the validity of the certificate. The authorized officer can grant time to the employer to make the payment of dues.

The central provident fund commissioner may require any person, from whom amount is due to the employer, to pay directly to the central provident fund commissioner/officer so authorized and the same will be treated as discharge of his liability to the employer to the extent of amount so paid.

iv) Priority of payment of contributions over the other debts (section 11)

Section 11 of the act provides that the contribution towards provident fund shall rank prior to other payments in the event of employer being adjudicated insolvent or where it is a company on which order of winding up has been made. The amount shall include:

a) the amount due from the employer in relation to an establishment to which any scheme or insurance scheme applies in respect of any contribution payable to the fund, or the insurance, damages recoverable under section 14B accumulations required to be transferred under sub-section (2) of section 15 or any charges payable by him under any other provisions of this act or of any provision of the scheme or the insurance scheme; or

c) the amount due from employer in relation to an exempted establishment in respect of any contribution to the provident fund or any insurance fund in so far as it relates to exempted employees under the rules of the provident fund, or any insurance fund or any contribution payable by him towards the family pension fun under sub-section (6) of section 17, damages recoverable under section 13B or any charges payable by him to the appropriate government under any provisions or this act or any of the conditions specified under section 17.

The above amount shall (where the liability therefore has accrued before the order of adjudication or winding up is made) be deemed to be included among the debts which under section 49 of the presidency towns insolvency act, 1909 or under section 530 of the companies act, 1956 are to be paid in property to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up as the case may be.

Sub-section (2) of section 11 states that the amount due from employer in respect of employees contribution deducted from wages of employees and employers contribution shall be deemed to be the first charge on the asset of the establishment and no withstanding in anything contained in any other law from the time being in force, be paid in priority to all other debts.

“Insurance fund” in this section and section 17, means any fund established by an employer under any scheme for providing benefits in the nature of life insurance to employees, whether linked to their deposits in provident fund or not, without payment by the employees of any separate contribution or premium in that behalf (Expl. To section 11).

5. Employer not to reduce wages (section 12)

Section 12 prohibits an employer not to reduce directly or indirectly the wages of any employee to whom the scheme or the insurance scheme applies or the total quantum of benefits in the nature of old age pension, gratuity or provident fund or life insurance to which the employee is entitled under terms of employment, express or implied, simply by reason of his liability for the payment of any contribution to the fund or the insurance fund or any charges under this act or the scheme or the insurance scheme.

In consolidated crop protection (p) ltd. V. Hema Chandra Rao and another 1977 lab. I.C. 251 (Bombay), it was held that the employer can get his contribution reduced by a proper application but so far as employers contribution is concerned there is a strict flat contained in section 12 that the benefit which the employee was getting shall not be permitted to be reduced. On execution from statutory scheme to voluntary scheme, more beneficial to employee for making reduced contribution, the employer cannot reduce his contribution to what he has been paying to the employee.

6. Transfer of Accounts (section 17A)

Section 17 A(1) of the act provides that where an employee employed in an establishment to which this applies leaves his employment and obtain reemployment in another establishment to which this act does not apply, the ,amount of accumulations to the credit of such employee in the fund, or as the case may be, in the provident fund of the establishment left by him shall be transferred within such time as may be specified by central government in this behalf to the credit of his account in the provident fund of the establishment in which he is employed, if the employee so desires and the rules in relation to that provident fund permit su,h transfer.

Sub-section (2) further provides that where as employee employed in an establishment to which this act does not apply, leaves his employment and obtain re-employment in another establishment to which this act applies, the amount of accumulation to the credit of such employee in the provident fund of the establishment left by him, may, if the employees so desire and also rules in relation to such provident fund permit, be transferred to the credit his account in the fund or as the case may be, in the provident fund of the establishment in which he is reemployed.

7. Protection against attachment

Statutory protection is provided to the amount of contribution to provident fund under section 10 from attachment to any court decree. Sub section (1) of section 10 provides that the amount standing to the credit of any exempted employee in a provident fund shall not in any way, be capable being assigned or charged and shall not be liable to attachment under any decree or order or any court or any court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the provincial insolvency act, 1909 nor any receiver appointed under the provincial insolvency act, 1920 shall be entitled to or have any claim on any such amount.

It is further provided in sub-section (2) that any amount standing to the credit of a member in the fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the scheme or the rules of the provident fund shall, subject to any deduction authorized by the said scheme or rules, rest in the nominee and shall be free from any debt or other liability Incurred by the deceased or the nominee before the death of the member or of the exempted employee.

The above provision shall apply in relation to the family pension or any other amount payable under the family pension scheme as they apply in relation to any amount payable out of the fund.

8. Power to Exempt (section 17)

Section 1 7 authorizes the appropriate government to grant exemptions to certain establishments or person from the operation of all or any of the provisions of the scheme. Such exemption shall be granted by notification in the official gazette subject to such conditions as may be specified therein:

a) When in the opinion of the appropriate government the rules framed by such establishment of its provident fund with respect to the rates of contribution are no less favorable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favorable to the employees than the benefits provided under this act or any scheme in relation to the employees in any other establishment of a similar character; or

b) If the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate government is of opinion that such benefits, separately or jointly are on the whole not less favorable to such employees than the benefits provided under this act or any scheme in relation to employees in any other establishment of a similar character.

Sub-section (1 A) empowers the central government to exempt, by notification in the official gazette and subject to such conditions as may be specified in the notification, form the operation of all or any of the provisions of the family pension scheme, any establishment if the employees of such establishment are in enjoyment of benefits in the nature of family pension and the central government is of the opinion that such benefits are on the whole not less favorable to such employees than the benefit provided under this act or the family pension scheme in relation to employees in any other establishment of a similar character.

Sub-section (2) provides that any scheme may make provision for exemption of any persons or class of persons employed in any establishment to which this scheme applies from the operation of all or any of the provisions of the scheme, if such person or class of persons is entitled to benefits in the nature of provident fund, gratuity or old age pension and such benefits provided under this act or the scheme; provided that no such exemption shall be granted in respect of a class of persons unless the appropriate government is of the opinion that the majority of persons constituting such class desire to continue to be entitled to such benefits.

Sub-section (2A) provides that, the central provident fund commissioner may, if requested so to do by the employer, by notification in the official gazette, and subject to such conditions as may be specified in the notification, exempt any scheme, if it is satisfied that *the* employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life insurance, whether linked to their deposits in provident fund or not, and such benefits are more favourable to such employees than the benefits admissible under the insurance scheme.

Sub-section (3) provides that where in respect of any person or class of persons employed in an establishment an exemption is granted under this section from the operation of all or any of the provisions of any scheme, (whether such exemption has been granted to the establishment wherein such person or class of persons is employed or to the person or class persons as such) the employer in relation to such establishment:

a) Shall, in relation to the provident fund, pension and gratuity to which any such person or class of persons is entitled, maintain such accounts, submit such returns, make such investment, provide for such facilities for inspection and pay such charges as the central government may direct.

b) Shall not at any time after the exemption, without the leave of the central government reduce the total quantum of benefits in the nature of pension, gratuity or provident fund to which any such person or class of persons was/were entitled at the time of the exemption; and

c) Shall, where any such person leaves his employment and obtains reemployment in another establishment to which this act applies transfer within such time as may be specified in this behalf by the central government, the amount of accumulations to the credit of that person in the provident fund of the establishment left by him to the credit of that persons account in the provident fund of the establishment in which he is re-employed or, as the case may be, in the fund established under the scheme applicable to the establishment.

Sub-section (3A) provides that, where in respect of any person or class of persons employed in any establishment, an exemption is granted under sub-section (2A) or sub-section (2B) form the operation of all or any of the provisions of the insurance scheme (whether such exemption is granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such) the employer in relation to such, establishment:

a) Shall, in relation to the benefits in the nature of life insurance, to which any such person or class of persons is entitled or any insurance fund maintain such accounts, submit such returns make such investments, provide for such facilities for inspection and pay such inspection charges, as the central government may direct.

b) shall not at any time after the exemption without the leave of the central govern met reduce the total quantum of benefits in the nature of life insurance to which any such person or class of persons was entitled immediately before the date of the exemption; and

c) shall where any such persons leave his employment and obtains reemployment in any other establishment to which this act applies, transfer within such time as may be specified in this behalf by the central government, the amount of accumulations to the credit of that person in insurance fund of the establishment left by him to the credit of that persons account in the insurance fund of the establishment sin which he is reemployed or as the case may be, in the deposit linked insurance fund.

Cancellation of the exemption : sub-section (4) of section 17 provides for cancellation of the exemption by the authority which granted it, if the employer fails to comply with the following:

a) In the case of exemption granted under sub-section (1) with any of the conditions imposed under that sub-section or with any of the provisions of sub-section (3)

aa) in the case of an exemption granted under sub-section (1A) with any of the conditions imposed under that sub-section (1A) with any of the conditions imposed under that sub-section;

b) in the case of an exemption granted under sub-section (2) with any of the provisions of sub-section (3)

c) in the case of an exemption granted under sub-section (2A), with any of the conditions imposed under that subsection, or with any of the provisions of subsection (3A); and

(d) in the case of an exemption granted under sub-section (2B) with any of the provisions of sub-sections (3A)

Sub-section (5) further provided that on the cancellation of the exemptions under sub-section (1), (1A), (2), (2A) or (2B) the amount of accumulations to the credit of every employee to whom such exemption applied, in the provident fund, family pensions scheme apply shall notwithstanding any exemption granted under sub-section (1) or subsection (2) pay to the family pension fund such portion of the employers contribution as well as the employees contribution to its provident fund within such time and in such manner as may be specified in the family pension scheme.

9. Power to remove difficulties (section 19A)

Section 19A contains provisions relating to removal of any difficulty that may arise in giving effect to the provisions of this act and in particular, to the following doubts;

i) whether an establishment which is a factory, engaged in any industry specified in schedule I;

ii) whether any particular establishment is an establishment falling within the class of establishments to which this act applies by I virtue of a notification under clause (B) of sub-section (3) of section 1. or,

iii) the number of persons employed in the establishment; or

iv) the number of years which have elapsed From the date on which an establishment has been set up; or

v) whether the total quantum of benefit to which an employee is entitled has been reduced by the employer.

For the removal of doubts in the above matters, the central government may by order make such provisions to give such direction not consistent with the provisions of this act as appear to it to be necessary or expedient and the order of the central government so issued shall be Final.

The power to move the central government under this section is not confined to the statutory authorities. Even an owner of an establishment can move the central government to resolve the dispute T ,R. Raghava Iyengar and Co.v R.P.F.C. A.I.R. 1963 Mad. 238. If once a doubt has been raised in respect of any matter mentioned in section 19A, unless the central government adjudicates the matter no further action can be taken by the authorities to enforce those provisions of the act Dhanalakshmi weaving works v. R.P.F.C., A.I.R. Ker. 219

Section 19A is substituted by new section 20, 21 and 22 by employees provident Fund and Misc. provo (amendment) act, 1988 (date of effect yet to be notified).

These new sections contain provisions for giving directions to the central board, making necessary rules to carry out the provisions of the act, prescribing salary and allowance and other terms and conditions of service of presiding officer and the staff of the tribunal, prescribing fees payable for Filing appeal manner of certifying copy of recovery certificate etc, by central government.

Every rule made, under the act shall be laid before each house of parliament for approval. However, any modification made by parliament shall not invalidate anything done earlier under the rule.

Necessary powers to the central government to remove difficulties in the implementation of the act are provided in section 22.

Questions For Test

1. Define the following terms as used in the Employees Provident Funds and Miscellaneous Proviso Act, 1952. Basic wages controlled industry, employer exempted employee, exempted establishment, factory, manufacture, occupier of a factory.

2. Define ‘basic wages’ under the Employee Provident Funds and Miscellaneous Provision Act, 1952.

3. Does the Employees provident funds and Miscellaneous Provision Act, 1952 cease to apply if at any time the number of employees in an establishment to which the Act applies fall below 20?

4. What are the provisions of the Employees’ Provident Funds and Miscellaneous provisions Act, 1952 relating to the constitution of Provident Fund Scheme and Family pensions Scheme?

5. How is the Provident Fund Scheme administered under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952?

6. What are the rules as to payment and recovery of contribution by an employer?

7. Explain the salient features of ‘Provident Fund Scheme’, Family Pension Scheme’ and Deposit linked Insurance under the Employees ‘Provident Funds and Miscellaneous Provisions act, 1952.

8. What matter are to be provided for in the Employees' deposit linked insurance Scheme?

9. How are the contribution under the Employees Provident Funds and Miscellaneous Provision Act, 1952 protect?

10. What are the provision regarding transfer of the amount to the credit of the provident fund of an employee where he leaves his appointment and joins another employment?

11. If any employer commits default in payment of contributions under the Employees 'Provident Funds and Miscellaneous Provisions Act, 1952 and not order is passed for its recover for about 5 years, is the employer liable to pay damages for default in paying contribution in time?

Notes -

LESSON 39
PAYMENT OF GRATIUITY ACT, 1972

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- To whom is gratuity paid
- How is the gratuity computed?

So, students can anybody tell me ,What is gratuity? Come on make an approach fine I will tell you "Gratuity is a retrial benefit. It is a lamp sum payment made by an employer to an employee in consideration of his past service when the employment is terminated. In the case employment coming to an end due to retirement or superannuation, it enables the affected employee to meet the new situation which quite often means a reduction in earnings or even total stoppage of earnings. In the case of death of an employee, it provides much needed financial assistance to the surviving members of the family. Gratuity schemes, therefore, serves as instruments of social security and heir significance in a developing country like India where the general income level are low cannot be over emphasized.

2. Historical background

In the earlier days, gratuity schemes where introduced in some establishments either by voluntary action of the employers or under agreements between employers and workers. These schemes were, however, confined to particular establishments and even within those establishments, to certain categories of staff and there was no general legislation requiring payment of gratuity to industrial workers. In course of time, it was recognized that workers had a right to receive gratuity in return for long and unblemished service. Industrial Tribunal dealt with disputes on the subject and their awards resulted in reduction of or modification in gratuity schemes in some establishments. Some cases reached the supreme court also. It was pointed out in once such case Delhi Cloth & General Mills Co. Ltd. V. Their Workmen (1968) 36 FJR 247, that the object of providing a gratuity scheme is to provide a retiring benefit to the workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer.

Provision was made in the working Journalists (Conditions of Services and Miscellaneous Provisions) act, 1955, requiring the newspaper establishment to pay gratuity to the working journalists employed by them.

A few years later, the Government of Kerala enacted the Kerala Industrial Employee's Payment of Gratuity Act, 1970, making gratuity a statutory right of the employee's covered by the Act. The government of West Bengal followed suit and enacted the West Bengal Employees Payment of Gratuity Act, 1971. The other States were also thinking in terms of enacting similar laws, It was, however, felt that instead of each State having its own law on gratuity, it would be advantageous to have a uniform central; Low for the whole country. The matter was discussed in the labour Minsters Conference and thereafter in the Indian labour Conference, in 1970 and it was agreed that the Central legislation on payment of gratuity should be undertaken. Accordingly a central Act, namely, the Payment of gratuity Act, 1972, modelled largely on the West Bengal legislation, was enacted it came into force on the 16th September 1972.

3. Application of the Act

Application of the Act to an employed person depends on two factors. Firstly, he should be employed in an establishment to which the Act applies. Secondly, he should be an 'employee' as defined in Section 2(e) 1;

Establishments to which the Act applies

According to Section 1 (3), the Act applies to -

a) every factory, mine, oilfield, plantation, port and railway company;

b) every shop or establishment within the meaning of any law* for the time being in force in relation to shop and establishments in a state, in which ten or more persons are employed, or were employed, on nay day of the preceding twelve months.

c) Such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months;

In exercise of the power s conferred by clause (c), the Central Government has specified Motor transport undertaking, Clubs, Chamber of Commerce and Industry, Inland Water Transport establishments, Solicitor's offices, Local bodies and Circus Industry, in which 10 or more persons are employed or were employed on any day of the preceding 1 2 months, as classes of establishments to which the Act shall apply.

A shop or establishment to which the Act has become applicable once continues to be governed by it, even if the number of persons employed there in at any time after it had become so applicable falls below ten (Section 3A)

5. Who is an 'Employee'?

According to Section 2(e), 'employee' means any person (other than an apprentice) employed on wages, not exceeding two thousand and five hundred rupees per mensem or such higher amount as the central Government may having regard to the general level of wages, by notification, specify, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semiskilled, or unskilled, manual, or supervisory, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity but does include any such person who holds a post under the Central Act or by any rules providing for payment of gratuity. The wage ceiling of Rs. 3,500/- which was earlier in the Act has

been removed. With the removal of ceiling on wage every employee will become eligible for gratuity, irrespective of his wage level w.e.f. 24th may, 1994.

6. Other important definitions

'Appropriate Government' [Section 2(a)]

'Appropriate Government' means-

iv) in relation to an establishment-

a) belonging to, or under the control of, the Central Government,

b) having branches in more that one State,

c) of a factory belonging to, or under the control of the central Government

d) of a major port, mine, oilfield or railway company the Central Government,

v) In any other case, the State Government.

Practice

Many large establishments have branches in more than one State. In such cases the 'appropriate Government' is the Central Government and any dispute connected with the payment or non-payment of gratuity falls in the jurisdiction of the 'Controlling Authority' and the "Appellate Authority" appointed by the Central Government under Sections 3 & 7.

A company secretary should know whether the ''appropriate Government" in relation to his establishment is the Central Government or the State Government. He should also find out who has been notified as the "Controlling Authority" and also who is he "Appellate Authority". It may be noted that any request for exemption under Section 5 of the Act is also to be addressed to the "appropriate Government" it is, therefore, necessary to be clear on this point.

Continuous Service (Section 2 A)

An employee shall be said to be in continuous service for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of sickness, accident, leave, absence for duty without leave (not being absence in respect of which an order treating the absence as break in service has been-passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), layoff, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act:

2. Where an employee (not being an employee employed in a seasonal establishment is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer-

a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

i) One hundred and ninety days in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days a week; and

ii) Two hundred and forty days in any other case;

b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less that-

c) Ninety five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less that six days a week; and

d) One hundred and twenty days in any other case;

"Explanation -for the purposes of clause (2) the number of day on which an employee has actually worked under an employer shall included the day on which—

i) he has been laid -off under an agreement or as permitted by standing orders made under the industrial Employment (Standing Orders) act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947); or under any other law applicable to the establishment;

ii) he has been on leave with full wages, earned in the previous years;

iii) he has been absent due to temporary disablement caused by accident arising out of an in the course of his employment; and

iv) In the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

3. Where an employee, employed in a seasonal establishment is not in continues service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent, of the number of days on which the establishment was in operation such period.

Family [Section 2(h)]

"Family" in relation to an employee, himself, his wife, his children, whether married or unmarried his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any.

In the case of a female employee, herself, her husband, her children whether married or unmarried her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

Explanation : Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption lawful, such child shall be deemed to be excluded from the family of the employee.

Retirement [Section 2 (q)]

"Retirement" means termination of service of an employee otherwise that on superannuation" in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or on conditions of service as the age on the attainment of which the employee shall vacate the employment.

Wages [Section 2(r)]

"Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and included dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages any other allowance.

7. When in gratuity payable?

According to Section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an "employee" on the termination of his employment after he has rendered continuous service for not less than five years—

a) on his superannuation, or

b) on his retirement or resignation, or

c) on his death or disablement due to accident or disease.

Note: The completion of continues service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

8. To whom is gratuity payable?

It is payable normally to the employee himself. However, in the case of death of the employee it shall be paid to his nominee and if no nomination has been made. To his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

9. Amount of gratuity payable -method of calculation

Establishment other that seasonal establishments:

Section 4(2) of the act lays down that for every completed year service or part hereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages paid for any overtime and shall not be taken into account.

Seasonal establishments:

In seasonal establishments the employees stand classified into two groups, viz.

i) those who work throughout the year and (ii) those who work only during the season. The former are entitled to gratuity at the rate of 15 day's wages for every completed year of service or part thereof in excess of six months. The latter (those who work only during the season) are, however, entitled to receive gratuity at the rate of seven days for each season.

Explanation -in the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn him by twenty-six and multiplying the quotient by fifteen.

Maximum limit on gratuity:

In cases covered by the preceding paras the maximum amount of gratuity shall not exceed Rs. 1,00,000 [Substituted for twenty months' wages by the Payment of Gratuity (Amendment) Act, 1994 w.e.f. 24th May 1994]

Computation of gratuity to a disabled employee:

Due to any accident or disease an employee may become disabled with result he cannot do the same work with the same efficiency. The employer may re-employ such employee only on reduced wages. The gratuity of this disabled workmen will be computed in two parts:

a) for the period preceding the disablement—gratuity is calculated on the basis of wages last drawn by him at the time of the termination of his service.

b) For the period subsequent to the disablement gratuity will be computed on the basis of the reduced wages as drawn by him at the time of the termination of his service.

The total of the gratuity of these two periods will be the amount of gratuity payable to the disabled employed.

Protection of Better Terms of Gratuity

The right of any employee to receive better terms o gratuity under any award, or agreement, or contract with the employer is protected. Where a particular provisions in an existing gratuity scheme is more favourable whereas some other provisions are less favourable, the employees must make a choice of one of the two schemes in its entirety as more favourable. Thus, if a gratuity scheme under an award, or agreement on contract with the employer provides for one months wages for each year with the stipulation that gratuity is payable on the basis of the minimum of ten year's service, the employees cannot ask for reduction of the period of five years while retaining the higher quantum of gratuity as in the existing scheme Similarly, where one months basic wages are provided in a scheme, the employees will have either to continue the same, if found more favourable in general, or revert to fifteen days' wages as per the Act.

10. Procedure for nomination (Section 6)

1. Each employee, who has completed one year of service shall make, within such time and in such form and in such manner a may be prescribed, nomination for the purpose of payment of gratuity in the event of his death.

2. Any employee may, in his nomination, distribute the amount of gratuity payable to him amongst more that one nominee.

3. In an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family. Any nomination made by such employee in favour of a person who is not a member of his family shall be void.

4. If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or person but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

5. A nomination may be modified by an employee at any time, after giving to his employer a written notice in the prescribed form and in the prescribed manner.

6. If a nominee predeceases the employee, the interest of nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

7. Every nomination, fresh nomination or alteration of nomination as the case may be shall be sent by the employee to his employer, who shall keep the same in his safe custody.

11. Forfeiture of gratuity.

The act deals with this issue in two parts. Section 4(6) (a) provides that he gratuity of an employee whose service have been terminated for any of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited b the extent of the damage or loss so caused.

Section 4(6) (b) deals with a case where the services of an employee have been terminated:

a) for riotous and disorderly conduct or any other act of violence on his port, or

b) for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited (Prior to the amendment of the act n 1984, the forfeiture in such cases was total)

Compulsory Insurance (Section 4A)

The payment of gratuity (Amendment) act, 1987 has prescribed provisions for compulsory insurance for the employer's liability for payment towards the gratuity under the Act form the Life Insurance Corporation of India esblished under the Life Insurance Corporation of India Act, 1956 or any other prescribed insurer. However, employer of an establishment belonging to or under the control of the central Government or the state Government are exempted for the operations of these provisions.

The appropriate Government may also exempt:

i) employers who have already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement; and

ii) employer employing 500 or more person, who establishes an approved, gratuity fund in the manner prescribed.

For the purpose of this Section, every employer shall within a prescribed time get his establishment registered with the controlling authority in the prescribed manner, and only those employers who have taken an insurance as referred above or has established an approved gratuity fund shall be registered.

To give effect to the provision of this section the appropriate government may make rules provided for the composition of Board of Trustees of the approved gratuity fund for the recovery by the controlling authority of the amount of gratuity payable to employees from Life Insurance Corporation of India or any other insurer with whom an insurance has been taken, or as the case may be, the Board of Trustees of the approved gratuity fund.

If there is any default on the part of the employer in payment of premium, to the insurance of by way of contribution to an approved gratuity fund he shall be liable to pay the amount of gratuity fund, and for the recovery by the controlling authority. Contravention of this is punishable with fine which may extend to Rs. 10,000 and in case of continuing offence with a further fine which may extend to Rs. 1,000/- for each day during which the offence continues.

12. Exemptions

The Payment of Gratuity Act empower the "appropriate Government" to grant exemption. The relevant Section 5 reads follows:

1. the appropriate Government may, by notification, and subject to such conditions as may be specified in notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not loss favourable than the benefits conferred under this Act.

2. the appropriate Government may, by notification and subject to such condition as may be specified in the notification, exempt any employee or class of employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop to which Act applies, from the operation of the provisions of this Act, if, in the opinion of the appropriate Government such employee or class of employee are in receipt of Gratuity or pensionary benefits not less favourable that the benefits conferred under this Act.

3. A notification under Sub-section (1) or (2) may be issued retrospectively a date not earlier that the date of commencement of this Act such notification shall not affected prejudicially the interest of any person."

13. The Controlling Authority and the Appellate Authority

The controlling Authority and the Appellate Authority are two important functionaries in the operation of the Act. Section 3 of the Act says that the appropriate Government may by notification appoint any officer to be a controlling Authority who shall be responsible for the administration of the Act. Different controlling authorities may be appointed for different areas.

Section 7(7) provided for an appeal being preferred against an order of, the controlling Authority to he appropriate Government or such other authority as may be specified by the appropriate government in this behalf.

14. Application for payment of gratuity (Section 7)

Section 7(1) lays down that a person who is eligible for payment of gratuity under the ACT or any person authorised, in writing, to act on his behalf shall send a written application to the employer. Rule 7 of the payment of gratuity (Central) Rules, 1972, provides that the application loll be made ordinarily within 30 days form the date gratuity becomes payable. The rule also provided that where the date of superannuation or retirement of an employee is know, the employee may apply to the employer before 30 days of the date of superannuation or retirement.

A nominee of an employee who is eligible for payment of gratuity in the case of death of the employee shall apply to the employer ordinarily within 30 days form the date of the gratuity becomes payable to him [Rules 7(2)]

Although the forms in which applications are to be made have been laid own, on application an plain paper with relevant particulars is also accepted.

The application may be presented to the employer either by personal service or by registered post with acknowledgment due. An application for payment of gratuity filled after the period of 30 day mentioned above shall also be entertained by the employer if the application adduces sufficient cause for the delay in preferring him claim. Any dispute in this regard shall be referred to the Controlling Authority for his decision.

15. Employer's duty to determine any pay gratuity.

Section 7(2) lays down that as soon as gratuity become payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority, specifying the amount of gratuity so determined.

Section 7(3) of the Act say that the employer shall arrange to pay the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.

Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the per son to whom it is payable.

Section 7(3A : if the amount of gratuity payable under Sub-section (3) is not paid by the employer within the period specified in Sub-section (3), the employer shall pay, form the date on which the gratuity become payable to the date on which it is paid, simple interest at the rate of 10 per cent per annum:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing form the controlling authority for the delayed payment on this ground.

16. Dispute as to he amount of gratuity or admissibility of the claim

If the claim for gratuity is not found admissible, the employer shall issue a notice in the prescribed form to the applicant employee, nominee or legal heir as the case may be, specifying reasons why the claim for gratuity is not considered admissible. A copy of the notice shall be endorsed to the Controlling Authority.

If the dispute realities as to the amount of gratuity payable, the employer shall deposit with the Controlling authority such amount as he admits to be payable by him. According to section 7(4) (e) the controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made-

i) to the applicant where he is the employee; or

ii) where the applicant is not he employee, to the nominee or heir of the employee if the Controlling Authority such amount as he admits to be payable by him. According to Section 7(4) (e), the Controlling Authority shall pay the amount of deposit as soon as may be after a deposit is made.

It is open to the employee to make an application to the Controlling Authority if there is any dispute as to the amount of gratuity payable or the admissibility of the claim or as to the person entitled to receive gratuity.

17. Recovery of gratuity (Section 8)

Section 8 provides that if the gratuity payable under the Act is not paid by the employer within the prescribed time, the controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the collector, who shall recover the same together with the compound interest thereon at such rate as the Central Government may by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:

"Provided that the controlling authority shall, before issuing certificate under this section give the employer a reasonable opportunity of showing case against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act",

18. Protection of Gratuity

Gratuity has been exempted form attachment in execution of any decree or order of any Civil, Revenue or criminal court. This relief is aimed at providing payment of gratuity to the person or persons entitled thereto without being affected by any order of attachment by any decree of any Court.

19. Act to override other enactments, etc.

The provision of the Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactments other that this Act or in any instrument or contract having effect by virtue of any enactment other that this Act.

Salient points of the act-

What is gratuity? - "Gratuity is a retrial benefit "
Application of the Act
Establishments to which the Act applies
Who is an 'Employee'?
Family
To whom is gratuity payable?
Amount of gratuity payable- method of calculation
Establishment other that seasonal establishments:
Seasonal establishments:
Maximum limit on gratuity
Computation of gratuity to a disabled employee
Protection of better terms of gratuity
Forfeiture of gratuity.
Compulsory Insurance (Section 4A)
The appropriate Government may also exempt:
The Controlling Authority and the Appellate Authority
Application for payment of gratuity (Section 7)
Employer's duty to determine any pay gratuity.
Recovery of gratuity (Section 8)
Protection of Gratuity
Act to override other enactments, etc.

Questions For Test-

1. Define the following terms as used in the Payment of Gratuity Act, 1972

   Appropriate Government, continuous service, employee, employer, family, wages.

2. What are the rules relating to nomination by an employee under the Payment of Gratuity Act, 1972?
3. What are the circumstances in which gratuity becomes payable to an employee under the Payment of gratuity Act, 1972?
4. When does an employee forfeit his right to gratuity?
5. What are the rules as 10 determination and recovery of the amount of gratuity under the Payment of Gratuity Act, 1972?
6. Who is controlling authority under the Payment of gratuity Act, 1972? What are his powers? Who can apply to controlling authority for direction? When can this application be made?
7. Enumerate the rights and obligations of employers under the payment of gratuity act,1972.
8. What ore the rights and obligation of employees under the Payment of gratuity Act, 1972?
9. Can gratuity payable to an employee under the Payment of Gratuity Act, 1972 be attached in execution of any decree of a court?
10. What is the rate of Gratuity payable to an employee under the Payment of gratuity Act, 1972? What is the maximum gratuity payable under the Act? When does an employee forfeit it?
11. Write a note on: “Compulsory insurance of employer for payment of gratuity”.

Notes -

LESSON 40
TRADE UNION ACT, 1926

Learning Outcomes

Dear students,
After todays class you should be able to answer the following questions

- What are the provisions of the Trade Unions Act?

My dear students a union according to Collins dictionary- ' is a workers organization which represents its members and which aims to improve things such as their working condition and pay' so what would a trade union stand for any guess…yes a trade union is of people in respect of a particular trade. We did make a reference to trade unions in which chapter can any body tell me…yes you are right Industrial Dispute Act 1947 good so you remember.

Article 19(1)

(a) and (c) of our constitution guarantees to every citizen, freedom of speech and expression and right to form association and unions to ventilate their views and grievances. 'Any group of persons whether workers or employers, can unite themselves to protect their interest, economic or otherwise. Usually the term trade union 'refers to association of workers formed to protect their economic interest. But the trade unions act, 1926, is very wide in scope and covers the trade unions of employers as well. According to its preamble, it is an act to provide for the registration of trade unions and in certain respects to define the law relating registered a trade unions. The act lays down a detailed procedure for the registration and working of trade unions. The act lays down a detailed procedure for the registration and working of trade unions. In order that the union may fight for its legitimate rights fearlessly, certain immunities from criminal and civil actions are granted to the members of a registered trade union and their officials. Thus, provisions have been made to ensure a healthy trade union movement in India. By virtue of section 1(2) the act extends to whole of India.

2. Important definitions : Section 2

i) Appropriate government

In this act, the term 'appropriate government means in relation to trade unions whose objects are not confined to one state, the central government, and in relation to other trade unions, the state government.

ii) Executive : section 2(a)

Executive means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted.

iii) Office bearer : section 2(b)

Office bearer in the case of a trade union includes any member of the executive thereof, but does not include an auditor.

iv) registered office and registered trade union : section 2(d) and 2(e)

registered office means that office of a trade union which is registered under this act as the head office thereof and a registered trade union means a trade union registered under this act.

Registrar : section 2(f)

Registrar means

a) a registrar of trade union appointed by the appropriate government under section 3 and includes any additional or deputy registrar of trade union; and

b) in relation to any trade union, the registrar appointed for the state in which the head or registered office, as the case may be, of the trade union is situated.

vi) Trade disputes : section 2(g) Trade dispute means any dispute between—

a) employee and workmen, or

b) Workmen and workmen, or

c) Employers and employers,

Which is connected with

i) the employment or non-employment or

ii) the terms of employment or

iii) the conditions of labour, of any person.

[since the above definition of trade dispute is almost similar to the definition of industrial dispute under the industrial disputes act, 1947, it is advised to refer to that act for details]

Workman means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

In order that a combination of workmen should be a trade union, such workmen must be persons employed in trade or industry : 1979-I labour law journal 448 (DB)

In a petition, the legality of registration of employees association as a trade union was challenged on the ground that it is purely a research and development organization

Without any profit motive and therefore, even if it can be regarded as an industry within the meaning of the industrial disputes (I.D.) act it is not a trade or industry for the purpose of the trade unions act. It was held that

there is no difference between the meaning of the word "industry" as defined in section 2(j) of the I.D. Act and the words "trade" or industry as used in section 2(g) of the trade unions act. Therefore, if an establishment or activity falls within the meaning of industry as defined in the industrial disputes act, the workmen thereof are also workmen employed in a trade or industry as specified in the definition of the words "trade dispute" contained in section 2(g) of the trade unions act and consequently they are entitled to form a trade union.

The words "trade" or "industry", even without the elaborate definition of the word "industry", even without the elaborate definition of the word "industry" under the I.D. act are themselves sufficiently wide enough to bring the petitioner society within the definitions of trade or industry notwithstanding the fact that it has no profit motive. The two enhancements, viz., the trade unions act and the industrial disputes act are in pari material and it is permissible to read the definition of the word "industry" contained in section 2(j) of the I.D. act to understand the same word used in the trade unions act, if so read, the conclusion is inevitable that the word "trade" or industry contained in section 2(g) of the trade unions act, should carry the same meaning as the word "industry" defined in section 2(j) of the I.D. Act; Central machine toll institute, Bangalore v. Asst. labour Commissioner, 1978 lab IC 1732 (Kant)

vii) Trade Union: section 2(h)

Trade union means any combination, whether temporary or permanent formed primarily for the purpose of

a) regulating the relation: (1) between workmen and employers or (2) between workmen and workemen, or (3) between employers and employers; OR

a) for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.

Provided that this act shall not affect

a) any agreement between partners as to their own business;

b) any agreement between an employer and those employed by him as to such employment; or

c) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

In the case of Rangaswamy v. Registrar of trade unions, AIR 1962 Mad. 231 certain employees consisting of gardners and domestic servants .employed at Raj Bhavan, madras formed a union with the object of using better service conditions and to failitate collectige bargaining twith employer. The registrar refused to register the trade union. The union tended that their services were not purely domestic services.

However, on an appeal to the court it was held that persons employed in raj bhanvan for domestic and the other duties cannot form a trade union on the found that workers are not employed in trade or business carried on by the employer. The services rendered by them are purely of a personal nature. The union of such workers would no come within the scope of the act so as to entitle it to registration there under. Similarly, the union of civil servants engaged in the task of the sovereign and legal functions of the government be held as trade union under the act; Tamilnadu non gazetted officers union v. registrar of trade unions, A.I.R. 1962 Mad. 234.

Lastly the definition not only recognizes the combination of workers but any combination of employers will also come within the scope of the term trade union, however deciding factor will be the purpose for which this combination is formed. Thus, a combination of employers in a jute industry, imposing restrictions on the members in the respect of prices to be charged from the customers, is covered under the definition of trade union radhakisan jaaikisan ginning and pressing factory warned v. Jamnadas nursery ginning and pressing co Ltd., AIR 1940 Nag. 228.

3. Appointment of registrars : section 3

a) The appropriate government shall appoint a person to be the registrar to trade unions for each state.

b) The appropriate government is also empowered to appoint if it thinks fir, additional and deputy registrar. Such persons will function under the superintendance and direction of the registrar who may define the local limits within which each one will operate.

c) Where an additional or deputy registrar exercises and discharges the powers and functions of a registrar in an area within which the registereded office of a trade union is situated, the additional or deputy registrar shall be deemed to be the registrar in relation to the trade union for the purposes of this act.

4. Registration of trade unions.

As is evident from the preamble itself that the act is encacted of provide for registration of trade unions, the act lays done in a comprehensive manner the procedure for registering a trade union. However, it should be noted that registration of trade union is not mandatory under the act. In view of a number of immunities granted to a registered trade union from civil and criminal proceedings, registration of trade unions is desired.

The procedure for registration enumerated in the following Para graphics carved out form the provisions of the trade unions act and the central trade union regulations, 1938, which are in relation to a trade union whose objects are not confined to one state. The procedure for registration in relation to other trade unions can be ascertained from the provision of the trade unions act, 1926 and the regulations made by the appropriate governments.

Procedure for registration

Mode of registration: Section 4

Any seven or more members of a trade union may apply for registration by subscribing their names to the rules of trade union and complying with other requirements in relation to registration under the act.

The application for registration referred to above shall be made in form A (regulation 3 of central trade union regulations, 1938). The fact that some of the applicants, at anu time, after the date of the application but before the registration of the trade union have ceased to be, the members of the trade union or have given notice in writing to he registrar dis-associating themselves from the application for registration, shall not be deemed to have the effect of invalidating such application provided the number of applicants, ceasing to be members or disassociating from the application should not exceed half of the total number of persons who made the application.

Application for registration: Section 5

Every application for registration shall be made to the register along with the fee as prescribed under regulation 8 (Rupees five

at present) and shall be accompanied by a copy of the rules of the trade union and a statement of the following particulars:

i) The names, addresses and occupations of members making the application;

ii) The names of the trade union and the address of its head office; and

iii) The titles, names, ages addresses and occupations of the officers of the trade union.

Where a trade union has been in existence for more than one year before the making of an application for registration in form A, there shall be delivered to the registrar together with the application, a general statement of the assets and liabilities of the trade union prepared in the manner prescribed in the manner prescribed (see schedule III to the central union) regulations, 1938).

Rules of trade union:

According to section 6 of the trade unions act, no trade union shall be entitled to registration unless the executive thereof is constituted and the rules thereof provide for the matters stipulated in section 6.

A trade union cannot be registered unless its executive has been constituted according to the law and the rules thereof provide for the following matters:

a) the name of the trade union:

b) the whole of the objects for which the trade union has been established;

c) the whole of the purposes for which the general funds of the trade union shall be applicable, all of which purposes shall be purposes to which such funds are lawfully applicable under this act.

d) The maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office-bearers and members of trade union;

e) The admission of ordinary members who shall be persons actually engaged or employed in an industry in an industry with which the trade union is connected, and also the admission of the number of honorary or temporary members as office bearers required under section 22 to form the executive of the trade union;

e) the payment of a subscription by members of the trade union which shall not be less than twenty five paise per month per member.

f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;

g) the manner in which the members of the executive and the other office bearers of the trade union shall be appointed and removed;

h) the manner in which the members of the executive and other office bearers of the trade union shall be appointed and removed.

i) The safe custody of the funds of the trade union, and annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the office bearers and members of the trade union; and

j) The manner in which the trade union may be dissolved.

In the case of Trilok Nath Tripathi v. Allahabad Division bench, A.I.R. 1957 all 234, it was observed that section 6 requires that no registration can be allowed unless certain conditions given in this section are fulfilled. Rules framed under the constitution of any trade union do not get any statutory force. It is correct that existence of such rules framed to comply with requirements of union. It is only in the nature of contract binding on the members of union. Any breach of such rules cannot be enforced by a writ of mandamus under Article 226 of the constitution. The remedy of the aggrieved party is by way o suit.

Power to call further particulars : Section 7

Before granting registration, the registrar is empowered to call for further information, if he is not satisfied with the particulars filed under section 5 or 6. He may refuse to register the trade union if such information required by him is not supplied to him.

Further if the name of the trade union proposed to be registered is identical or resembles with the name of any other existing registered trade union, the registrar shall not register the trade union unless the name has been altered. This provisions ensures that the public or members of either trade unions are not deceived with respect to the identity of the union.

Registration: section 8

The registrar shall register a trade union by entering in register to be maintained in form B the particulars relating to the trade union after being satisfied that the trade union has complied with all the requirements in regard to registration. If all the terms of act are complied with, it is obligatory upon the registrar to register a union and he has no discretion in the matter: kesoram Rayon Workmens Union v. Registrar of trade unions, 33 FJR 23 (HC).

This function of registrar to register the trade union was fully discussed in Re. Indian steam navigation workers union, AIR 1936 Cal. 57. In this case employees of all the inland steamer services in the province of W. Bengal decided at a meeting to form a union in the name of “inland steam navigation workers union” An application was filed before the registrar of trade unions for its registration. An application was filed before the registrar of trade unions for its registration. But the registrar refused the union on the ground that Ii) the rules and the constitution of the proposed union for all practical purposes are identical, with an existing union, the principal officers are common to both and therefore the present application is an attempt to have the union which was already registered, (ii) few days before the application was filed, the general secretary of the union addressed the government of Benngal in a letter stated that he had been directed but the general body of Indian steam navigation workers union formerly known as RSN & IGN. Rly. Workers union, to approach the government and request that the notification declaring the RSN & Rly. Workers union as unlawful association, might be withdrawn, (iii) since the old union was declared unlawful by a notification under section 16

of criminal law amendment act, 1908, the proposed union which is nothing but old union with a new name, and hence it also an unlawful association.

In an appeal to Calcutta High court, it was held as follows:

1. The registrar appears to have acted on a letter written by the secretary to the government, without giving the appellant any notice of it or without giving them any opportunity of dealing with the statement therein set out. Such an Opportunity ought to have been given before the registrar considered that letter if indeed he ought to have considered that letter at all.

2. The findings of the registrar that the present union is nothing but an attempt to revive an old trade union, declared unlawful association is not within the scope of section 8. The duties of the registrar were to examine the application and look at the objects for which the union was formed. If those objects were objects set out in the act, and if those objects did not go outside the objects prescribed in the act and if all the requirements of the act and the regulations made thereunder had been complied with, it was his duty, in view to register the union. If at sometime that union is deemed, by those who have the power to deal with the matter, to be an unlawful association, this union can be declared as unlawful association in the same way as any other body. The register is not, at this stage entitled to go into that question. His functions are limited to seeing that the requirements of the act have been complied with. The registrar can do very little more than satisfying himself that the technical requirements of the act have been complied with. Thus it is not within the powers of registrar to consider at all the question whether the applicants were rally another trade union which had been banned and which was seeking the registration under a different name.

The court sent back the cast to the registrar to consider the question whether the requirements of the act and the regulations made thereunder, with regard to registration, have been complied with or not. If on the face of the application, the objects and the provisions for carrying them out are within what is allowed by the act, the requirements as to the registration have been complied with, he should register, if not, he should decline to register.

The registrar cannot determine as to which of the rival groups of office bearers of a trade union is the real one. (ONGC workers association v. West Bengal 1988 lab IC 555 cal)

ii) Certificate of registration : section 9

The registrar on registering a trade union under section 8 shall issue a certificate of registration in form C which shall be conclusive evidence that the trade union has been duly registered under the act.

The trade union act, 1926 being " an act to provide for registration of trade unions and in certain aspects to define the law relating to registered trade unions" does not cast any obligation on the employer to maintain any register, record/books, etc. nor does it require filing of a return of a return / notice.

iii) Cancellation of registration : section 10

The registrar may withdraw or cancel the certificate of registration on the following grounds:

a) Certificate has been obtained by fraud or mistake.

b) Trade union has ceased to exist.

c) Trade union has wilfylly and after notice from the registrar contravened any provision of the act.

d) Trade union has allowed any rule to continue in force which is inconsistent with any provisions of the act.

e) Trade union has rescinded any rule providing for any matters, provision for which is required by section 6.

f) Trade union has on its own, applied for its withdrawal or cancellation;

Provided that before the certificate is withdrawn or cancelled, the registrar shall give at least two months notice in writing, specifying the grounds on which it is proposed to take action. In absence of previous notice any proceeding for cancellation or withdrawal of registration is illegal; Radheshyam singh v. Bata Majdoor union 1977 lab IC 1488 (Pat.) However, no notice is required when application has been made by trade union itself.

Further the registrar should satisfy himself that the withdrawal or cancellation of registration has been approved by the general meeting of the trade union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed (60 days) from the date on which the registrar passed the order, appeal

a) Where the head office of the trade union is situated within the limits of a presidency town to the high court, or

b) Where the head office is situated in any area, to such court, not inferior to the court of an additional or assistant judge or a principal civil court of original jurisdiction, as the appropriate government may appoint in this behalf for that area.

2. The appellate court may dismiss the appeal, or pass an order directing the registrar to register the union and to issue a certificate of registration under the provisions of section 9 or setting aside the order for withdrawal or cancellation of the certificate as the case may be, and the registrar shall comply with such order.

3. For the purpose of an appeal under section 11 (1) an appellate court shall, so far as may be, follow the same procedure and have the same powers as it follows when trying a suit under the code of civil procedure, and may direct by whom the whole or any part of the costs of the appeal shall be paid, and such costs shall be recovered as if they had been awarded in a suit under the said code.

4. In the event of the dismissal of an appeal by any court appointed under section 11 (1)(b), the person aggrieved shall have a right of appeal to high court, and the high court shall, for the purpose of such appeal, have all the powers of any appellate court under sections 11 (2) and (3), and the provisions of those sub-sections shall accordingly.

In an appeal by a Trade Union, whose certificate of registration was cancelled, no other Trade Union has a right to be impleaded as a party (KESEB v. KSEBTU (1987) 2 LN 560 Ker.)]

iv) Registered officer : Section 12

All communications and notice to a registered Trade Union may be addressed to its registered office. Notice of any change in the

address of the head office shall be given within fourteen day of such change to the register in writing, and changed address shall be recorded in the register referred to in section 8.

v) Incorporation of Registered Trade Unions

Ever registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquired and hold both movable and immovable property and to contract, and shall by the said ame sue and be used.

vi) Certain Act not to apply to registered Trade Union : (Section 14)

The following acts shall not apply to any registered Trade Unions and the registration of any such Trade Union Under such Act shall be void.

a) The Societies Registration Act, 1960

b) The Co-operative Societies Act 1912

c) The Companies Act, 1956.

5. Funds of Registered Trade Union

The Act provides for two types of Funds, viz. (i) General funds and (ii) Funds for political purpose.

General Funds : Section 15.

The general funds of any registered Trade Union can be utilized only for the following purposes:

i) The payment of salaries, allowance and expenses of office bearers of the Trade Union.

ii) The Payment of expenses relating to administration of the Trade Union including audit of the Accounts of its General Funds.

iii) The prosecution or defence of any legal proceeding to which the Trade union or any member thereof is a part for securing and protecting any rights of the Trade Union or its members. However, such rights should arise out of the relationship of its members with the employers.

iv) The conduct of trade disputes on behalf of the Trade Union or any other member thereof

v) The compensation of member for loss arising out of trade disputed.

vi) Allowance to members or their dependents on account of death, old, age, sickness, accidents or unemployment of such members.

vii) The fund s can be utilized for the issue of life insurance policies or taking liability under such policy on the lives of members or under policies insuring members against sickness, accident or unemployment.

viii) Funds can be utilized for purposes like educational, social or religious benefits for members including the payment of the expenses of funeral or religious ceremonies for deceased members, etc.

ix) For keeping of periodical published mainly for the purpose of discussing questions affecting employers or workmen as such.

x) Funds can be utilized in furtherance of any of the objects of the trade union and contribution to any cause intended to benefit workmen in general. Such expenses shall not exceed 1/ 4th of the total gross income which has accrued to general funds during a particular year and the balance at the credit of credit of those funds at the commencement of that year.

xi) Funds can be utilized, subject to any conditions contained in the notification or order issued by appropriate Government, for any other purpose.

In G.S. Dhara Singh v. E.K. Thomas (AIR 1988 SC 1829), SC has decided that any amount received for and on behalf of members by union, is liable to be refunded to the member on resignation from the union.

Political fund of a registered trade union: Section 16

The Act, authorizes a registered Trade Union to constitute a separate apart fund from the general fund. Such separate fund shall be constituted from separate contributions made towards that fund by the members. Such fund shall be used in furtherance of any of the objects specified below for promotion of Civil and Political interests of its members. Such objectives are:

i) the payment of any expenses incurred either directly or indirectly by a candidate of prospective candidate for ejection, as a member of any legislative body constituted under the constitution (or legislature of that state in case of Jammu & Kashmir) or of any local authority in connection with his candidature or election before or after or during these ejection as the case may be; or

ii) holding o(nay meeting or the distribution of any literature or document sin support of any such or prospective candidate: or

iii) for the maintenance of any person who is a member of any legislative body constituted under the constitution (or legislature of that state in case of State Jammu and Kashmir) or of any local authority; or

iv) for the registration of the electros or the selection of a candidate for nay legislative body constituted under the constitution or for any local authority; or

v) for the holding of political meetings on any kind or the distribution of political literature or political documents of any kind.

No member can be compelled to contribute to this fund. For no contribution of money towards political fund, a member cannot be excluded from the benefits of trade Union or placed in any respect, either directly or indirectly, under any disability or disadvantage as compared to other members. However, a non contributory cannot claim management and control of the political funds. Further no condition can be imposed for compulsory contribution to the political funds for admission to membership of the Union.

6. Privileges of a Registered trade union

The Act protect the members and the office-bearer of a Registered Trade Union from certain criminal and civil acts, provided such acts are necessary in carrying out the lawful objectives of the trade union. These immunities may be discussed under the following heads:

i) Immunity from criminal proceedings: Section 17

According Section 17, no office-bearer or member of a registered trade Unions shall be liable to punish under sub-section (2) of Section 120-B of the Indian penal code, in respect of any agreement made between the members for the purpose of furthering any such objects of the Trade Union as is specified in Section 15, unless the agreement to commit an offence.

Thus, immunity is granted, in respect of any agreement made between the member for the purpose of furthering the objects of trade union, from punishment under Section 120-B(2) of Indian penal code.

Following decided cases may be noted;

1. in R. S. Ruiker v. Emperor, A.I.R. 1935 Nag. 149, the members of the Nagpur Textile Union went on strike to press their demands. The president of the union made speeches on various occasion when some moment picketer where harassed by the police, he brought his own wife to the mill gate and poster here there with instruction to beat with her slippers any one who interfered with her. Later, he was persecuted on the charges of instigating, picketing and abatement of picketing by his wife under Section 7 of the criminal law amendment act read with section 114 of the Indian Penal Code. The accused contented that by virtue of immunity granted form liability for criminal conspiracy, he cannot be held liable. The court rejecting his contention held that there is nothing in the Act which, apart from immunity granted from criminal conspiracy allows immunity from any criminal offices. Indeed any agreement to commit an offence would, under Section 17, make them liable for criminal conspiracy. Section 7 of the criminal law Amendment act is a piece of criminal law of the land and offences committed, as defined in that section, is an offence which the concluding sentence of Section 17 or the Trade Union. Act applies as much as it would do to an agreement to commit murder.

2. in the case of National labour Relations Board v. Fansteel Metallugical Corporation (1939) 306 U S 240, workers went on sit-down strike. They took over and occupied tow key building of the company resulting in stoppage of work in the organization. The management sought the help of the police who told the workers to vacate the buildings. On their refusal to do so, police removed them forcibly. At this the workers became angry and indulged in violence. Later on, the company dismissed these workers. The workers pleaded immunity from criminal action in furtherance of their trade dispute. Held, workers were not entitled to any immunity. Employees had right to strike but no license to coming acts of violence or seize plant or buildings. The fact that it is the unfair labour practice committed by the employer which led to this violent situation, the employees cannot be permitted to take law in their hands and resort to force instead of peaceful remedies.

3. In another case, there was “pend –down” strike by the employees who refused to vacate their seats when called upon to do so. Held, though there is no right to stay within the establishment beyond officer-hours, without permission, there is not trespass as the strikers were peaceful unlike in the Fansteel’s case. Hence, workers are not liable for the act of trespass, etc.

4. In tynem v. Balmer’s case (1966) 3 AIIER 133, workers were held liable for obstructing the high-way, as they were coming in circular movement, and immunity granted under section 17 was not available to them.

5. Another noted case is of jay Engineering works Ltd. AIR 1968 Cal. 407. this is relates to gherao and its legal validity and protection under Section 17 of the Trade Union Act. It was observed by Calcutta High Court that gherao is the physical blockade of a target, either by encirclement or focible occupation. The staff. The gherao will be unlawful and uncstitutional if it is accompanied by wrongful restraint and/or wrongful confinement or accompanied by assault, criminal trespass, mischief to person property, unlawful assembly and various other criminal offences used as a coercive measures to controller of industry to force them to submit to the demand of the blockaders. Thus, ghergo though not mentioned as office under I.P.C. but if it is accompanied by confinement or other offices the mere fact that it is does not give them special treatment or exemption.

Section 17 grants immunity to Trade Unions. But no exemption is granted against either an agreement to commit an offence or intimidation, molestation or violence when they amount of an offence. A peaceful strike is permitted. Workers can assemble peacefully but if they turn violent, this right is lise. Hence, if they commit unlawful confinement of person, criminal trespass, indulge in criminal force or assault or intimidation, protection under Section 17 is lost.

ii) Immunity from civil Suits in certain cases : section 18

No suit or other legal proceeding shall be maintainable in any civil court against any registered trade Union or any office-bearer or member thereof, in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the only ground that;

a) such act induces some other person to break a contract of employment or

b) it is in interference with the trade, business, or employment of some other person; or

c) it is in interference with the right of some other person to dispose of this capital or his labour as he wills:

Section 18(2) further provides that a registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any trotious act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is roved that such person acted without the knowledge of or contrary to express instructions given by the executive of the Trade union.

Depending on facts of each case, conduct or act will be protected under Section 18

Thus, section 18 protects the trade Union and its officer bearers or members in respect of certain specified tortuous act committed in contemplation or furtherance of a rade dispute. The law with regard to the tort of conspiracy is now weel established. Conspiracy as tort must arise form combination of two or more persons to do an act. It would be actionable if the purpose of the combination is to inflict damage to another person and there is resulting damage to that person, as

distinguished from serving the boan fide and legitimate interest of those who so combine.

Following illustrative cases will further help in understanding the extent of immunity granted under Section 18.

1. So long as the strike does not indulge acts unlawfully and tortuous court will not interfere with theis legitimate right of the labor: Shri Ram a Vilas service ltd. v. Simson Group companies workers union, (1979) LLJ 28TH (Mad.)

But where documentary evidence has been placed as to the facts of violence, assault, interference Indian Express v. T.M. Nagrajan (Eld 1988 CLW 54)

2. An association of certain ship owners was formed to regulate their activities so as to monopolies the China Sea Carrying Trade. A rebate of 5% was offered to the shippers who dealt with the members of the Association. When some non-member sent their ships etc., the association reduced heavily the carrying rates. Due to this cut-throat competitions, the non-members were forced, obliged to carry trade at un-remunerative rates. The association also threatened certain shipping agents if they used non-member ships. At this non-members brought action in tort of conspiracy for damages caused by loss of cargos due to the action of the association. It was held that since the action of the association was to protect the genuine trade interest of their members and to extend their and increase profits and since they had not used any unlawful means, non-members has no right of action. Thus combining to trade and to offer discount and other trade facilities, will not amount to unlawful (mogul steamship Co. ltd. v. Macgregor, (1892 A.C. 25)

3. A butcher who employed non-union labour was asked by the union not to employ that worker which the butcher refused. He however was prepared to pay the subscription for workers membership but trade union did not agree. In order to pressurize the butcher, the union threatened a supplier or menut to the butcher, not to supply meat to him or else a strike of his workers will be called. The supplier stopped the supply to the butcher who brought action to the tort of conspiracy against the union. Held, union had committed the tort of conspiracy. Their motive was not the legitimate one of advancing their trade union interests but to cause harm to butcher and non-unionist and this turned their action into an unlawful act. A combination to advance the combines own trade interest is lawful but merely to injure another is unlawful (quinn v. Leathem 1901 AC 495).

5. The plaintiff X, a retail news agent was a member of a news vendors union. The trade union policy was to prevent newcomers, if any area was sufficiently supplied. X got his supply from W, a whole sale agent of publishing company. A new comer started his work without union agreeing to it. He was getting his supply from W. Union asked its members not to buy news papers form W but from other agents of the publishing company. To safeguard their interest, the publishing company too approached its union which threatened its agents not to supply papers to X or else his supply would be stopped. This resulted in stoppage to supply X, who brought action against publishers association. Held that, union had been acting in defense of their own interest which had been attacked by the action of the news vendors union and x has no cause of action.

Following propositions were laid down in this case:

a) a combination of two or more persons for the purpose of injuring man in his trade is unlawful and if it results in damages to him, it is actionable.

b) if the real purpose of combination is not to injure another but to forward or defend the trade of combiners, not tort is committed although damages to another ensures, provided no unlawful mean are employed (sorrel v. smith 1925 AC 700)

6. A union of the dock-workers demanded higher wages for its member from the mill-owners. But mill-owners contended that they could no pay higher wages as there was cutthroat competition from crofter who wove yarn imported from a nearby island. At this the union asked its members not to handle such yarn or cloth made out of it. It injured the trade of many producers of tweed who were using imported yarn. They brought action against the union officials for tort of conspiracy. Held, union officials were not liable because even if there was conspiracy between the union and the mill-owners, the real purpose was to benefit the members of the union (crafter Harris tweed co. v. vietch).

7. A dispute between the employer and employees regarding the employers claim for wages and salaried for the strike period and employers claim for Compensation for loss due to strike, was mutually submitted for arbitration in the award of the arbitrators, it was held that the (a) strike are for “ulteriors objectives”, (b) strike being illegal, it cannot be held to be furtherance of a trade dispute; (c) workers committed the tort of conspiracy and are not protected under the section 18 of the trade union act; (d) workers are liable to pay compensation to the employer.

In an appeal the union against the award of the arbitrators, Patna High Court rejected and quashed the award of the arbitrators on the following grounds:

i) the arbitrators did not going to details of “ulterior objectives” for the strike and thus, they, misdirect in law;

ii) the arbitrators did not find whether the strike was in furtherance of trade dispute or not; and

iii) The employer has not right of civil action for damages against the employees participating in an illegal strike only remedy is statutory penalty provided by section 26(1) of the industrial dispute Act,1974.

8. R was the member of the workers union which was the close shops union. He resigned from the membership of the union .At this the union threatened the employer to dismiss R or they would withdraw labour of their members under threat R’sservices were terminated but got a longer notice of termination. R. brought action for damages against the union officials for using unlawful induce his employer to terminate his contract of employment and/or for conspiring for have dismissed by threatening his employer .Held, union officials were guilty of unlawful intimidation (Rookes V. Barnard and other 1964 AC 1129 at p.1191). But in the case of Allen V. Flood 1898 AC, 1, though the facts were similar it Rookes’ case it was held union officials are not liable.

ii) Enforceability of agreement: Section 19

Notwithstanding any contained in any other law for the time being in force, agreement between the members of the registered Trade union shall not be void or voidable merely by reason of the fact that any of the objects, of the Agreement are in restraint of trade. However, nothing in this section shall enable any civil court to entertain any legal proceeding instituted for the IS 'press purpose of the enforcing or recovering damages far the breach of any agreement concerning the conditions on which any members of a Trade union shall or shall not sell their goods, transact, business, work, employ or be employed.

9. Office-bearers of a Trade Union

i) Disqualifications of office bearers : section 21 A

The following persons cannot be appointed as office bearer or member of the executive:

a) a person who has not attained the age of eighteen years;

b) a person who has been convicted by a court in India of any offence involving normal terpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

The scope of powers of the registrar of trade unions where a dispute arises as to whom are validly or legally elected set of office bearers of a trade union are dealt in the case of R. Murugesan V. Union Terrritory of Pondicherry 1976-11 Louber Law Journal 435(MAD). Held, where a dispute arises, the registrar has to necessarily come an conclusion of his own and as to who are the validaly any legally elected office bearers so that he can record the same in his registers. For this purpose a limited enquiry is invetable otherwise the registrar will be in a eviable position of having to record two sets of office-bearers of the same trade union without having any power to decide as to which of them he will recognize for the purpose of administration of the act sanjeeva. Reddi V. registrar of the trade union and the others, (1969-I LLJ. 11) AND mankind Ram Tanti v. Registrar of the trade unions (1963-I LLJ. 60)

It must, however, be clearly understood that when the registrar takes any such decision he is not determining a dispute between the parties so as to bind them. The act as not constituted the registrar as election court or Tribunal and any decision rendered by the registrar is merely administrative in character, as ancillary to the discharge of his duties and power under the act. Therefore, not withstanding the decision of the registrar, the parties are at liberty to fight out their dispute and establish their respective cases before the proper forum.

ii) Composition of Office bearers : section 22

According to Section 22, at least half of the office-bearers of registered Trade Union should be persons actually engaged or employ in an industry with which Trade union is connected. This provision ensures that the union activities are not dominated by outsides. However, at the same time, the provision makes it clear that outsiders can become an Office-bearer of a trade union. Even the appropriate government has been empowered to exempt any trade union or class of trade union from compulsorily having 50% of their office-bearers from within the industry to which the union belongs.

8. Certain membership rights.

i) Rights of mioners to membership of trade unions : section 21

Any person who has attained the age of fifteen years may be a member of a registered Trade union subject to any rules of the Trade union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and executive all instruments and give all a quittances necessary to be executed or given under the rules.

ii) Rights to inspect books of Trade union : section 20

The account books of a registered Trade union and the list of members there of shall be open to inspection by an Office-bearer or member of the Trade union at such times as may be provided for in the rules of the Trade union.

9. Change In the Name and Structure

i) A change of name : section 23

Any registered Trade union may with the consent of not less than two-thirds of the total number of its member, change its name: section 23.

A notice in writing, signed by the secretary and seven member of the trade union should be sent to the registrar of Trade union. The registrar shall, if he is satisfied that the provisions of this act in respect of change of name have been complied with, register the change of name in the register referred to in section 8.

If the proposed name is identical with that by which any other existing Trade union has been registered or in the opinion of the registrar, so nearly resembles such name has to be likely to deceive the public or the members of either Trade union, the registrar shall refuse to register the change of name.

The change in the name of the registered Trade union shall not affect any rights or obligations of the Trade union or render defective any legal proceeding by or against the Trade union. Any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by bits new name.

ii) Amalgamation of trade unions

Any two or more registered Trade unions may become amalgamated together as one Trade union with or without dissolution or division of the funds of such trade unions or either or any of them. For this votes of at least one-half of the members of each or every such trade union entitled to vote are recorded, and atleast 60 per cent of the votes recorded are in our of the proposal (section24).

A notice in writing of every amalgamation, signed by the secretary and by the seven members of the each and every Trade union which is the party thereto, shall be sent to the registrar, and where head of the of the amalgamated Trade union is situated in the different state, to the registrar of such state.

The registrar of the state in which the head office of the amalgamated Trade Union is situated shall if he is satisfied that the provision of this Act in respect of the amalgamation have been complied with and the Trade union formed thereby is entitled to registration under the section 6, register the change of name in the register and in the manner provided in section

and the amalgamation shall have effect from the date of such registration (section 25).

However, the registrar shall certify under his signature at the foot of the certificate on its presentation to him by the secretary that the new name has been registered.

An amalgamation of two or more registered Trade unions shall not prejudice any right any such unions or any right of the creditor of any them.

10. Dissolution of Trade union : section 27

In case a registered Trade union is dissolved, a notice signed by members and the secretary of the union shall be given to the registrar with 14 days of such dissolution. If the dissolution has been effected in accordance with the rules he shall registar the same and it will have effect from the date of such registration.

On dissolution where the rules do not provide for distribution of the funds of the Trade union, the registrar shall distribute the fund amongst member in such manner as may be prescribed under the Trade union regulations, the registrar shall divide the funds in proportion to the amounts contributed by the members by way of subscription during their membership (regulation 11)

11. Submission of Returns : section 28

1. There shall be sent annually to the registrar, by 31st day of july in each year, a general statement audited in the prescribed manner, of all receipts and expenditure of every registered Trade union during the year ending on the 31st day of December next preceding such prescribed date, and do the assets and liabilities of the trade union existing on such 31st day of December the statement shall be prepared in form of "D" and shall comprise such particulars as may be prescribed (Regulation 12).

2. Together with general statement their shall be sent to the registrar a statement showing all changes of office bearers made by the Trade union during the year to which the general statements refers, together also with the copy of the rules of the trade union corrected upto the date of the dispatch thereof to the registar.

For each set of the alterations made simultaneously.

3. A copy of every alteration made in the rules of registered Trade union shall be sent to the regitrar within fifteen days of the making of the alteration on receiving the copy of the alteration made in the rules of a Trade Union, the registrar unless he has reasons to believe that the alteration has not been made in the manner provided by the rules of the Trade Union, shall be register to be maintained for this purpose and shall notify this fact to the secretary of the trade union.

4. The registrar or any officer authorized by him by general or special order, may at all reasonable time inspect the certificate of registration, account books, register and other documents relating to a Trade, at the registered office or may require their production at a place as may specify in this behalf, but such place shall be at distance of more than ten miles from the registered office of Trade Union's.

The annual audit of the account of a registered trade union shall be done by auditors and in a manner provided by regulation 13 to 17

12. Offences and Penalties

1. if default is made of the part of any registered Trade union in given any notice or sending any statement

or other documents are required by or under any provision of this Act, every office bearer or other person bound by the rules opt the trade union to give or send the same, or if there is no such office bearer or person, every member of executive of the trade union, shall be with the fine which may extend it five rupees and in the case of continuing default, with aqn additional fine which may extend to five rupees for each week after the first during which the default continues. however the aggregate fine should not exceed fifty rupees.

2. a person who willfully makes, or causes to be made, any false entry in, or any commission from, the general statement required by section 28 or in or from any copy of rules or of alterations of rules sent to the registrar under the section, shall be punishable with fine which may extend to five hundred rupees

13. Power to make Regulations: Section 29

The appropriate Government is empowered to make regulations for the of carrying into effect the provisions of the Act. In exercise of the conferred by section 29 the central government has made Central lion Regulations, 1938 in relation to Trade Union Whose objects are not to one state.

Under this study Regulation as contained in Central Trade Union Regulations, 1938 are referred to. However, see Regulation is framed by state Government for respective state (Refer to section 29). Such Regulation may provided for all or any of the following matters:

a) The manner in which Trade Union and the rule of the Trade Union shall be registered and the fees payable on registration.

b) The transfer of registration in the case of any registered Trade Unions, which has changed its head office from State to another.

c) The manner in which, and the qualification of person by whom, the accounts of registered Trade Unions of any case of such Unions shall be audited.

d) The conditions Subject to which inspection of documents kept by registrar shall be allowed and the fees, which shall be chargeable in respect of such inspections.

e) Any matters which is to or may be prescribed.

According to Section 30, the power to make regulation's is subject to the condition of the regulations being made after previous publication.

The date to be specified in accordance with section 23 (3) of the general clauses Act, 1897, As that after which a draft of regulation proposed to be made will taken into consideration shall not be less than three month form the date on which draft of the proposed regulations was published in the official Gazette, and on such publication shall have effect as if enacted in this Act.

Questions

1. Define the following terms a used in the Trade Union Act, 1926.

   (a) Trade Union (b) Trade dispute, (c) Registered trade union.
2. write briefly how trade unions are registered and certificated of registration thereof issued under the Trade Union Act, 1926. Can a minor be admitted as a member of a trade union?
3. Write a note on the amalgamation of trade unions.
4. What are the objects on which general funds of a trade union may be spent?
5. Briefly explain the provision relating to dissolution of a trade union under the Trade Union act, 1926.
6. Discuss the provisions of the Trade Union Act, 1929 relation to amalgamation of trade unions. What are the effect of amalgamation of trade unions?
7. State the law on the extent of immunity enjoyed by trade unions or officers or members thereof in the matter of civil and criminal liability.
8. When does an appeal lie from the orders of the Register of Trade Unions? What are the power of the Appellate Court?

Notes -

LESSON 41
COLLECTIVE BARGAINING AND ILO CONVENTIONS

Learning Outcomes

Dear students,

After todays class you should be able to answer the following questions

- What is meant by collective bargaining?
- What were the specific features of ILO Conventions?

Collective Bargaining

So, students what do we mean by a bargaining done by group of people together against the management or do you have something else on your mind. Fine do not put your self in more confusion . I will make it simple for you. The term "collective bargaining" originated in the writings of Sidney and Beatrice Webb, the famous historian of the British labour movement, towards the end of the nineteenth century. It was first given currency in the United States by Samuel Gompers. Collective bargaining is a process of joint decision-making and basically represents a democratic way of life in industry. It establishes a culture of baptism and joint and technical changes in an industry. It helps in establishing industrial peace without disrupting either the existing arrangements or the production activities.

Meaning and Concept:

Collective bargaining has been defined in the Encyclopedia of Social Sciences as " a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert. The resulting bargain is an understanding as to be performed. More specifically, Collective bargaining is the procedure by which am employer or employers and a group of employees agree upon the conditions of work. "Stevens defines collective bargaining as a 'social control technique for reflecting and transmitting the basic power relationships which underlie the conflict of interest in an industrial relations system.' The definition emphasizes important characteristics of collective bargaining that it is concerned with the application of power in the adjustment of inherent conflicts of interest. The Webbs describe collective bargaining as an economic institution, with trade unionism acting as a labour cartel by controlling entry into the trade. Prof. Allan Flanders has argued on the other hand, that collective bargaining is primarily a political rather than an economic process. He describes organization and the management organization. The agreement arrived at is a 'compromise is joint administration, synonymous with joint management. Maxists control that Collective bargaining is merely a means of social control within industry and an institutionalized _expression of the class struggle between capital and labour in capitalist societies. It is a method by which management and labour may explore each other's problems and viewpoints, and develop a framework of employment relations and a spirit of cooperative goodwill for their mutual benefit. It has been described as a civilized bipartite confrontation between the workers and the management with a view to arriving at an agreement. In brief, it can be described as a continuous, dynamic process for solving problems arising out of the employer – employee relationship.

There are three concepts of collective bargaining with different emphasis and stress namely, marketing concept, government concept, and the industrial relations or managerial concept. The marketing concept views collective bargaining as the means by which labour is brought and sold in the market place. In this context, Collective bargaining is perceived as an economic and an exchange relationship. This concept focuses on the substantial content of collective agreements, i.e., on the pay, hours of work, and fringe benefits which are mutually agreed between employers and trade union representatives on behalf of their members. The government concept of Collective bargaining, on the other hand, regards the institution as a constitutional system or rulemaking process which determines relation between management and trade union representatives. Here collective bargaining views the institution as a participative decision making between the employees and the employers, on matters in which both parties have vital interests.

Collective bargaining is essentially a multi-dimensional institutional institution. It is also an important means of extending democracy to employees within the workplace. Therein workers directly but he deals with a collective authorized institution. It is an institutional mechanism for:

a. fixing up the price of labour service;

b. establishing a system of industrial jurisprudence; and include freedom of association for employees to organize into trade unions which are independent both of their employers and of the state employer recognition, bargaining in good faith, and mutual acceptance of the agreement entered into by employers and employees.

Every bargaining structure comprises of bargaining levels, bargaining scope, bargaining units, bargaining forms, and bargaining scope. Bargaining levels, for example, may be on a national district, company plant or sub-plant bias. Bargaining units, on the other hand, relate to the groups of employees which are covered by a particular set of bargaining arrangements and collective agreements. Bargaining forms describe whether the agreements are written of formal, on the other hand, or are unwritten and informal on the other. Bargaining scope is concerned with the range of subjects covered in a particular negotiation.

Functions:

Collective bargaining serves a number of important functions. It is a rule making or legislative process in the sense that it formulates terms and conditions under which labour and management may cooperate and work together over a certain stated period, it is also a judicial process for in every collective

agreement there is a provision or clause regarding the interpretation of the agreement, and how, any difference of opinion about the intention or scope of a particular clause is to be resolved. It is also an executive process as both management and undertakes to implement the agreement signed.

John Dunlop and Derek Book have listed five important functions of collective bargaining: -

1. establishing the rules of the workplace
2. determining the form of compensation;
3. standardizing compensation;
4. determining priorities of each side; and
5. redesigning the machinery of bargaining.

In collective bargaining, the employer does not deal with workers directly but he deals with the collective authorized institution. It is an institutional mechanism for:

a. fixing up the price of labour services;
b. establishing a system of Industrial jurisprudence; and
c. providing a machinery for the representation of individual and group interests.

It covers the entire range of organized relationship between union and management, including negotiation, administration, interpretation, application and enforcement of written agreements. It sets forth joint understandings as to policies and procedures governing wages, rates of pay, hours of work and other conditions of employment.

Type of Bargaining:

Collective bargaining is among other things a rule – making or orm creating process of a bilateral kind. Collective bargaining rules are of two kinds, namely, procedural and substantive. Procedural rules, as the term implies, set out the procedures that govern the behaviour of the employer and the union. They cover all procedural matters relating to negotiation of contracts, their modification, renewal or termination. It also includes in it the facilities to be extended to union officials in order to enable them to bargain. Substantive rules, on the other hand, do not regulate the relationship with the substance of the agreements which the union and managements work out. The three different kinds of relations that are regulated by substantive rules are:(i) economic or market 'relationship; (ii) government relationship; and (iii) work – place relationship.

There are two types of bargaining exercises. One is known as conjuritive or distributive bargaining and the other intergrative or Co – operative bargaining. Though both aim at joint decision making, their processes are dissimilar. In distributive bargaining, the relationship is a forced one, in which the attainment of one party's goal appears to be in basic conflict with that of the other. It deals with issues in which parties have conflicting interests and each party uses its coercive power to a maximum extent possible. In such a situation, one party's gain is the other's loss. Wages bargaining is an obvious example of distributive or conjunctive bargaining. In contrast to the win-lose syndrome of distributive, integrative bargaining is concerned with the solution of problems confronting both parties. It is a situation where neither party can gain unless the other gains as well. Ti makes a problem solving approach in which both the parties make a positive joint effort to their mutual satisfaction. Productivity bargaining is an instance of integrative bargaining.

Productivity bargaining is a complex subject which constitutes an integral part of the collective bargaining exercise. It may broadly be described as an agreement in which advantages of one kind or another, such as higher wage or increased leisure, are given to workers in return for agreement on their part accept changes. In work practices, methods of work, etc. Effective productivity bargaining necessitates openness and trust between the parties in the negotiation process. It is one of the most important method to increase the level of industrial efficiency. The factors which play a significant role in productivity bargaining are the general economic and political environment, human aspirations, type and nature of industry, management objectives and culture of the organization. Productivity bargaining is necessary for higher productivity and better industrial relations. Productivity agreement differs from convectional collective agreements. Conventional negotiations are more in the nature of wage bargaining. On the other hand, productivity negotiations relate to proposal for economical work practice in return for an increase in remuneration and fringe benefits. However there are certain impediments in the practice of productivity bargaining such as resistance on the part of the workman and trade union leaders, hesitation on the part of the union to make any corresponding commitment with the company in lieu of increase in wages and fringe benefits and lack of consensus among the union about the advantages of productive agreements.

Essential Conditions:

The success of Collective Bargaining depends upon the following factors: -

1. One of the principle for establishing and promoting Collective bargaining is to give voluntary recognition to trade union as one of the contracting parties. It may also have the positive benefit of improving industrial relations productivity.

2. there should be willingness to give and take by both the parties and genuine interest on the part of both to reach an agreement and to make Collective bargaining work. The trade union should refrain from putting forward exaggerated demands. Both the parties must realize that collective bargaining negotiations are but their very nature a part of compromised process. An emphasis on accommodation rather than conflict is necessary.

3. The whole atmosphere of collective bargaining gets vitiated, relations become bitter and strained and negotiations more difficult, if one or both the parties engage in unfair practices and must have healthy regard for their mutual rights and responsibilities. Trust and openness are very essential for meaningful discussion.

4. Collective bargaining usually takes place when there are difference between the parties on certain issues. But in order to make the collective bargaining process more successful, it is essential on the part of the representation of employers and union to hold meetings at regular intervals to consider matters of common interest. Such an on going process would enable

them to understand one another's problem better and make it easier to find solutions questions on which their interests conflict.

5. Effective collective bargaining presupposes an intelligent understanding of management and needs, aspirations, objectives and problems of the other party. Union leaders must have a developed awareness of the nature of the union as a political institution operating in an economic environment.

6. The effectiveness of collective bargaining cannot be attained without maturity of leadership on the bargaining theory. The negotiators should such qualities, as experience, skill, intelligence, resourcefulness, honesty, and technical know how.

7. Intelligence collective bargaining demands specialized training. The increasingly technical of the collective bargaining agenda requires expert professional advice, experience and skill on the part of the negotiators.

8. Both management and the union often find it difficult to locate the men on the other side of table who are authorized to negotiate. For proper negotiations, it is necessary to know the persons empowered to act for the company and the union respectively.

Collective Bargaining Process:

Collective bargaining is two-edged sword; what is won may also be lost. Today's collection process is based upon statutory law. What makes collective bargaining possible in this text is that both labour and management have an ultimate harmony of interest; that is, the desire to assure that the firm for which they work and from which they are both paid will remain in business. In order to stay in business, it must be competitive with other firms.

One of the most difficult aspects of the collective bargaining process is to determine appropriate bargaining units. The principle to be followed is that there should exist a community of interest among the employees to be represented. Otherwise, a single bargaining agents would find it impossible to represent all of their interest equally well.

The first step in the collective bargaining process is establishing a relationship for on going negotiations and the formation of agreements covering conditions in the workplace. It is obvious that a great deal of effort can go into the process of establishing a collective bargaining relationship. It is an anxiety producing process and that each step may involve bitter conflict between the parties. Sometimes this conflict escalates to litigation; and sometimes it even spills over to violence.

The second step in the bargaining process relates to the scope of bargaining i.e. the matters on which to bargain. It consists of three broad categories of items – subjects over which bargaining is mandatory, subjects, considered illegal or prohibited, subjects on which bargaining is permitted but not required.

The third step in bargaining process is careful structuring. Many observers agree that some structural aspects are crucial in facilitating the ability to reach agreements. The personnel departments should take the initiative of forming a negotiating tem consisting of two or three members, besides the relation's experts. The management team should include representatives of the departments, a personnel specialist and someone competent to assess the various proposal and counter proposals. The bargaining teams should also be balanced in terms of number of individuals present. Both the sides should agree in advance on the timing, location, and length of the bargaining sessions. An agenda should be prepared indicating which items are to be taken up first economic or non-economic. A decision must be made as to whether economic or non-economic. A decision must be made as to whether to treat each item separately, or to seek to bargain an entire package at once.

Steps to improve the process of collective bargaining are:

1. Begin the process of negotiations with proposals, not demands.
2. Avoid taking public positions for or against certain proposals in advance of negotiations.
3. Avoid taking strike votes before the process of negotiation begins.
4. Give negotiation proper authority to bargain.
5. Avoid unnecessary delays in beginning negotiations and in conducting them.
6. Insist on offering facts and arguments.
7. Make plenty of proposals to enhance the opportunities to find compromises.
8. Be prepared to compromise.
9. Be prepared to get results gradually.
10. Preserve good manners and keep discussion focused on relevant issues.
11. Be prepared to stand for a long and hard strike or lock out (as the case may be) in order to force a settlement justified by facts and arguments.

Negotiations:

Negotiation is concerned with resolving conflict between two or more parties, usually by the exchange of concessions. It can be competitive know as win – lose negotiation, or it can be Co-operative, known as win – win. Negotiation should be regarded as a potentially beneficial activity for both parties. It does not always have to imply confrontation although it may sometimes require an element of workmanship.

Negotiation plays a central role over a wide range of human activity. There are two primary purpose to negotiating in the industrial relations context. First, to reconcile difference between managements and unions and second, to device ways of advancing the common interest of the parties. Among managements and trade union that deal with each other on an ongoing basis, negotiating may at the outset take the character of mutual problem solving. The process involves the recognition of the common interest of the parties, the areas of agreement and disagreement and possible solutions, to the mutual advantages of both sides.

Negotiating is an art. Successful negotiation depends upon the knowledge and skill of the negotiators. They most, through careful preparations, become knowledgeable about their own and the other side positions on the bargaining issues. A negotiator must cultivate the technique of listening skills and the ability to communicate clearly: -

For success of negotiation;

- Always do you homework
- Always fell free to ask questions
- Listen to what other person has to say…
- Maintain an attitude of respect for your opposite at all times
- Honour minor courtesy commitments
- Adopt a friendly tone.
- Recognize your opposite's ego needs
- Display an open mind and willingness to compromise
- Avoid tricks or pressure tactics

Tactics or Strategies in Collective Bargaining

The following some of the common strategies to make collective bargaining exercise more meaningful:

1. The management has to anticipate the demands and also understand the main directions in which the demands are going to be placed. Grant or rejection of demands cannot be decided upon in a vacuum; it is very much relative to the time and place of the bargaining.

2. An adequate area survey of what the comparable organizations in the region have already conceded or in the process of conding is most essential. An adequate questionnaire must be drawn up, and care must be taken to identify the organizations must that are truly comparable. Generally speaking, negotiations are best done if both the parties do their homework well.

3. it is essential that a real team spirit is maintained throughout the negotiations. The team must have confidence of facing any eventuality which may come up during negotiations.

4. any collective bargaining strategy should firstly separate the personalities from the problems for arriving at a workable and desirable agreement and secondly, explore the possibilities for harmony and compatibility.

5. collective bargaining is a two way traffic. The management as well as the union must gain out of collective bargaining. Hence, the management team should also present their counter proposals.

6. there is a greater necessity on the part of the management representatives to give a patient hearing to the demands of the union and not to react even if there is a threat of strike or work stoppage.

7. it is also a bad strategy to depute persons of low rank without authority to commit the management on the negotiating table.

8. it is a good practice always to classify the various demands raised by labour representatives distinguishing the real from the unreal.

9. it is a good tactic to total the cost of all the union proposals and to make up the non – cost items first or items on which it is easy to come to an agreement so that suitable collective bargaining atmosphere is created.

10. any collective bargaining strategy must result in a good agreement or settlement, the characteristics of which are (a) it must strike a proper balance between the various factors and must be viewed as a whole;(b) it must be based upon experience, logic and reasonable to both the parties and also to the consumers in respect of better quality goods and services.

Collective Agreement and their Implementation: -

The term 'collective agreement' means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representation workers' organizations or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other (I.L.C Recommendation No.91).

The contents of collective agreement vary considerably from plant to plant and industry, usually they cover items relating to wages, working conditions, working hours, fringe benefits, and job security. Legally, a collective agreement binds only the parties to it and the persons on behalf of whom they were acting. It often happens that all workers in a given undertaking may not belong to the union which signed the agreement, or that they are non-unionized, therefore, in a number of countries the law provide for compulsory coverage of agreements or settlements on the employers and all the employees in an establishment, the implementation of collective agreements also differs from country to country.

Effective collective bargaining of agreement is vital to the health of union management of an agreement depends on mutual respect among employees, management relations is mutual agreement without third party intervention.

Collective Bargaining in India: -

Like many other countries, collective bargaining in India got some impetus from various statutory and voluntary provisions. The Trade Disputes Act, 1929, the Bombay Industrial Relations Act, 1946, the Industrial Disputes Act, 1947, and the Madhya Pradesh Industrial Relations Act,1960 provided a machinery for consultation and paved the way for Collective bargaining. Among the voluntary measures, mentioned may be made to the different tripartite conferences and joint consultative bodies.

The Collective bargaining contract in India ca be enforced under Section 18 of the Industrial Disputes Act 1947 as a settlement arrived at between the workers and the employers. The appropriate government may refer the dispute over a breach of contract to a labour court or to an Industrial Tribunal.

In India the collective bargaining agreements have been concluded at three levels at plants levels, industry level and national level. A number of plant level agreements have been reached between management and union covering wages scales, hours of work, working conditions, welfare amenities, health and safety, etc. the best example of an industry level agreement is that of Ahmedabad Mill Owners Association and the Ahmedabad Textile Labour Association. Such agreements are to be found in the plantation industry in the South and in Assam and in the coal industry. The agreements at the national level are generally bipartite agreements.

In India collective bargaining was not very popular till the end of the Second World War. However there had been a few instances where wages and working conditions were regulated

by collective agreements even earlier. Collective bargaining was traditionally conducted at the plant level as in the case of T.I.S.C.O, India Aluminium Company and Bata Shoe Company. In some industrial units, detailed grievance procedures have been laid down by mutual agreements. The collective agreement signed between the T.I.S.C.O and Tata Workers Union in 1956 embodies with management. The Belur Report of 1958 which is a study by Subbiah Kannappan and his associates in the Indian Aluminium Company is one of the best-published case studies on collective bargaining in India. It throws light on the factors responsible for creating a favorable bargaining relationship between the management and the union.

The Employer's Federation in a study of collective bargaining in its member organization in 1970 classified collective agreements into three categories: (i) agreements which have been drawn in after direct negotiations between the parties and purely voluntary in character for the purpose of their implementation; (ii) agreements which combine the elements of voluntariness and compulsion i.e. those negotiated by the parties and registered before a conciliator as settlements; and (iii) agreements which acquire legal status because of successful discussions between the parties when the matters in disputes were under reference to industrial tribunal court and could be considered sub judice, the agreements reached being recorded by the tribunals/courts as consent awards.

The National Joint Consultative Committee for the steel industry also arrived at a number of agreements covering the wages structure and allied matters for different categories of employees. Similar such agreements also exits for the coal mining industry.

Association and the Ahmedabad Textile Labour Association, which were signed on the June 5 laid down the procedure to be followed for the grant of bonus and the voluntary settlement of industrial disputes.

International Labour Organization-

International labour standards are central to the activities of the International Labour Organization. Over the years, the governments of member States and their employers' and workers' organizations have built up a system of international standards in all work-related matters, such as the abolition of forced labour, freedom of association, equality of treatment and opportunity, employment promotion and vocational training, social security, conditions of work, maternity protection, minimum age for entering the labour market, and protection of migrants and categories of workers such as seafarers.

In June of each year, after considerable preparatory work, representatives of governments, and employers' and workers' organizations of all member countries meet in the International Labour Conference in Geneva, to adopt or revise those standards which will become international labour Conventions or Recommendations. These international instruments deal with people and their work. The Conventions are binding for countries which ratify them.

These standards are subject to constant supervision by the ILO. Each member country agrees to present periodically to the International Labour Office a report on the measures taken to apply, in law and in practice, the Conventions which it has ratified. The government reports are examined by the Committee of Experts on the Application of Conventions and Recommendations, composed of some twenty independent, eminent figures in either the legal or social field and who are also specialists in labour matters. The Committee submits an annual report to the International Labour Conference, which is closely examined by a tripartite committee composed of government, employer and worker members.

In parallel with this mechanism of regular supervision, procedures written into the ILO Constitution also contribute to observing the system of international labour standards. Employers' and workers' organizations can lodge representations with the International Labour Office on a member State's non-compliance with a Convention it has ratified. If the representation is judged receivable by the ILO Governing Body, it appoints a tripartite committee to examine the issue. This committee submits a report containing its conclusions and recommendations to the Governing Body.

Moreover, any member country can lodge a complaint with the International Labour Office against another member country which, in its opinion, has not ensured in a satisfactory manner the implementation of a Convention which both of them have ratified. The Governing Body has the option to establish a Commission of Inquiry to examine the issue and present a report on the subject. This process may also be set in motion by the Governing Body itself or on complaint of a delegate to the Conference.

The Commission of Inquiry formulates recommendations on measures to be taken, if necessary. The governments concerned then have three months to accept these recommendations. If they do not, they may submit the case to the International Court of Justice.

If a member State does not comply with the recommendations of the Commission of Inquiry or with the decision of the International Court of Justice, within the stipulated time, the Governing Body may "recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith".

The supervisory system of the ILO also includes a standing tripartite committee of the Governing Body responsible for examining complaints concerning freedom of association and the right to organize, rights which have a central place in the ILO Constitution. Since its creation in 1951, this committee has examined over 1,800 cases concerning both employers' and workers' organizations in countries all around the world.

The supervisory mechanisms concerning the application of standards are extremely important. They ensure that the principles, once enunciated, are actually put into effect. In many cases, the regular supervisory procedure, based on the periodic examination of reports by the Committee of Experts and the Conference Committee, has proved to be effective.

Measures taken at the national level to put the Conventions into force are a crucial factor. International labour standards play an important role in the elaboration of national legislation,

even in those countries which have not ratified a given Convention. Governments of member countries often refer to the ILO Conventions in questions concerning the adoption of labour laws or modifying existing legislation. The provisions of the standards are used as a basis for establishing national laws. International Labour Conventions thus have an impact which goes well beyond the legal obligations which they engender.

The Recommendations are not subject to ratification. They therefore do not carry the legal requirements of Conventions. They are often adopted at the same time as Conventions dealing with the same subject, which they complement in more detail. Recommendations are aimed at member countries and their goal is to stimulate and guide national programmes in given areas. They have also left their mark on law and practice in countries around the world.

The standard-setting function is the strength of the International Labour Organization. It draws its uniqueness from the constant search for a consensus between public authorities and the principal interested parties, namely employers and workers. The entire process of international labour standards, from their elaboration to the supervision of their application and their promotion is motivated by tripartism, which is a peaceful means of conducting work relations involving the full participation of employers and workers in the decisions which affect them. Governments and employers' and workers' organizations are thus partners in the framework of this unique international organization, the ILO, whose objective is to improve the lot of all people in their work. Standards are the principal means which it puts at their disposal for bringing this about.

ILO Conventions

Specific features of Conventions

Conventions are instruments designed to create international obligations for the states which ratify them. In addition to its Conventions, the ILO has adopted a number of Recommendations, which are different from the point of view of their legal character. Recommendations do not create obligations, but rather provide guidelines for action.

Conventions have a number of specific features, which can be grouped under four main ideas:

1. Conventions are adopted within an institutional framework. Thus, the adoption of Conventions does not follow the type of diplomatic negotiation which is usual in the case of treaties. They are rather prepared in discussions in an assembly that has many points in common with parliamentary assemblies. This also partly explains the fact that unanimity is not necessary for the adoption of Conventions. For the same reason, only the International Court of Justice can interpret the Conventions. The revision of Conventions is made only by the General Conference, which is the legislative body of the Organization.

2. The International Labour Conference, which adopts Conventions, is constituted by representatives of governments, employers and workers, each delegate being entitled to vote individually.

3. A two-thirds majority is sufficient for the adoption of a Convention, and governments should submit the Convention to their competent authorities for ratification, i.e. as a rule to their parliaments. Also, the governments have the obligation, when requested, to supply reports on various issues related to Conventions. (See overview of supervisory system)

4. Some Conventions include flexibility clauses, because they are generally directed towards countries with very different economic, social and political conditions, as well as different constitutional and legal systems. The flexibility clauses comprise options regarding the following:

A. Obligations: possibility of choosing, at the time of ratification, by means of formal declaration, the extent of the obligations undertaken. (for .e.g. Social Security Convention, No. 102)

B. Scope: Governments may decide for themselves, subject to certain consultations, what the scope of the Convention shall be (for. e.g. Conventions of minimum wage fixing machinery, Nos. 26 and 29), or they may be permitted to exclude certain categories of persons or undertakings (for e.g. Conventions on night work, Nos.41 and 89), or the definitions of persons covered may be based on a specified percentage of the wage earners or population of the country concerned (for e.g. many social security Conventions), or exceptions are allowed for a certain part of the country (Various types of Conventions, for e.g. Nos. 24, 25, 62, 63, 77, 78, 81, 88, 94, 95, 96 etc.), or governments may themselves define a certain branch, industry or sector (for e.g. Weekly rest Convention, No. 106)

C. Methods: State which ratifies a Convention shall take such action as may be necessary to make effective the provisions of such Convention, custom, administrative measures or, in certain circumstances, collective agreements.

Core Conventions

While ILO Conventions are not ranked in terms of their order of importance, there is an underlying hierarchy, which can be discerned. In the first category are Conventions dealing with freedom of association and collective bargaining (Conventions Nos. 87 and 89), forced labour (Conventions Nos. 29 and 105), non-discrimination in employment (Conventions Nos. 100 and 111) and child labour (Convention 138).

These core Conventions were identified and given prominence in the Conclusion of the World Summit for Social Development in 1995. In the second category are technical standards, which establish norms to improve working conditions.

Freedom of Association and Protection of the Right to Organize Convention, 1948)

Establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by the public authorities. In December 1997, 121 countries had ratified this convention.

Right to Organize and Collective Bargaining Convention, 1949
Provides for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other, and for measures to promote collective bargaining. In December 1997, 137 countries had ratified this convention.

Forced Labour Convention, 1930

Requires the suppression of forced or compulsory labour in all its forms. Certain exceptions are permitted, such as military service, convict labour properly supervised, emergencies such as wars, fires, earthquakes, etc. In December 1997, 145 countries had ratified this convention.

Abolition of Forced Labour Convention, 1957

Prohibits the use of any form of forced or compulsory labour as a means of political coercion or education, punishment for the expression of political or ideological views, workforce mobilization, labour discipline, punishment for participation in strikes, or discrimination. In December 1997, 130 countries had ratified this convention.

Discrimination (Employment and Occupation) Convention, 1958

Calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, color, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment. In December 1997, 129 countries had ratified this convention.

Equal Remuneration Convention, 1951

Calls for equal pay for men and women for work of equal value. In December 1997, 135 countries had ratified this convention.

Minimum Age Convention, 1973

Aims at the abolition of child labour, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling, and in any case not less than 15 years (14 for developing countries). In December 1997, 59 countries had ratified this convention.

Conclusion:

To promote Collective bargaining in our country what is needed is firstly, a bold realistic Government approach with full commitment to it and secondly, a favorable environment to promote competence on the part of the employers and trade union to negotiate with each other, Collective bargaining has made considerable headway in our country which is recently characterized by signing of agreements, settlements between the parties. It has resulted in considerable signing economic gains to both blue collared and white collared workers.

Notes -

Rai Technology University

ENGINEERING MINDS

Rai Technology University Campus

Dhodballapur Nelmangala Road, SH -74, Off Highway 207, Dhodballapur Taluk, Bangalore - 561204

E-mail: info@raitechuniversity.in | Web: www.raitechuniversity.in