R 813

DIRECTORATE OF DISTANCE EDUCATION

LABOUR MANAGEMENT

M.L.M., SECOND YEAR

LABOUR LEGISLATIONS

MADURAI KAMARAJ UNIVERSITY
PALKALAI NAGAR, MADURAI - 625 021.

Printed by **M.M. 3114, Madurai Kamaraj University Co-operative Printing Press Ltd.,**
Palkalainagar, Madurai - 625 021. Phone : 2458679 Copies : 1000 10/2007

Master of Labour Management

Labour Legislations

Second Year

Dear Student,

Labour plays a very important and indispensable role in the overall industrial growth. After independence, labour legislations have made great strides towards improving working conditions, employer-employee relations and gradually raising the standards of living of the working classes.

Labour legislations have occupied a significant place in modern democratic states. With the growing complexities of the present industrial and commercial society the scope of the legislations have expanded remarkably. The aim of labour legislations is the promotion of social justice and social security. The field of industrial laws covers a large number of enactments. There is no single labour code in our country. We have different statutes dealing with different branches of industrial law. To the Labour management students, the study of the Labour Legislations is highly useful and indispensable.

The subject of labour legislations is divided into 16 units. In addition to the study material students are advised to go through the relevant statutes, to have a thorough understanding of the provisions. In each lesson, suggested questions for exercise are given.

Department of Labour Studies

SYLLABUS

References

Labour Relations Law in India - *Agarwal*

Labour and Industrial Laws - *S.N. Misra*

Labour Laws - *S. Krishnasamy*

Labour Law - *S.K. Puri*

A Study of Industrial Law - *G.M. Kothari & A. G. Kothari*

Unit - 1

INTRODUCTION

Origin and nature of Industrial Jurisprudence

The concept of industrial jurisprudence in our Country has been developed only after independence. The growth of industrial jurisprudence can be noticed not only from increase in labour and industrial legislations but also from a large number of industrial law matters decided by the Supreme Court and High courts. This branch of law has modified the traditional law relating to master and servant. The growth of industrial legislations had cut down the old theory of laissez-faire based upon the freedom of contract in the larger interest of the society because that theory was found wanting for the development of harmonious relations between the employers and employees. The traditional right of an employer to hire and fire his will has been subjected to many restraints.

In England as well as in the United States labour legislation dates from the Nineteenth Century Much of this legislation we designed to promote safety and to protect the health of the workmen. Labour legislation in India grew with the growth of industry.

Laissez faire and state regulation of labour

The old doctrine of laissez faire based upon the freedom of contract, which was observed and practiced since the time of Adam Smith has practically given place to a doctrine which emphasize the duty of the State to interfere in the affairs of individuals in the interest of the social well being of the entire community. That is, a shift from the doctrine of 'laissez faire' to a 'welfare state'. The doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. For example, where an employer wants to exercise his right to employ labourers on any wages he likes. However, industrial adjudication does not recognize the employer's right to employ labour on terms below the terms of minimum basic wage. This no doubt is an interference with the employer's right to hire labour but social justice requires that the right should be controlled.

Industrialization in its early period encouraged economic laissez faire but later made the need for state intervention, with a view to ameliorating the lot of industrial worker compelling. The growth of humanitarian idealism prompted the state to undertake protection against unemployment, sickness, old age etc. The economic struggle of labour and capital is fought collective by organized labourers. With a view provide economic justice by ensuring fair return to the by labour that the state as the custodian of public intervenes State regulation.

Master and Servant

Similarly there is change in the concept of master and servant. One who invests capital is no more a servant. They are employer and employees. The interest of the employee is in many respects protected by legislation.

The factor that lead to this departure from the old theories of the law of contract and the law of master and servant, is industrialization. Industrialization in India brought with it some new socio-economic problems. The increase in the cost of living resulted consistent demand from labour for increase in wages. Democratic ideas have also grown simultaneously with the growth of industrialization in our country.

Out of the struggle between workers demanding for better share in the production and profit of the industry and the employers hesitation to part with it beyond a certain limit have grown the recognition of certain principles. These basic principles are - 1. The right of workmen to combine and form association or unions. 2. The right of workmen to bargain collectively for the betterment of their conditions of service. 3. A shift from the doctrine of laissez faire to a welfare state. 4. Tripartite consolation i.e. settlement of industrial disputes through the participation of workers, employers and the Government. 5. The State can no more be a natural of looker but must interfere as the protector of social good.

Principles of Labour Legislation

Labour Legislation is based on the principles social justice, social equity and national economy.

Social justice implies equitable distribution of profits and other benefits of industry between employer and workers. Providing protection to the workers, against harmful effect to their health, safety and morality, is another object of social justice. Social justice is justice according to social interest. Social justice does not mean doing everything for the welfare of labour to the utter disregard of the employer. The balance of social justice leans neither side. Social justice, therefore, is dealing equitably and fairly not between individuals but between classes of society, the rich and the poor. The concept of social justice has become an integral part of industrial law. It is founded on the basic idea of socio-economic equality. The constitution of India has also affirmed social and economic justice to all its citizens. Art, 38 of the constitution provides that "the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life". According to Art 39, it shall be the duty of the state to apply certain principles of social justice in making laws, Social justice has thus been made object of state policy.

Social Security

Social security means a guarantee provided by the state through its appropriate agencies, against certain risks to which the members of the society may be exposed Social security envisages that the members of a community shall be protected by collective action against social risks causing unduehardship and privation to individuals whose private resources can seldom be adequate to meet them.

Accordingly social security is that a society guarantees help and assistance to sick, disabled, destitute, aged and those who are temporarily incapacitated and need other's help. It enable workers to become more efficient and thus reduce wastage arising from industrial disputes. Lack of social impedes production and prevents formation of a stable and efficient labour force. Therefore social security measures are not a burden but a wise investment which yield good dividends.

The international Seminar on Social security adopted in 1952 embodies universally accepted basic principles and common standards of social security. Art, 22 of the Universal Declaration of Human Rights has rightly emphasized the importance of social security in the following words "Every one as a member of the society has the right to social security and is entitled to realization through national efforts and international co-operation and in accordance with the organization and resources of each state of economic, social and cultural rights indispensable for his dignity and the free development of his personality".

Social Security in India

There are several schemes providing social security to the workers against such contingencies as ill health industrial accidents, maternity etc. In our country a number of social security legislations have been enacted from time to time. The earliest one was the Workmen's Compensation Act which ensures payment of compensation in case of a personal injury caused by an accident arising out of and in the course of employment.

The Employee's State Insurance Act, 1948. The Employees, Provident Fund and Family Pension Fund and Deposit Linked Insurance Fund Act, 1952, Maternity Benefits Act, 1961 and the Payment of Gratuity Act are some of the other Social security legislations.

Labour Legislation in India

Labour legislation in India grew with the growth of industry. In India plantation industry in Assam was the first to attract legislative control. Workers who were recruited in this industry through professional recruiters faced several hardships. A number of Acts were passed from 1863 on wards to regulate the recruitment's These legislation protected more the interests of the employers than safeguarded the interests of the workers. Then the Factories Act was passed in 1881 and the Mines Act in 1901.

In India a number of labour legislations have been enacted to promote the conditions of the labour keeping in view of the development of industry and national economy. Industrial jurisprudence in our country is a development of mainly post independence period. Since independence both legislation and public opinion have done a lot to better the condition of the workers. After independence it was largely felt that the labour policy must emphasize upon self-reliance on the part of the workers. When V.V. Giri was the Labour Minister all official pronouncements emphasized that labour should become self-reliant. Tripartism became the central theme i.e., the trade union representing the workers, the employers, and the

Government, meet together discuss the points in dispute and strive to reach a consensus. The various Annual Labour Conferences emphasized the team of tripartism and advocated many things such as, workers participation in management, worker's education, works committee and minimum wage legislations. The Conference also advocated the parties to avoid strikes and lockout without notice and to rely on settlement of disputes by discussions by voluntary arbitration or such measures as the law may provide.

The most important enactment that was passed during the pre-independence period was the workmen's compensation Act, 1923. But the post independence period witnessed the rapid growth of labour legislation in India. Social security legislation, like Employees State Insurance Act, 1948, the Employees Provident Funds Act, 1952 were passed. To regulate labour management relations, Industrial Disputes Act, 1947, and the industrial Employment (standing orders) Act, were passed. To ensure labour welfare, legislations like the Factories Act, 1948, Minimum wages Act, 1948, Payment of Bonus Act, 1965 etc., were also passed.

India and the International Labour Organization Object

An international Organization, namely the international Labour Organization. To regulate the conditions of labour was established in 1919. The out break of the First world war brought into the existence of many important labour problems. It was realized that these could be solved only through the regulation by a permanent and active international agency. Versailles Pence Conference of 1919 recommended for the establishment of the International Labour Organization and on June 28th 1919, it was established as an organ other League of Nations. In 1946, when a new international political organization known as the United Nations came into existence to replace the defunct League of Nations, the I.L.O. entered into relationship with the United National and became one of its specialized agencies.

The main aims of the I.L.O are:-

1) to remove injustice, hardship and privation of toiling people all over the world.
2) to improve their standard of living and working conditions.
3) by these steps to secure the permanent peace and harmony of the world.

The I.L.O. operates through three main organs. They are (1) the International Labour Conference (2) the Governing Body and (3) the International Labour office.

The International Labour Conference consists of four representative from each member state. Of these four representative, two represent the Government one represents the employer and one is the representative of the workers. Thus, this body is tripartite in character.

The Conference is the main policy making or legislative body of the I.L.O. It discusses the international labour problems in full length and passes the resolutions. The resolutions

take the form of either Conventions of Recommendations. The Conventions of Recommendation rest standards for the domestic labour legislation.

The Governing Body is the executive organ of the I.L.O. consisting of 48 members, out of which 24 represent the Government, 12 represent the labour and 12 represent the employers.

The Internation labour office is the permanent secretariat of the I.L.O. and is situated at Geneva. The International Labour office collects information on the conditions of industrial life and labour, prepares documents for the meetings of the International Labour Conference and the Governing Body makes a survey of the application of the Conventions and Recommendations by the member states. It also brings out publications on the problems of industry and labour of international interest.

When a resolution is adopted by the International Labour conference, it places and obligation on the Government of each member state to present the recommendations within a period of one year or within a period of 18 months in exceptional cases from the closing of the session of the conference for ratification. A member state by planting the resolution before the legislative authority, is free to ratify. Not only the conventions but also the Recommendations of the I.L.O. exercise influence on labour legislations in India.

Many of the recommendations of the conference have been ratified by India and suitable amendments were made to give effect to such resolutions in various enactments. (e.g. Factories Act, the Mines Act, Railways Act, Workmen's compensations Act, Maternity Benefits Act, etc.). Among those Recommendations, the following are important, namely, Lead Poisoning (women and children), persons, Forced Labour (Regulation), welfare facilities, Voluntary Conciliation and Arbitration and Examination of Grievances.

Thus I.L.O. has influenced the course of Indian labour legislation to a great extent I.L.O. had been instrumental in stimulating public interest in labour question and, at times, initiating measures which might not otherwise have been adopted. The Report of the Royal commission on labour also plays a tribute to the I.L.O. for the progress of Indian labour which it has brought about directly and indirectly.

Suggested Question

Explain the effects of I.L.O. on labour legislations in India.

Unit - 2

THE TRADE UNION ACT, 1926

Origin and Growth

The growth of Trade Unionism in India can be traced back to 1890, when the Bombay Mill Hands Association was formed for the redressal of grievance of the Bombay Mill workers. However this Association could not be treated as trade Union the strict sense. After the first world war, there were number of strikes by industrial and factory workers due to economic discontent. On many occasions these strikes were successful in getting the demands of the workers fulfilled. The established of International Labour Organization has also influenced the growth of trade union movement in our country.

In the year 1920, the Madras High Court in a suite field by Binny & Co., Ltd., against the Textile labour union, granted an injunction restraining the union officials from inducing the workers to break their contracts of employment by not returning to their work, with the result, the leaders of the Trade union activities. Hence, the necessity for legislative protection was felt by Trade Unions.

In 1921, N.M. Joshi who was the General Secretary of All India Trade Union Congress successfully moved a resolution in the Central Legislative Assembly seeking introduction of some legislation by the Government for protection of Trade Unions. This move was strongly opposed by the employers. Because of stiff opposition from the employers, that the passing of the Indian Trade Union Act was possible only in 1926. The Act came into force only from 1st June 1927.

Amendments to the Act

The Indian Trade Union Act, 1926, was amended in 1929 providing for appeal against the decision of the Registrar, refusing to register a Trade Union of withdrawing the Registration. The other important amendment to the Act are as follows:

In 1947, the Act was amended for providing compulsory recognition of the Trade Unions by the employers. Any dispute regarding recognition was to be decided by the Labour Court set up under the Act. However these provisions relating to compulsory recognition have not been put into operation and remained a dead letter so far.

The Indian Trade Union (Amendment) Act, 1960, made some changes in sections 2 (f), 3,4,6,14,16 and 28 of the Act. By the Amendment Act of 1964, the word 'Indian' has been deleted from the Act and called as Trade Unions Act, 1926.

Object and Scope of the Act

The Supreme Court in Swadeshi Industries Ltd., Vs. Its workman (AIR 1960 SC 1258) explained the object of a trade union in the following words, "Trade unions are essential for safeguarding the rights of labour when there is a struggle between the labour and management and the interest of the two are in conflict, the Trade Unions are required to sort it out. The primary object of a Trade unions is securing improvements on matters like basic pay dearness allowance, bonus, gratuity, leave and holidays to its members".

Art. 19(1)(a) and (c) of the Constitution of India guarantees to every citizen freedom of speech and expression and right to form associations and unions to ventilate their grievances. Any group of persons whether workers or employers can write themselves to protect their interest. 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 Union of employed as well.

The Preamble of the Trade Unions Act says, it is an Act to provide for the Registration of Trade Union and in certain respects of define the law relating to registered 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 legislatimate 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 union movement in India.

Definitions - Section - 2

Now let us see some of the important definitions provided in the Act.

Appropriate Government: In relation to a Trade Union Whose objects are not confined to one state. The 'Appropriate Government' is the Central Government. In relations to all other Trade Unions, the State Government is the Appropriate Government'.

Executive : Executive means the body to which the management of the affairs of a trade union is entrusted.

Office bearer: Office bearer's includes any members of the executive of the Trade Union. But an auditor is not deemed to be an office bearer of the Trade Union.

Registrar: Registrar means - (a) a Registrar of Trade Union appointed by the appropriate Government under Sec 3. Registrar also includes an Additional or Deputy registrar of Trade Unions and,

(b) in relation to any Trade Unions, the Registrar appointed, for that State in which the head or registered office of the Trade union is situated.

Trade Dispute

The expression Trade Dispute means any dispute

(a) between employer and workmen, or

(b) between workmen and workmen, or

(c) between employers and employers.

Any such dispute must be connected with the employment or non-employment or the terms of employment; or the conditions of labour of any person.

The definition of Trade dispute in this Act is almost identical with the definition of Industrial disputes Act. Trade union: Sec-2 (L) defines Trade union as any combination whether, temporary or permanent. formed (1) Primarily for the purpose of regulating the relation between workmen and workmen or between employers and employers, or (2) for imposing restrictive conditions on the conduct of any trade or business.

A trade union is a continuous association of wage earners for the purpose of maintaining the condition of the lives. The words combination used in Sec-2 (L) carries a very wide meaning. Whatever may be the, if it is for one or the other statutory object, it is Trade union. In Tamil nadu N.G.O. union, Vs. Registrar, Trade Union (1962), The Tamil Nadu NGO Union included among its members sub-magistrates of the judiciary, Thasildars' officers in charge of Treasuries and Sub-Treasuries, officers of civil court establishment, and the Home Department of Government. The court, held that their union could not be recognized as a Trade Union for these persons were civil servants engaged in the task of the sovereign function of the Government.

Registration of Trade Union

Appointment of Registrars: (Sec.3)

The appropriate government i.e. State Government appoints a person to the Registrar of Trade Union for the State. It may also appoints as many Additional and Deputy Registrars of Trade Unions as it thinks fit for the purpose of exercising and discharging the powers and functions of the Registrar. The State Government also defines the local limits within which they shall exercise and discharge the powers and functions so specified. If any such Additional or Deputy Registrar is appointed and exercises and discharges the powers and functions if a Registrar in an area, he stall be deemed to be Registrar for the purposes of this Act.

Mode of Registration : (Sec.4)

Any seven or more members of a Trade Union may be subscribing their names , apply for registrations of trade Union. After the date of application, but before the application, if more than half of the members who applied for registration, cease to be members or

disassociate themselves from the application by giving a notice in writing to the Registrar - In such a case the applications shall be deemed to have become invalid. Whereas only half or less than half of the members cease to the members of the union or disassociate themselves from the application, the application for registration shall be valid.

Application for Registration : (Sec.5)

(1) Application should be sent to Registrar in which 7 or more of such union must subscribe their names. The application must be accompanied by a copy of its rules and a statement containing the following particulars.

a) the names, occupation and address of members making the application.

b) the name of the Trade Union and the address of its head office.

c) the titles, names, ages, addresses and occupations of the office bearers of the Trade Union.

Where a Trade Union has been in existence for more than one year, a general statement of the assets and liabilities of the Trade Union has to be delivered to the Registrar along with the application for registration.

Rules of Trade Union : (Sec.6)

Every registered Trade Union is required to have written rules, which shall determine and govern the relationship between the Trade Union and its members. They also provide guidance for the administration of the Trade Union.

A Trade Union is entitled to registration

1) if its executive is constituted in accordance with the provisions of the Act, and

2) its rules provide the following matters, namely-

(a) the name of the Trade Union

(b) the whole of its objects

(c) the purpose for which the general funds of the Trade Union shall be applicable

(d) the maintenance of a list of members and adequate facilities for the inspection there of by office bearers and members of the Trade Union.

(e) admission of ordinary members - the person to be admitted must be an employee in the industry with which the Trade Union is connected. The rule shall also provide for Admission of the number of honorary or temporary office bearers to form the executive of the Trade Union.

(f) payment of subscription - it shall not be less then 25 paise per month per month per member.

(g) conditions under which any members shall be entitled to any benefit assured by the rules and under which any fine may be imposed on the members.

(h) the manner in which the rules shall be amended, varied or rescinded.

(i) the manner in which the members of the executive and other bearer of the Trade Union shall be appointed and removed.

(j) safe custody of funds, annual audit of accounts, adequate facilities for the inspection of account books by the office bearer and members of the Trade Union, and

(k) the manner in which the Trade Union may be dissolved

The Registrar may also ask for further information which he thinks necessary for the purpose of satisfying himself that the application complies with the provisions of the Act. He may refuse to register the Trade Union until such information is supplied. If the name under which a Trade Union or resembles such name as to be likely to deceive the public or the member of either Trade Union, the Registrar may direct the persons applying for the registration to change the name and it shall be registered only after such alteration.

Registration

The Registrar on being satisfied that the Trade Union has complied with all the requirements of this Act shall register the Trade Union by making necessary entries in the register. On registering a Trade Union, the registrar shall issue a certificate of registration in the prescribed form (Sec.8)

All communications and notices to a registered Trade Union may be addressed to its registered office (Sec.12). Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar.

Cancellation of registration (Sec. 10) - The Registrar may withdraw or cancel the certificate of registration on the following grounds

(a) if the certificate has been obtained by fraud or mistake,

(b) if the Trade Union has ceased to exist,

(c) The Trade Union has wilfully contravened any provisions of the Act,

(d) the 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 which ought to be there,

(f) Trade Union has on its own, applied for withdrawal of cancellation.

Before the Certificate is withdrawn or canceled the Registrar shall give atleast two months notice in writing specifying the ground on which it is proposed to take action. In the absence of previous notice any proceeding for cancellation or withdrawal of registration is illegal - (Radheysham singh V.Batat Majdoor Union). However, no notice is required when application has been made by the Trade Union itself.

Appeal : (Sec.11)

If the registration of a Trade Union is refused or if a certificate of registration is withdrawn or cancelled, any person aggrieved or the Trade Union may appeal to the court, not inferior to the court of Principal, District Judge in the civil court of original jurisdiction as the appropriate Government may appoint in this behalf for that area.

A trade union after registration, 1) becomes a body Corporate and becomes a legal entity distinct from the members of which it is composed. (2) It has perpetual succession and a common seal. (3) It has the power to acquire and hold both movable and immovable properties. (4) It has the power to contract, and (5) it can use and be used.

Rights and Liabilities of Registered Trade Unions

1. A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civil and political interests of its members (Sec. 16)

2. It becomes a body corporate (Sec. 13).

3. An office-bearer or member of a registered Trade Union hall not be liable to punishment under Sec. 120-B (2) of the Indian Penal Code, in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union For example a registered Trade Union has a right to declare strike and can persuade their to members to abstain from their work (Sec.17).

4. Immunity from civil suits : Sec. 18 provides immunity to the members and office bearers of a registered Trade Union from civil proceedings. Normally a person is liable in start for bringing about disruption of employment between the employer and the employee. A Trade Union, or any office bearer or member is protected from civil litigation, even if they induced a worker to break off the contract of employment or for interfering with the trade, business or employment of some person provided the inducement is in contemplation or furtherance of a trade dispute. As a result no suit or other legal proceeding is maintainable in any civil court against a trade union or any office bearer or members of the union. However the immunity will not cover acts of threat, violence or illegal means employed by the union, its members and office bearers.

In Rohtas Industries staff Union Vs. State of Bihar (AIR 1963 Pat, 170), the question was whether employer can claim damages against the employees participating in an illegal strike and thereby causing loss to the employer. It was held that the purpose of the Act is to benefit the community and not to benefit the employees by commencing an illegal strike the employer has no right of civil action against the employees apart from the penalty provided by the Industrial disputes Act against such strikes.

5. Enforceability of agreements: (Sec. 19) under the Indian Contract Act, 1872, an agreement in restraint of trade is void as against public policy. But under the Trade Union Act any agreement between the members of a registered Trade Union shall not be void or voidable merely because any of the object of the agreement one in restraint of trade.

6. Right to inspect of books of Trade Union: (Sec.20). An office bearer or member of the Trade Union at such time as provided in the rules, may inspect the account books of a registered Trade Union and the list of members. The object of conferring this right on office bearers and members is that they satisfy themselves as to the genuineness of members and of the accounts of the union.

Membership:(Sec.21)

Any person who has attained the age of fifteen years may be a member of a registered Trade union and enjoy all the rights of a member. However, he cannot become an office-bearer till he completes the age of 18 years. Sec.21-A of the Act lays down that a person cannot be chosen as an office-bearer of a registered Trade Union if he has not attained the age of 18 year or if he has been convicted and sentenced to imprisonment by a court in India for an offence involving moral turpitude unless a period of five years has elapsed since his release from jail. Sec. 22 of the Act emphasises that not less than one-half of the total number of office bearers of every registered Union shall be persons actually engaged or employed with which the Trade Union is connected. However the Government is empowered to exempt any Trade Union or class or Trade Union from the operation of the Section.

Change of Name : (Sec - 23, 25, and 26)

A trade union may change its name with the consent of not less than two-thirds of the total number of its members, by giving a notice in writing signed by the secretary and by seven members of the of the Trade Union. The change in name does not effect rights or obligations of the Trade Union or render defective and legal proceeding by or against the trade Union.

Objects on which general funds may be spent : (Sec. 15)

The general funds of a registered Trade Union shall not be spent on any other objects than the following namely:

(a) the payment of salaries, allowances and expenses to office bearers of the Trade Union.

(b) the payment of expenses for the administration of the Trade Union including audit of the accounts of the general funds of the Trade Union;

(c) the prosecution of defence of any legal proceeding to which the Trade Union or any member there of is party.

(d) the conduct of the trade disputes on behalf of the Trade Union or any member there of.

(e) the compensation payable to members for loss arising out of trade disputes.

(f) allowances to members of their dependents on account of death, old age sickness, accident or unemployment.

(g) the issue of or the undertaking of liability under policies of assurance on the lives of members.

(h) the provision of educational, social, or religious benefits for members or for the dependents of members

(i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employees or workmen as such.

(j) the payment of contributions to any cause intended to benefits workmen in general provided such, contributions in any financial year shall not exceed one - fourth of the total income, and,

(k) subject to any conditions contained in the notification, any other object notified by the appropriate government in the official Gazette.

Amalgamation of Trade Unions : (Sec 24 to 26)

Two or more Trade unions may be amalgamated to form one Trade union with or without dissolution or division of funds of the Trade Unions. In support of amalgamation one-half of the members of each or every Trade Union entitled to vote shall be recorded. Out of that at least 60% of the recorded votes must support the proposal for amalgamation. Notice of amalgamation signed by the secretary and by seven members of each of the Union shall be sent to the Registrar. If the Registrar is satisfied that all necessary formalities have been complied with he may register the Trade Union and the amalgamation shall have effect from the date of such registration. An amalgamation of two or more registered Trade Unions shall not prejudice any right of any such Trade Union or any right of a creditor or any of them.

Dissolution of Trade Union : (Sec. 27)

A Trade Union shall be dissolved by a notice of dissolution signed by seven members and the Secretary of the Union within 14 days of such dissolution. It shall be sent to the Registrar of Trade Unions who shall register the same. Dissolution will take effect only from the date of such registration. In the absence of any rules providing for distribution of funds of the Trade Union the Registrar shall divide the funds amongst the members of the union.

Collective Bargaining

A collective bargaining is and agreement made by two groups of persons. Collective bargaining is, therefore, a method by which a group agreement is reached between two groups of persons. Through an individual is free to bargain for himself and safeguard his own interest, he stands in a weaker position before his employer or master, The individual has to accept the offer without any reserves for the has to feed his family. However the position becomes different if a bargain is made by a body or association of workmen. In the words of Sydney Web, collective bargaining is a method of fixing the terms of employment by means of bargaining between the employees and employers.

Collective bargaining has been defined in the Encyclopedia or social science as "a process of discussion and negotiation between two parties, one or both of whom being a group of persons acting in concert. More specifically it is the procedure by which an employer or employers and a group of employees agree upon the conditions of work.

'The Encyclopaedia Britannica' defines that the collective bargaining is negotiation between an employer or group of employers and a group of work people to reach agreement on working conditions.

Tudwig Teller defines collective bargaining as an agreement between a single employer or an association of employers on the other, which regulates the terms and conditions of employment.

Essential features

1. Collective bargaining is carried out by a group of people

2. The groups that are involved in collective bargaining are the workers and employers.

3. In the bargaining process workers as a whole do not enter into negotiations with the employers. They are represented by their unions. It is the trade unions that enter into negotiations with the employers. Similarly, the employers may also be represented by their presentative in the bargaining process.

The process of collective agreements normally take one or the other forms, namely, - negotiation, mediation and arbitration which may be voluntary or compulsory. Mainly collective bargaining has two phases i.e. the negotiation phase and the phase of conclusion of agreement.

Negotiation

Negotiation is the process of setting the difference by face to face between the representatives of the employees and employers. Generally it involves three stages, viz.

(a) preparation for negotiation, (b) negotiation technique and (c) follow up. This bipartisan agreements are drawn up in voluntary negotiation between management and unions, without any pressure from outside. The implementation of these types of agreements are also not a problem because both the parties feel confident of their ability to reach the agreement. When the process of negotiation is complete; and agreement is signed by both parties, more conclusion of an agreement is not sufficient for collective bargaining. The enforcement of the agreement is important. The union while making a collective bargaining must also be borne in mind that the interest of the workers who are not the members of the Trade union are also protected and the workers are not discriminated against.

Settlement

In case of failure of the negotiation machinery to resolve the difference by mutual discussion and understanding, a third party intervention to secure settlement of labour disputes by way of mediation is often resorted to. It is tripartite in nature because usually it is reached by conciliation. The conciliation officer plays an important role in bringing about conciliation of the parties. The mediator functions not as a judge, but assists' the parties in dispute to reach an agreement by persuading them to resume of continue their bargaining efforts. Then the parties are to finalise the terms of the agreement and should report back to the conciliation officer within a specified time. But the forms of settlement are more limited in nature because they strictly relate to the issue referred to conciliation officer.

Arbitration

Arbitration is an act of setting labour disputes through the medium of a third party. The parties to a dispute may either agree amongst themselves to submit for settlement by a third person and abide by his award, it is called voluntary arbitration. When a dispute is submitted to an arbitrator, under the provisions of a statute, it would be compulsory arbitration. In case of voluntary arbitration the selection of arbitrator entirely rests with the parties to the dispute. The award is binding on the parties and is also enforceable in the courts.

Collective bargaining - its merits

The rule of collective bargaining has been incorporated in the Industrial Disputes Act, 1947. Under this Act a provision is made for appointment of conciliation officers, entrusted with the deity of mediation in and promoting the settlement of industrial disputes. There is a strong view prevalent in the Industrial world, that parties should be left to themselves to settle their disputes and the State should not intervene in these maters. Collective bargaining is the best available method for setting industrial disputes in this country. According to the National Commission on Labour - Collective bargaining being a system based on bipartite agreement is superior to any agreement involving third party intervention in matters which essentially concern employers and workers.

Merits : Being a method of solving disputes between the parties is more democratic in form and application. This is the only method which provides settlement without the compulsion from outside forces.

2. Collective bargaining develop the spirit of self confidence and self-reliance in the mind of employees.

3. In this method, there is a give and take policy which will develop good will and understanding between labour and management. It helps to create a peaceful atmosphere in the industrial relations.

4. Another advantage is, speedy solution to the dispute. The parties can do it at their own time and discretion. Compared to the delay in compulsory adjudication the time lag in solving the dispute through collective bargaining is comparatively less.

5. It produces more harmonious relationship between employers and workers.

The merits of collective bargaining method have been highlighted by Justice Ananthanarayanan in Tamil Nadu Electricity Workers Federation V. Madras State electricity Board, "The whole theory of organised labour and its statutory recognition in Industrial Legislations is based upon the unequal bargaining power that prevails as between the capitalist, employer and an individual workman or disunited workmen. Collective bargaining is the foundation of this movement and it is the interest of labour that statutory recognition has been accorded to Trade Unions and their capacity to represent workmen, who are members of such bodies".

The Trade Unions and the employers, while making a collective bargaining must be careful and watchful that the agreement arrived at should be in conformity not only with the provisions of general law touching upon the subject of dispute, but in conformity with the provisions of the industrial law. While making an agreement with the employer, it has to be borne in mind that the interest of the employees who are not the members of the Trade Union are also protected and the workers are not discriminated against. The Internation Labour Organisation also in a conference held in 1951 recognised the principle of collective bargaining and adopted a resolution recommending collective agreements.

Suggested Questions

1) What is the procedure prescribed for the registrations of a trade union?

2) Write a note on the privileges and immunities of a registered trade union?

3) Explain the role of collective bargaining in the settlement of industrial dispute?

Unit - 3

THE INDUSTRIAL DISPUTES ACT, 1947

Scope and object

The Industrial Disputes Act, 1947 extends to the whole of India. It came into operation on the first day of April, 1947.

The object of the industrial relations legislation in general is industrial peace and economic justice. The prosperity of any industry depends upon its growing production. The production is only possible when the industry functions smoothly without any interruptions. Therefore, the object of the Act as laid down in preamble is to make provision for the investigation and settlement of industries disputes.

The principal objects of the Act as analysed by the Supreme Court in Workmen of Dimakuchi Tea Estate V. Management of Dimakuchi Tea Estate, (AIR 1958 S.C. 353), are as follows:

1. The promotion of measures for securing amity and good relations between the employer and workmen.
2. An investigation and settlement of industrial disputes.
3. The prevention of illegal strike and lockouts.
4. Relief to workmen in the matter of lay-off retrenchment and closure of an undertaking.
5. Collective bargaining.

Definitions (Section 2): Now let us see some of the important definitions provided under the Act.

Appropriate Government Sec. 2(a) - The appropriate government is the central government in relation to any industrial dispute concerning (1) any industry carried on by or under the authority of the central Government or by a railway company or concerning any such controlled industry as may be specified by the Central Government. (2) the Industrial finance Corporation of India or the Employees' State Insurance Corporation, the Indian Airlines and Air - India Corporations, or the Life Insurance Corporation, or the Agricultural Refinance Corporation, or the Deposit Insurance established for, two or more contiguous states under Sec - 16 of the Food Corporation Act, 1964, or Regional Rural Bank, or the Banking service Commission, or a banking or an insurance Company, a mine, an oil, field, a Cantonment Board or a major port.

In relation to any other industrial dispute, the 'appropriate Government' means the State Government.

Average Pay. [Sec.2 (aaa)] - It means the average of the wages payable to a workman in the case of -

(1) monthly paid workman - in the three complete calendar months.

(2) Weekly paid workman - in the four complete weeks, and

(3) daily paid workman, - in the twelve full working days.

Where the calculation of the average pay is not possible because the workman has not put in the required service, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

Award - Sec 2 (b) It means an interim of final determination of any industrial dispute or of any question relating there to by any Labour Court, Industrial Tribunal of National Tribunal. It also includes an arbitration award made under Sec 10 - A.

Closure - Sec 2 (cc) - Closure means the permanent closing down of a place of employment or part thereof.

Controlled Industry - Sec 2 (ee) - It means any industry the control of which by the union has been declared by any central Act to be expedient in the public interest. Therefore, a controlled industry implies an industry which is controlled by the union i.e., the central Government.

Employer : Sec 2 (g) - Employer in relation to an industry carried on by or under the authority of any department of the central Government or a state Government means the authority prescribed in this behalf. Where no authority is prescribed, the employer means the head of the department carrying means the chief executive officer of that authority. But the definition of is neither exhaustive nor inclusive. It extends to all industrial undertakings and not merely to those run by Government or local authorities.

Industry - Sec. 2(j)

A seven judge Bench of the Supreme court gave a wide amplitude to the meaning of the term 'industry' in the case Bangalore water supply V.A. Rajappa, (A.I.R 1978 S.C. 548) so as to bring within its scope clubs, educational and research institutions ranging from the Bangalore water supply and Sewerage Board to the Gandhi Ashram were such as to come within the scope of the term 'industry' as defined in Sec 2(j) of the Industrial Disputes Act, 1947.

The supreme court overruled the decisions given in the cases relating to the Safdarjang Hospital, Gymkhana club, Delhi university and Dhanrajgiri Hospital. The following important principles were laid down by the supreme court in the Bangalore water supply case.

(1) Where there is (a) systematice activity (b) organised by co-operation between employer and employee (c) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie, there is an industry' in that enterprise.

However, industry does not include spiritual or religious services or services geared to celestial bliss, e.g. making on a large scale prasad or food. It includes material services and things.

(2) Absence of profit motive or gainful objective is irrelevant, be the venture in the public joint, private or other sector.

(3) The true focus is functional and the decisive test is the nature of activity with special emphasis on the employer - employee relations. If the organisation is a trade or business it does not cease to be one because of philanthropy nature.

Therefore any systematic activity organised or arranged in a manner in which trade or business was generally organised or arranged would be an industry even if it proceeded from charitable motives. It was the nature of the activity that had to be considered and it was upon the application of that test that even the state inalienable functions fell with in the definition of 'industry'. Thus the Octrou department of a Municipal Council was help to be industry - Abdul wahab lal Bhai V.G.E. Patankar (1980).

The definition of the term 'industry' has been amended in 1982, to a great extent incorporating the views of the Supreme Court expressed in Bangalore water supply vs A. Rajappa (AIR 1978) The Industrial Disputes (Amendment) Act, 1982 - enacts altogether a new definition of industry. This amended definition nullifies the effect of many judicial decisions.

Now 'industry' means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contract) for the production, supply, or distribution of goods or services with a view, to satisfy human wants or wishes whether or not,

(i) any capital has been invested for the purpose of carrying on such activity ; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes -

a) any activity of the Dock Labour Board established under the Dock workers (Regulation of Employment) Act, 1948.

b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include-

1) any agricultural operation except where such 'agricultural operation is carried on an integrated manner with any other activity and such other activity is the predominant one.

However, for the purpose of this cub clause, agricultural operation does not include any activity carried on in plantation as defined in the Plantation Labour Act, 1951, or

2) hospitals or dispensaries ; or

3) educational, scientific, research or training institutions, or

4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service, or

5) Khadi or village industries or,

6) any activity of the Government relatable to the sovereign functions of the Government including all the activities dealing with defence research, atomic energy and space, or;

7) any domestic service; or

8) any activity, being a profession practiced by individual or body of individuals, if the number of persons employed by the individual or body of individuals in such profession is less than ten; or

9) any activity, being an activity carried on by a Co-operative society or a club or any other body of individuals, if the number of persons employed by such society or club or body of individuals in relation to such activity is less than ten.

Industrial Dispute - Sec. 2(k) : It means (1) a dispute or difference between (a) employers and employers or (b) employers and work men, or (c) workmen and work man.

(2) such dispute or difference is connected with (a) the employment or non-employment, (b) the terms of employment or (c) the conditions of labour of any person. Generally an industrial dispute is implied to mean a dispute between the workmen and the management.

Individual dispute and industrial dispute :- whether a single workmen who is aggrieved by an action of the employer can raise industrial dispute. Sec.2(k) speaks of a dispute between employer and Workmen. Before insertion of Sec. 2-A, an individual dispute could not perse be an industrial dispute, but it could become one of taken up by the Trade Union or a number of workman. Now Sec. 2-A, provides that where any employer discharges, dismisses, retrenches or other wiseterminates the services, of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute even if not their workman nor any union of workmen is a party to the dispute.

Sec.2A is of limited application. It does not declare all individual disputes to be an industrial dispute. A dispute connected with a discharges, dismissed retrenched, or terminated workman shall be an industrial dispute.

In Workmen of Indian Express Newspapers Ltd V Management of Indian Express Newspapers (AIR 1970 S.C. 737). a dispute relation to two workmen of Indian Express Newspapers Ltd. was raised by the Delhi union of journalists which was an outside union. About 25 percent of the working journalists of the Indian Express were members of that union. But there was no union of the journalists of the Indian Express. It was held that the Delhi union of journalists could represent the working journalists employed in Indian Express and the dispute was thus transformed into an industrial dispute.

Lay-off [Sec. 2 (kkk)] - Lay-off means the failure, refusal or inability of an employer to give employment to a workman whose name is borne on the master rolls of his industrial establishment and who has not been retrenched.

The failure, refusal or inability of an employers to give employment to a workman whose name is borne on the master rolls of his industrial establishment and who has not been retrenched.

The failure, refusal or inability to give employment to a workman may be on account of

(i) Shortage of coal, power or raw materials, or

(ii) The accumulation of stocks, or

(iii) The break down of machinery, or

(iv) natural calamity; or

(v) for any other reasons

A workman shall be deemed to have been laid-off for any days if he presents himself for work at the establishment at the appointed time and is not given employment by the employer within two hour of his so presenting himself . But if the workman, is asked to be present during the second half of the shift for the day and is given employment then he shall be deemed to have been laid off for one half of the day. If he is not given employment even in the second half of the shift there shall be deemed to have been laid off for the whole day land entitled to full basic wages and dearness allowance for the whole day.

Lock out-Sec. 2(1) - Lock out means the closing of a place to employment, or the suspension of work or the refusal by an employer to continue to employ any number of persons employered by him.

Strike is a weapon in the hands of the labour to force the management to accept their demands. Similarly, lock out is a weapon in the hands of the management to course the labour to come down in their demands relating to the conditions of employment.

Difference between lock out and lay off

1. Lock out is resorted to by the employer to coerce or pressurise the workmen to accept his demands, lay off is for trade reason beyond the control of the employer.

2. Under lock out the employer refuses to give employment because of closing of a place of employment or suspension of work

Under lay off, the employer refuses to give employment because of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for and other reason to give employment.

(3) Lock out is due to an industrial dispute and continues during the period of dispute; lay off is not connected, with a dispute.

Difference between lock out and closure

1) Lock out is temporary, closure is permanent.

2) Lock-out is a weapon of coercion in the hands of employer, closure is generally for trade reasons.

3) Lock-out is during an industrial dispute; while in the case of closure there need not be any dispute.

4) In closure there is severance of employment relationship, where as in lock-out there is no severance but only suspension of such relationship.

Difference between lock out and retrenchment

1. Lock out is temporary - retrenchment is permanent.

2. Lock out is with a motive to coerce the workmen-where as the intention of retrenchment is to dispense with surplus labour.

3. Lock out is due to and during an Industrial dispute; where as in case of retrenchment there is no dispute.

4. In-lock-out the relationship of employer and employee is only suspended, where as in retrenchment such a relationship is severed at the instance of the employer.

Public utility service :- Sec 2(a) - Public utility service means

(i) any railway service

(ii) any transport service for the carriage of passengers or goods by air

(iii) any service in or in connection with the working of any major port or dock

(iv) any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed there in depends.

(v) any postal, telegraph or telephone service;

(vi) any industry which supplies power, light or water to the public;

(vii) any system of public conservancy or sanitation;

(viii) any industry specified in the first schedule such as cement, Banking, coal, Iron and steel. Government Mints, security press etc.,

The appropriate Government may, if satisfied that public emergency or interest so requires, by notification in the official Gazette, declare any industry specified in the first schedule to be a public utility service for the purpose of the Industrial Disputes Act for such period as may be specified in the notification.

The period so specified shall not in the first instance exceed six months. But it may be extended from time to time by any period not exceeding six months at any time by similar a notification.

Retrenchment :- Sec. 2(oo) - It means the discharge of surplus about or staff by the employer for any reason what so ever. The action says retrenchment means the termination by the employer of the service of a workman for any reason what so ever, otherwise than as a punishment inflicted by way of disciplinary action.

However retrenchment does not include (a) voluntary retirement of a workman, or (b) retirement of a workman on reaching the age of superannuation if the contract of employment between the employer and the workman contains a stipulation in that behalf, or (c) termination of the service of a workman on the ground of continued ill - health.

In Santosh Gupta V. State Bank of India: (AIR 1980 S.C. 687), an employee of the bank was discharged on the ground that she failed to pass the prescribed test proved for confirmation in service. She had but in more than 240 days service in a year. The supreme court directing her reinstatement with full back wages held that such termination of service would amount to entrenchment.

In M/S Gammon India Ltd V. Sri Niranjan Dass (1984 ILLJ. 233). the services of senior clerk were terminated due to reduction in the volume of business of the company as a result of rescission in work. It was held to be case of retrenchment because the termination does not fall in any of the three excluded categories.

Strike : Sec 2 (q)

Strike means : (1) a cessation of work by a body of persons employed in any industry acting in combination; or

(2) a concerted refusal of any number of persons who are or have been employed in any industry to continue to work or to accept employment or

(3) a refusal under a common understanding of and number of person who are or have employed in industry to continue to work or accept employment.

Strike means the stoppage of work by a body of workmen acting in concert with a view to bring pressure upon the employer to concede to there demands during an industrial dispute. Cessation of work or refusal to work is an essential element of strike. Cessation of work even for half an hour amounts to a strike.

(Patiala Cement Co., Ltd V. Certain Workers). Mere absence from works is not enough, but there must be concerted refusal to work, to constitute a strike. It is an expensive weapon and generally labours last resort in connection with industrial disputes.

Kinds of strike : There are mainly three kinds of strike, namely (i) general strike (ii) stay in strike; and (iii) go slow.

A general strike is one, where the workmen join together for common cause and stay away from work. Token strike is also a kind of general strike. It may be for a day or a few hours or for a short duration because its main object is to draw, the attention of the employer by demonstrating the solidarity and Co-operation of the employees. General Strike is for a longer period and resorted to when employees fail to achieve their object by other means.

A Stay - in - Strike is also known as tools - down strike or pen down Strike. In this form of strike workmen report to their duties but do not work. In Punjab National Bank Ltd, V. Their workmen (AIR 1960 S.C. 160), the Supreme Court held that if in persuance of common understanding the employees entered the premises of the Bank and refused to take their pens in their hands would no doubt be a strike.

In a go slow strike, the workmen do not stay away from work, they work but with a slow speed in order to lower down the production and thereby cause loss to the employer. Strictly speaking, go slow is not a strike within the meaning of the term in the Act, but is serious misconduct.

In addition to these forms which are frequently used by the industrial workers, a few more are also common, though some of them do not fall within the definition of strike. They are sympathetic strike. Hunger strike, work to rule.

wages - Sec - 2(rr) - wages means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment.

Wage also includes - (1) such allowance including dearness allowance as the workman 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 of any concenssional supply of food grains or other articles.

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both.

But the following are not wages:-

(a) any bonus.

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for benefit of the workman under any law for the time being in force.

(c) any gratuity payable on the termination of service of workman. Workman Sec. 2 (s) - workman means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward. The terms of employment may be express or implied.

For the purposes of any proceeding under this Act in relation to an industrial dispute, 'work man' includes any 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 workman does not include any such person -

(i) who is subject to the Air Force Act. 1950, or the Army Act, 1950, or the Navy Act, 1957, or

(ii) who is employed in the police service or

(iii) who is employed mainly in a managerial or administrative capacity or

(iv) who being employed in a supervisory capacity, draws wages exceeding Rs.1600 per month or exercises, either by the nature of the duties attached to office or by reason of the powers vested in him, function mainly of a managerial nature.

Authorities under the Act

The main object of the Industrial Disputes Act is investigation and settlement of industrial disputes. The Act provides an elaborate and effective machinery for bringing about industrial

peace by setting up the following authorities for the investigation and settlement of industrial disputes. The various modes of settlement of disputes provided by the Act may be classified as: (1) Conciliation (2) Adjudication and (3) Arbitration.

The machineries that make use of conciliation as the method of settlement of disputes are the 1) works committee 2) conciliation officer and 3) Board of conciliation.

The adjudicating authorities that decide any dispute under the Act are - the Labour Court, Tribunals and National Tribunal. Sec - 10-A, makes provision for voluntary reference of disputes to arbitration. Regarding Court of Inquiry whose main function is inquiry into any matter appearing to be connected with or relevant to an industrial dispute.

Now let us discuss each one of the Authorities provided under the Act. (Sections 3 to 9)

1. **Works committee : (Sec.3)** - In the case of an industrial establishment in which one hundred or more workmen are employed of have been employed on anyday in the proceeding twelve months, the appropriate Government may by general or special order, require the employer to constitute a works committee. The Committee shall consist of representatives of employers and workmen engaged in the establishment. The number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their registered trade union.

The duties of the works committee are , (a) To promote measures for securing and preserving amity and good relations between the employers and workmen.

(b) To achieve the above it is their duty to comment upon matters of common interest or concern of employers and workmen, (c) To endeavour to compose any material difference of opinion in respect of such matters. These matter include welfare of workers, supervision of recreational facilities and creches and hospitals, their training, wages, hours of work, bonus, gratuity, holiday with pay, and working conditions including discipline, promotions, transfers etc.

The institution of the works committee has been provided under the Act in order to look after the welfare and interest of the workmen. They are normally concerned with the problems arising in the day-today working of the concern and functions of the works committee is to ascertain the grievances of the employee and endeavours to seek amicable settlement. (Kemp and co., Ltd v. Their workmen)

2. Conciliation officers (sec.4) - The appropriate Government may be notification in the official Gazette, appoint such number of persons as it thinks fit to be conciliation officers.

The duty of the conciliation officers shall be to mediate in and promote the settlement of industrial disputes. A conciliation officer may be appointed for a specified area or for specified industries and either permanently or for a limited period. He shall be deemed to be a public servant within the meaning of Sec. 21 of The Indian Penal Code, 1860.

3. **Boards of conciliation (Sec.5) -** The appropriate Government may, by notification in the official Gazette, constitute a Board of conciliation. The object of appointing the Board is promotion of settlement of an industrial dispute. A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. The chairman shall be an independent person. The other members shall be persons appointed in equal number to represent the parties to the dispute. Any person appointed to represent a party shall be appointed on the recommendation of that party. But if any party fails to make a recommendation with in the prescribed period, the appropriated Governments shall appoint such persons as it thinks fit to represent that party.

A Board having the prescribed quorum may act even though the chairman, or any of its members is absent or there is any vacancy in its number. But, if the appropriate Government notifies the Board that the services of chairman or of any other member have cased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

4. **Courts of Inquiry (Sec.6) -** The appropriate Government may, by notification in the official Gazette, constitute a court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

A court may consist of one independent person or of such number of independent person as the appropriate Government may think fit. Where a court consists of two or more members, one of them shall be a appointed as the chairman.

5. **Labour courts (Sec.7)** - The appropriate Government may by notification in the official Gazette, constitute one or more labour courts for adjudication of industrial disputes relating to any matters specified in the Second schedule. The matters specified in the second schedule are,

1. The propriety or legality of an order passed by an employer under the standing orders.
2. The application and interpretation of standing orders.
3. Discharge or dismissal of workmen, including reinstatement or grant of relief to workmen wrongfully dismissed.
4. Withdrawal of any customary concession or privilege.
5. Illegality or otherwise of a strike or lock out.

The Labour courts shall also perform such other functions as may be assigned to them under this Act. A Labour court shall consist of one person only to be appointed by the appropriate Government. The qualification of a person who can be appointed as presiding officer of the Labour Court are -

(a) He is, or has been a judge of a High court. or

(b) He has been a District judge or an Additional district judge for a period not less then three years, or

(c) He has been held any judicial office not less than seven years, or

(d) He has been the presiding officer of a Labour Court for not less than five years.

6. **Industrial Tribunals (Sec.7-A)** - The Industrial Disputes Act empowers the appropriate Government to constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter to whether specified in the second schedule or in the third schedule. To mention some of the matters specified in the third schedule, wages, Hours of work and rest intervals, leave with wages and holidays, Bonus, Retrenchment of workmen and closure of establishment. etc.

The Tribunal shall consist of only one person to be appointed by the appropriate Government. For appointment as the presiding officer of the Tribunal the Act prescribes a similar qualification as that of the presiding officer of a Labour court.

National Tribunal (Sec.7B) - The Central Government may, by notification in the official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes. And it can be constituted only for the adjudication of the Industrial disputes involving question of National importance or where industrial establishments are situated in more than one state and they are likely to be affected or interested in such disputes. A National Tribunal shall consist of one person only to be appointed by the central Government. A person shall not be qualified for appointment as the presiding officer of a National Tribunal unless he is or has been a Judge of a High Court. The central Government may, if it thinks fit appoint two persons as assessors to advise National Tribunal in the proceeding before it.

Grievance Settlement Authority

A new Section 9-C, has been added by the Industrial Disputes (Amendment) Act, 1982. Setting up of Grievance Settlement Authorities.

The employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the proceeding twelve months shall provide for a Grievance settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.

Where an industrial dispute connected with an individual workman arises in an establishment, the workman or any trade union in which such workman is a member refer such dispute to the Grievance Settlement Authority.

The Grievance Settlement Authority shall follow such procedure and complete its proceedings within such period as may be prescribed. Any dispute referred to in this section shall not be referred to other Authorities, unless such dispute is referred to the Grievance settlement Authority and the decision is not acceptable to any of the parties to the dispute.

Procedure, Powers and Duties of Authorities

Procedure - (Sec.11) - Subject to any rules that may be made in this behalf, an arbitrator, a Board of conciliation, a court of Inquiry, Labour court, an Industrial Tribunal shall follow such procedure as the arbitrator or others authority concerned may think fit. These provisions give very wide discretion to the authorities, and the discretion must be exercised with care and caution bearing in mind the principles of natural justice.

Powers of authorities (Sec.11):- 1. A conciliation officer or a member of a Board of conciliation or court of Inquiry or the Presiding officer of a Labour Court, Industrial Tribunal or National Tribunal may for the purpose of inquiry into any, existing or apprehended industrial dispute, enter the premises authority must give reasonable notice of its intention to do so.

2. Every Board of conciliation, Court of Inquiry, Labour court, Industrial Tribunal and National Industrial Tribunal shall have the same powers as are vested upon a civil court, when trying a suit As a result they are competent to enforce the attendance of any person and examine him on oath, compel the production of documents and material objects, and issuing commissions for the examination of witnesses.

3. Every inquiry or investigation by a Board of conciliation court of Inquiry. Labour court, Industrial Tribunal or National Tribunal shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 the Indian penal Code.

4. A conciliation officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation or any award.

5. A court of Inquiry, Labour Court, Industrial Tribunal or national Tribunal may, if it so thinks fit, appoint one or more persons have special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

6. All conciliation officers, members of a Board of conciliation or court of Inquiry and the presiding officers of a Labour court, Industrial Tribunal or National Tribunal shall deemed to be public servants with the meaning of Social of the Indian penal Code.

7. Every Labour court, Tribunal or national Tribunal shall be deemed to be civil court for the purpose of section 345, 346 and 348 of the Code of Criminal Procedure.

8. The cost of any proceeding or the Cost incidental to any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of authority before which the proceedings are going on. The authority concerned shall have full power to determine by whom and to whom costs are to be paid.

9. Where an industrial dispute relating the discharge of dismissal of a workman has been referred to a Labour court, Tribunal or National Tribunal for adjudication and the such authority is satisfied that the discharge or dismissal was not justified, it may by its award set aside the order of discharge or dismissal and direct reinstatement of the workman. Orelse it is empowered to give such other relief to the workman including the award of the lesser punishment in discharge of dismissal as the circumstances may require.

Duties of conciliation officers

Sec. 12 speaks about the duties of conciliation officer for the purpose of bringing about a settlement of dispute.

1. The conciliation officer could investigate the dispute with out any delay. He may also do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

2. As soon as a settlement is arrived the conciliation officer should send a report to the appropriate Government. Along with the report the conciliation officer should send a memorandum of the settlement signed by the parties to the dispute.

3. If any such settlement is not arrived at, he should send a full report to the appropriate Government, explaining the steps taken by him for bringing about a settlement. In the report he shall state the reasons on account of which, a settlement could not be arrived at. Such report shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

4. The Government is authorised to examine the report and if it satisfied that there is a case for reference to a Board of conciliation, Labour Court, Industrial Tribunal or National Tribunal it may make a reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reason therefor

Duties of Board of Conciliation

Sec. 13 of the Act lays down the duties board of conciliation a. If any dispute is referred to the Board, it is the duty of the Board to endeavour to bring about a settlement without any delay.

2. If a settlement is arrived at in the course of the conciliation proceedings, the Board shall send a report to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

3. If any such settlement is not arrived at the Board shall send a full report to the appropriate government setting forth the steps taken by the Board for bringing about a settlement. The report shall be accompanied with facts and circumstances, its finding there on the reasons on account of which, in its opinion, a settlement could not be arrived at the board shall also send its recommendations for the determination of the dispute.

4. On the receipt of the report, in respect of a disputerelating to a public utility service if the appropriate Government does not make a reference to a Labour court, Tribunal or National Tribunal it shall record and communicate the parties concerned its reason there for.

5. The Board shall submit its report within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government.

Duties of Courts :- Sec. 14 of the Act deals with the duties of the court. The duties of a court of inquiry are, - when a reference is made by appropriate Government, regarding any matters relating to the Industrial dispute, to enquire into the matter and to submit airport within a period of six months from the commencement of he enquiry.

Duties of Labour Courts, Tribunals and National Tribunal:- The duties of these bodies as laid down. by Sec. 15 of the Act are:-

(i) To hold adjudication proceedings expeditiously; and

(ii) To submit its award to the appropriate Government within the report specified in the order referring such industrial dispute. The Government can also extend the period. if it is necessary.

Award and Settlement

Award means an interim or final determinant on a any industrial dispute or any question relating there to by any Labour Court, Industrial Tribunal, or National Tribunal and includes an arbitration award made under Sec. 10-A [Sec.2(b)].

The term 'settlement' is defined under Sec. 2(p) of the Act as follows:

Settlement means a settlement arrived at in the course of a conciliation proceeding. It includes a written agreement between the employer and workmen arrived at otherwise than

in then course of conciliation proceeding where such agreement has been signed by the parties there to in such manner as may be prescribed and a copy there of has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

Form of Report and award (Sec.16)

The report of a Board of conciliation of court of Inquiry should be in writing, and they should be signed by all the members of Board or court.

The award of a Labour Court of Tribunal or National Tribunal should be in writing and it should be signed by its presiding officer.

Publication of reports and awards (Sec. 17)

Every report of a Board or court and every award of a Labour Court, Tribunal or National Tribunal should be published in the official gazette within thirty days from the date of the receipt of report by the appropriate Government.

Commencement of award (Sec. 17-A)

An award becomes enforceable on the expiry of theory days from the date of its publication under Sec. 17. But the appropriate Government can declare in the official gazette that the awards shall not become enforceable on the expiry of thirty days from the date of its publication, if the Government is of opinion that the enforcement of such award would affect national economy or social justice. For the purpose of stopping the enforcement of any award a notification in the official Gazette is necessary.

Where a declaration stopping the enforcement of award has been made, the appropriate Government or the Central Government may make an order rejecting or modifying the award. Any such award may be modified or rejected within ninety days from the date of publication of the award under Section 17. Further, the award together with a copy of the order shall be laid before the Legislature of the state or before Parliament as the case may be.

Such award becomes enforceable after fifteen days from the date on which it is so laid before the legislature or Parliament.

Payment of full wages to workmen pending proceedings. (Sec. 17B). This section was inserted by the Industrial Disputes (Amendment). Act 1982. The Labour Court of Tribunal or National Tribunal may pass an award directing reinstatement in any workmen. Against such award the employee may prefer any proceedings; in a High court or Supreme Court. Sec. 17-B provides that during the period of tendency of such proceeding the employer is liable to pay such workman full wages inclusive of any maintenance and allowance. Thus, the amended section protects the interest of workmen.

Persons on whom settlement and awards are building (Sec. 18)

Any settlement arrived at by an agreement between the employee and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Such agreement must be signed by the parties and a copy of it must be sent to the appropriate Government.

A settlement arrived at in the course of conciliation proceedings or on arbitration award or an award of a Labour Court. Tribunal or national Tribunal which has become enforceable is binding on the following persons:-

(a) All parties to the industrial dispute;

(b) All other parties summoned to appear in the proceeding as parties to the dispute;

(c) Where a party referred to is an employer, his he is successors or assigns in respect of the establishment to which the dispute relates.

(d) Where a party referred to is composed of workmen all persons who were employed in the establishment.

In Herberstons Ltd. Vs. Workmens (AIR 1977 SC.322) the Supreme Court held that when recognised union negotiates with an employer the worker as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interest of labour, enters into a settlement in the best interest of labour.

Period of operation of settlement and awards : (Sec. 19)

Settlement :- A settlement arrived at in the course of conciliation proceeding before a Board of conciliation shall come into operation (a) on such date is agreed upon by the parties to the dispute and (b) if not date is greed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute. Sec. 19(1).

Such settlement shall be binding for such period as agreed by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties. It shall continue to be binding until a party gives notice in writing to terminate the settlement. The settlement shall cease to be binding on the expiry of two months from such notice of termination.

Award :- An award shall remain in operation for a period of one year from the date on which the award becomes enforceable. But the appropriate Government may reduce the said period and fix such period as it thinks fit. The appropriate Government may also extend the period of operation by any period not exceeding one year at a time. But the total period of any award shall not exceed three years from the date on which it came into operation.

The award shall continue to be binding on the parties after the expiry of the period of operation till a part bound by the award gives notice to the other party or parties intimating its intention to terminate the contract. The award shall cease to be binding on the expiry of two months from notice. The notice shall not have any effect unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.

Notice of change

Sec.9-A of the Act prevents the employer from making any change in the conditions of service of any workman in respect of the matters specified in the Fourth Schedule. Before making any change in the conditions of service a Notice is to be given some of the matters that are enumerated in the Schedule are :-

(1) Wages, including the period and mode of payment;

(2) Compensatory and other allowances;

(3) Hours of work and rest intervals;

(4) Leave with wages and holidays

(5) Classification by grades;

(6) Introduction of new rule of discipline, or alternation of existing rules, except in so as they are provided in standing orders etc.

The employer should give notice to the workmen likely to be affected by such change. The notice must be given in the prescribed manner and must state the changes proposed to be effected. After giving such notice, the employer must wait for twenty one days. Any change is effected before the expiry of the said period of twenty one days shall be invalid.

However no notice is necessary, where the change is effected in pursuance of any settlement or award.

The object and purpose of Sec. 9-A is to afford an opportunity to the workmen to consider the effect of a propped change and it necessary to present their view on proposal. For example, changing the weekly holiday from Sunday to some other day of rest would fall within the Fourth Schedule. Therefore, the effecting any change in weekly rest day a notice under Section 9-A would be necessary and any change without such notice would be ineffective.

In the workmen of the Food Corporation of India Vs. M/s. Food Corporation of India (1985 II LLJ) the corporation introduced the systems of direct payment of wages in 1973 but was discontinued in Feb.1975. The system of payment of wages through contractor was introduced. No notice was issued to the workers under Sec.9-A of the Act. It was held that

if the employer wanted to introduce a change in respect any of the matters set out in Fourth Schedule it was obligatory to give a notice of change. By cancelling the direct payment and introducing the contractor, both the wages and the mode of payment was altered to the disadvantages of the workmen. A notice of change was, therefore a must before introducing the change otherwise it would be an illegal change. Any such illegal change invites a penalty under sec. 31(2) of the Industrial Disputes Act.

Reference of Disputes to Boards Courts (or Tribunals)

Sec . 9-B of the Act confers powers on the appropriate Government to exempt by notification in the gazette certain class of industrial establishments or class of workmen employed in any industrial establishments from the application of the provisions of Sec. 9A of the Act.

Section 10 provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time.

(a) Refer the dispute to a Board promoting a settlement thereof or;

(b) Refer any matter appearing to be connected with or relevant to the dispute to a court for Inquiry, or

(c) Refer the dispute or any mater appearing to be connected with or relevant to the dispute, if it relates to any matter specified in the Second Schedule to a Labour Court for an judicationis; or

(d) Refer the dispute or any matter appearing to connected with or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication. The reference should be by an order in writing.

Where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may if it so thinks fit, make the reference to a Labour Court.

Where the dispute relates to a public utility service and a notice under Sec. 22 has been given the appropriate Government shall make a reference under Sec. 10(1) not with standing that any other proceeding under this Act in respect of the dispute may have commenced. However, if the Government considers that notice has been given frivolously or vexatiously or that it would be inexpedient so to do, it may not make a reference under Sec. 10(1).

Under Sec. 10 (1-A), the Central Government may refer a dispute to a National Tribunal for adjudication if it is of the opinion that:-

(i) Any dispute exists or is apprehended;

(ii) The dispute involves any question of national importance ; or

(iii) The dispute is of such a nature that industrial establishment situated in more than one state are likely to be interested in or affected by such disputes.

(iv) The dispute should be adjudicated by a National Tribunal

The Central Government may refer the dispute or any matter appearing to any connected with or relevant to the dispute. Water it relates to be matter specified in the second schedule or third schedule.

Sec.10(2) of the Act provides for Compulsory reference of an industrial dispute by the appropriate government. The two conditions to be fulfilled are :-

i) An application by the parties to an industrial dispute whether made jointly or separately to refer the matter and;

ii) Satisfaction of the appropriate Government as to the fact that the person applying represent the majority of each party.

If these two conditions are fulfilled then the industrial dispute may be referred to Board, court of Inquiry, Labour Court, Industrial Tribunal or national Tribunal.

Where an industrial dispute has been referred to a Board or Conciliation, Labour Court, Industrial Tribunal or National Tribunal under sec. 10, the appropriate Government may issue an orders prohibiting the continuance of any strike or lock out in connection of with such dispute which may be in existence on the date of reference.

Where in an order referring an industrial dispute to a Labour Court, Industrial Tribunal or national Tribunal under Sec. 10 the appropriate Government has specified the points of dispute for adjudication, then such authority shall confine its adjudication to those points and matters incidental there to. At the time of referring an industrial dispute to a Labour Court, Tribunals or National Tribunals, the appropriate Government should specify the period with which is authority should submit its award.

Sec10 (1) confers a discretionary power and this discretionary power can be exercised on being satisfied that in industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it form an opinion that an industrial dispute exists or is apprehended Sec.10 of the Act confers discretion on the Government to refer a dispute or not. But when conciliation proceedings have failed, the reasons for refusing to refer the dispute for adjudication must be recorded by the Government.

In Sadhu Ram Vs. Delhi Transport Corporation (1983 II LLJ 383) the conciliation officer had reported to the government about the failure of conciliation proceeding. On the basis of this report the government referred the dispute to the Labour Court. The Supreme Court held that the Government was justified in thinking that was an industrial dispute and , therefore, the reference to the Labour Court was within its powers.

In Hotel Imperial, New Delhi Vs. Chief Commissioner, Delhi, a dispute between the Imperial Hotel New Delhi and its workmen as represented by the Hotel, workers union, was referred to adjudication under Sec. 10 of the Act. The employers argued that the reference was bad on the grounds the union could not be a party to the reference and the reference was vague as it did not exactly indicate the number of workmen involved. The Supreme Court rejected the connection and held that Sec.36 permits workmen to be represented by their Trade Union.

A decision of the Government issuing the order of reference can be challenged on the ground of mala fides. If a party to and industrial dispute proves that the Government was actunated by mala fields in making a reference, it is liable to be quashed. The tribunals can not go beyond the terms of reference. Decision of the tribunal on any point not referred to it would be invalid being beyond its jurisdictions (U.P.Electric Supply Co., Ltd. Vs. Workers of M/s.S.M. Chandhary. AIR 1980 SC 818)

When a request for reference is made and the Government rejects or declines to make reference it cannot be said that the industrial dispute has ceased to exist. In such a situation the Government can subsequently make a reference when the material and relevant consideration for exercise of power are available. Where Government once, decides not to make a reference of any dispute, it can still later on change its mind and make a reference.

Voluntary reference of disputes to arbitration (Sec 10-A) : Sec. 10 of the Act provides for reference of an industrial dispute by the Government either on its own application having been made to it by the parties to the dispute. The arbitrator under Sec. 10 is appointed by the Government making such reference. But section 10-A, authorises the parties to a dispute themselves to choose their own arbitrator, including a Labour Court. Tribunal or, National Tribunal.

Sec 10-A provides that where any industrial exists or is apprehended and the employer and the workman agree to refer the dispute to arbitration, they may refer the dispute a arbitration. Such reference by agreement may be made at any time before the dispute has been referred under sec. 10 to labour court, Tribunal or National Tribunal. The reference shall be made to such persons or persons (including the presiding officer of a Labour Court, Tribunal or National Tribunal) as an attractor or arbitrators as may be specified in the arbitration agreement.

Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire. The umpire shall enter upon the reference, if the arbitrators are equally divided in their opinion and the award of the umpire shall prevail. It shall be deemed to be the arbitration award for the purposes of this Act.

An arbitration agreement shall be in such from and shall being by the parties there to in such manner as may be prescribed. A copy of the arbitration agreement shall be forwarded to the appropriate Government and the consultation officer. The appropriate Government shall within one month from the date of the receipt such copy publish the same in the official Gazette [Sec.10-a(3)].

Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, issue a notification in such manner as may be prescribed. Such notification may be issued within one month from the date of the receipt of copy of the arbitration agreement. When any such notification is issued the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given and opportunity of presenting their case before the arbitrator.

The award given by the arbitrator may affect not only he parties to the agreement but also those who are given opportunity of being heard.

Where an industrial dispute has been referred to arbitration and a notification has been issued under Sec. 10-A(3A), the appropriate Government may, by order prohibit the continuance or any strike or lockout in connection with such dispute which may be in existence on the date of the reference.

STRIKES AND LOCK-OUTS

In the previous unit we have seen the definition of strike and lock-out. Certain types of strikes and lock-outs are prohibited. Sec.22 and 23 of the Industrial Disputes Act lays down the relevant provisions.

Prohibition of strikes and lock-outs (Sec.22 and 23)

In India it is the breach of statutory provisions which renders the industrial strikes illegal. Section 22 of the Act deals with the prohibition of strikes and lockouts. This section applies to the strikes or lock-outs in industries carrying on public utility service. Strike or lock out in this section is not absolutely prohibited but certain requirement are to be fulfilled by the workmen before resorting to strike or by the employers before locking out the place of business.

The main intention is to provide sufficient safeguard against a sudden strike or lockout in public utility service or else it would result in great inconvenience to the general public as well the society.

Section 22(1) provides that no person employed in public utility service shall go on strike in breach of contract.

(a) Without giving to the employer notice of strike within six weeks before striking; of

(b) Within fourteen days of giving such notice; or

(c) Before the expiry of the date of strike specified in any such notice as above said; or

(d) During the pendency of any conciliation proceeding before a conciliations officer and seven days after the conclusion of such proceedings.

You must note that these provisions do not prohibit the workmen from going on strike but require them to fulfill the conditions before going on strike. Further these provisions apply to a public utility service only. According this section, a strike notice is valid only for six weeks. Notice of strike within six weeks before striking is not necessary where there is already a lock-out in existence. A notice of strike shall not be effective after 6 weeks from the date it is given. So the strike must be commenced within that period. However no notice of strike is necessary where there is already in existence a lock out.

LOCK-OUT IN PUBLIC UTILITY SERVICE : Sec. 22(2)

The Section lays down that no employer carrying on any public utility service shall lock out any of his workmen.

(a) Without giving them notice of lockout and within six weeks before a locking out; or

(b) Within fourteen days of giving such notice; or

(c) Before the expiry of the date of lockout specified in any such notice as above said; or

(d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceeding.

The notice of lock-out shall not be necessary where there is already is existence a strike. The employer shall send intimation of strike or lock-out on the day on which it is declared to the authority specified by the appropriate Government. Sec.22(6) deal with the intimation of notice. If an employer receives any notice of strike from any person employed by him or gives to any person employed by him any notice of lock-out, he shall within five days report to the appropriate Government or to such authority as the Government may prescribe.

In Madura Coats Ltd. Vs. Inspector of Factories Madurai.

The supreme court emphasised the importance of giving notice. Here the workmen went on a strike without servicing a notice under section 22. They claimed wages for national holiday which fell in the strike period. The court held that were not entitled to wage because they have themselves brought about a situation by going on strike without giving a notice where by the management was deprived of their right to take work from them.

General Prohibition of strike and lock-out (Sec.23)

Section 23 applies to both public utility as well as non-public utility establishment. The section prohibits the commencement of strike during the pendency of conciliation, adjudication and arbitration proceedings and for some time even after the conclusion of such proceedings. It also prohibits strike during the period of operation of a settlement or an award in respect of the matters covered by such settlement or award.

Section 23 lays down that no workman who is employed in any industrial establishment shall on strike in breach of contract and no employer of any such workman shall declare a lock out.

(a) During the pendency of conciliation proceedings before a Board of conciliation and seven days after the conclusions of such proceedings.

(b) During the pendency of proceedings before a Labour Court, Industrial Tribunal or National Tribunal and two months after the conclusion of such proceedings.

(c) During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings where a notification as been issued sec.10-A3; or

(d) During any period in which a settlement or award is in operation in respect of any of the matters, covered by the settlement or award.

The object of these provisions seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. According to this section only during the pendency of a conciliation proceeding before a board of conciliation either strike or lock out is prohibited. A conciliation proceeding before conciliation officer is no bar to a strike or lock out under sec.23.

The term 'in breach of contract' generally denotes the standing orders relating to an establishment approved by the statutory authority. Such standing order govern the contractual relationship between the workmen and the employer. Therefore any strike in breach of the standing orders may well be a strike provided other conditions enumerated in the section are also fulfilled.

Illegal strikes and Lock-outs : Sec.24

According to Sec.24(I) a strike or lock out shall be legal if it is,

(i) Commenced or declared in contravention of Sec.22 in a public utility service;

(ii) Commenced in a contravention of Sec.23 in any industrial establishment (including both public utility and non public utility service);

(iii) Continued in contravention of an order made under Sec.10(3) or Sec.10-A(4A)of the Act.

Where a strike or Lock-out is in pursuance of an industrial dispute which has already commenced and is in existence at the time of reference of the dispute to a board, an arbitrator, a Labour court, Tribunal or National Tribunal the continuance of such strike or lock-out shall not be deemed to be illegal. However such strike or lockout was not in contravention of the provisions of this Act, at its commencement or contravention of such strike or Lockout was not prohibited under Sec.10(3) or Sec.10-A(4A).

If a strike is illegal the party guilty of the illegality is liable to punishment under Sec.26 of the Act. In *Crompton Graves V. The Workmen* (AIR 1978 SC 1489) it was held that in order to entitle the workmen to wages for the period of strike it should be legal as well as justified. Before the conclusion of the talks for conciliation which were going on, the company retrenched as many a 93 of its workmen without even informing the Labour Commissioner. The court held that the strike cannot be said to be unjustified. Where the strike is illegal and at the same time unjustified, the workmen have no claim to wages and must also be punished. Where the strike is illegal and yet justified they have right to claim wages.

If the strike is illegal, workmen are not entitled to wages or compensation and they are also liable to punishment by way of discharge or dismissal. *(India General Navigation and Railway Company Ltd., and another Vs. Their workmen AIR 1960 S.C. 219) In workers of Bihar Fire Bricks and Batteries Ltd. Vs. Management;* six workmen of the company were dismissed. The union demanded their reinstatement and there was one hour taken strike to protest against the dismissal order. The management ordered deduction of wages for the strike period. Because of it there was another one hour strike. The strike was held to be illegal and at the same time the order of deduction was also held to be bad. The Tribunal observed that strike is a weapon of expressing protest and if the deductions are allowed to be made, it would amount to denying the workmen their right which they have achieved offer a great deal of struggle and sacrifice.

The Supreme Court, in *Bata Shoe Company (Pvt) Ltd. V. Ganguly* (1961 I LLJ 303). observed that participation in an illegal strike may not be necessarily punished with dismissal but when an enquiry has been properly held and the employer has imposed the punishment of dismissal on the employee who has been guilty of the misconduct of joining the illegal strikes the Tribunal should not interfere unless it finds unfair labour practice or victimisation against the employees.

Prohibition of financial aid to illegal strikes and lock-outs

Sec.25 of the Act prohibits financial aid to illegal strikes and lock-outs. The section says that no person shall knowingly spend or apply any money in direct furtherance or support of an illegal strike or lock-out. For any violation of provisions of this section, punishment is provided by Sec.28 of the Act. Whether a person is a workman or any body if he supports an illegal strike or lock-out by spending or applying any money, such person can be penalised under Sec.28 for violating, the provisions of Sec.25.

LAY-OFF AND RETRENCHMENT

The Industrial Disputes Act, 1947 as originally enacted did not contain any provision for the payment of lay off or retrenchment compensation to the workmen. In order to ameliorate the difficulties of workmen who were laid off, Parliament made provision for payment of compensation.

The provisions as to lay off and retrenchment of workmen as embodies in section 25 to 25E apply only to industrial establishments in which fifty or more workmen on an average per working day have been employed in the proceeding calender month.

These provisions do not apply to industrial establishment (1) in which less than fifty workmen on an average per working day have been employed in the proceeding calender month or (2) which are of a seasonal character or in which work is performed only intermittently. If a question arises whether an industrial establishment is of a seasonal character or whether work is performed intermittently, the decision of the appropriate Government shall be final.

Continuous Service:- Sec. 25B defines continuous service. A work and is said to be in continuous service for a period if his service for what period is uninterrupted. It is also provided that any interruption on certain accounts shall not be considered an interruption and the service shall still be deemed to be continuous. These interruptions may be on account of (1) Sickness or (2) authorised leave; or (3) an accident, (4) a strike which is not illegal or (5) a lock-out or (6) a cessation of work which is due to any fault on the part of the workmen.

Where a workman is not in continuous for a period of one year he shall be deemed to be in continuous service under an employer provided he actually worked for not less than.

(i) One hundred and ninety days in the case of a workman employed, below the ground in a mine; and

(ii) Two hundred and forty days in any other case.

Similarly, a workman shall be deemed to be in continuous service for a period of six months, if he has actually worked under the employer for not less than.

(iii) Ninety five days, in the case of a workman employed below the ground in a mine; and

(ii) One hundred and twenty days, in any other case.

In computing the number of days on which a workman has actually worked under an employer shall include days on which.

(i) He has been laid-off.

(ii) He has been on leave with full wages, earned in the previous year.

(iii) Absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) On maternity leave, in the case of a female, not exceeding twelve weeks.

Right Workmen laid off for compensation

(Section 25-C) : The section entitles a workman to get compensation from the employer for the period he is laid off. Before a workman may claim lay off compensation be must fulfill the following conditions:

(i) His name must be born on the muster rolls of an industrial establishment.

(ii) He must have completed at last one year's continuous service.

(iii) The workman must not be a badly or a casual workman.

If the above requirements are fulfilled a workman whether laid off continuously or intermittently, shall be paid compensation. The workman is entitled to get compensation for all days during which he is laid off, except for such weekly holidays as may intervene. The rate of compensation shall be equal to fifty percent of the total of the basic wages and dearness allowance that would have been payable to him had be not been laid off.

Where a workman is laid off for more than forty five days, no compensation shall be payable after the expiry of the forty five days provided there is any agreement between the workman and the employer to this effect. Thus compensation is payable for a maximum period of 45 days during a period of twelve months.

Where a workman is laid all for a period of forty-five days during a period of twelve months, the employer can law fully retrench him at any time after the expiry of forty-five days. When an employer decides to retrench, he must comply with the requirements of the provisions of Sec. 25 of the Act. Any lay off compensation paid to the workman during the proceeding twelve months may be set off against the compensation payable for retrenchment.

So in order to claim lay off compensation the conditions to be fulfilled are:-

(1) The workman must have been laid off for reasons specified in Sec. 2 (kkk) and

(2) Requirements as provided by section 25-C.

Badli Workman

Badli workman a workman who is employed in an industrial establishment in the place of another whose name is borne on the muster rolls of establishment. But he shall case to be regarded as such for the purposes of this section, if he has completed one years continuous service in the establishment. Hence when a workman whose name is actually borne on the muster rolls is absent, some one else is employed in his place on the days he remains absent, and such other person is called a Badli Workman, After completion of one year's continuous service such person shall cease to be a 'Badli Workman'. Therefore, every a Badli workman, whose name is found in the muster rolls, is entitled to lay off compensation. (Vijay Kumar Mills. V. Labour Court, 1960 II LLJ 567 Mad.)

In Radha Raman Sumanta Vs Bank of India I (2004) SLT 144 case Supreme Court decided that an employee rendered services in vacancy of temporary post for more than 240 days, sufficient to treat him as Badli for purpose of absorption and directed the Bank to absorb the worker in vacant post or in absence of any vacancy in appropriate post and to compensate the worker monetarily.

Sec.25-D imposes a duty upon the employer to maintain a muster roll for the purpose of this chapter. Every workman who has been laid off is required to present himself for work at the establishment on each working day at the appointed time. He shall entry in the muster rolls maintained by the employer. A workman who does not so present himself and sign the muster roll is not entitled to claim lay- off compensation.

Workman not entitled to compensation in certain cases.

Sect.25-E provides that a laid off workman shall not be entitled to compensation:-

1. If he refuses to accept alternative employment provided that such alternative employment is :-

(a) In the same establishment, or

(b) In the other establishment belonging to the same employer situated in the same town or village or situated within a radius of five miles from the establishment to which he belongs; or

(c) In the opinion of the employer, the alternative employment does not call for any special skill or previous experience and be done by the laid off workman, and

(d) The wages which would normally, have been paid to the workman in his previous employment are offered for the alternative employment also.

(2) If he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day.

(3) If the lay off is due to a strike or slowing down of production on the part of workman in another part of the same establishment.

In Natau Mills Ltd Vs. Employees 'State Insurance' state Insurance corporation, the main issue was whether the employee during the period of lay off would be entitled to go and serve another master? The result of his doing so would be that he is not entitled to receive compensation.

Special provisions relating to lay off

Under the Industrial Disputes (Amendment) Act, 1976, lay of is prohibited in industrial establishment in which not less than 300 workmen were employed on an average per working day for the proceeding twelve months. Sec. 25-M provides that no workman (other than a Badli workman or casual workman) whose name is borne on the muster roll of an establishment (not being an industrial establishment of a seasonal character or in which work is performed only intermittently) shall be laid off by his employer except with the previous permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette. The above provision shall not apply, in case, such lay off is due to shortage of power or natural calamity. In case of a mine where lay off is due of fire, flood, excess of inflammable gas or explosion, the section is not applicable.

Where an application for permission to lay-off has been made and the appropriate Government or authority for granting the permission does not communicate the permission or the refusal to employer in writing within a period of two months from the date of application it shall mean permission for the lay off has been granted on the expiration of the said period of 60 days. An order passed by the appropriate authority either granting or refusing to grant permission, shall be final and binding all the parties. Such order shall remain in force for one year from the date of such order.

On the other hand, where no application for permission made or where it has been refused, the lay-off shall be demand to be illegal from the date on which the workmen have been laid off. In such case, the workmen are entitled to all the benefits under any law in force for the time being as if they had not been laid off. [Sec.25-M(5)].

However, a workman will not be deemed to be laid off, if he is offered any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) by the employer.

(1) In the same establishment from which he has been laid off, or

(2) In any other establishment belonging to the same employer situated in the same town or village or situated within such distance that it will not cause under hardship to the workman, and also the wages offered for the alternative employment must be the same. The penalty for illegal lay-off is imprisonment upto one month or fine upto Rs.1000/- or both (Sec.25-G)

Retrenchment

We have already seen the definition of retrenchments as defined in Sec.2(00). It means termination of service of a workman by the employer for any reason what so ever, otherwise than as punishment inflicted by way of disciplinary action.

Retrenchment may be due to variety of reasons such as economy rationalisation, installation of new machinery etc.

Sec.25-F of the Industrial Disputes Act, lays down the requirements for a valid retrenchment. However these conditions apply in case of retrenchment of an employee who has been in continuous service for not less than one year, Sec.25 F prescribes three conditions for a valid retrenchment namely.

1. One month's notice in writing, indicating the reason for Frenchmen should be given to the affected workmen. After the expiry of the notice period, retrenchment should be effected. If no such notice is given to the workman, he must be paid in lieu of such notice wages for the period of notice.
2. At the time of retrenchment, the workman has been paid compensation which is equivalent to fifteen day's average pay for every completed year of continuous service or any part thereof in excess of six months.
3. Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official Gazette.

The Supreme court in Indian Hume Pipe company Vs. Their Workmen (1959 II LLJ 830 SC) held that the object of giving retrenchment compensation is to give some relief to tide over the difficulties caused by sudden termination of employment.

In Surendrakumar Varman Vs. Central Govt. Industrial Tribunal (1981 I LLJ 386 SC) the supreme court held that when retrenchment of a workman is invalid instatement can be ordered.

Procedure for Retrenchment

The well recognised principle of retrenchment in industrial law is first come lost go and lost come first go. This principle has been in corporated in Sec.5 -G of the Act. The following conditions must be fulfilled before claiming any protection by a workman and they are.

1) The workman must be a workman within the meaning of Sec.2 (S) of the Act.

2) The workman should be an Indian Citizen.

3) The workman should be employed in an establishment which is an Industry.

4) The workman should belong to a particular category of workman in the industrial establishment, and

5) There should be no agreement contrary to the principle of last come first go between the employer and the workman. Any provision in the standing orders to the above effect shall be deemed to be an agreement for the purposes of this section.

When a workman is improperly retrenched he has a right to reinstatement even if some one has been engaged in his place and an order for payment of remuneration for the period, the employee remained unemployed may be made by the Tribunal - Brohan Kumar Vs. Barauni Oil Refineries (AIR 1971 Pat.1974).

Re-employment of Retrenched Workman

Sec.25 H of the Act is based on well known principle that when a workman has been retrenched by the employer on the ground of surplus staff, such workman should first be given an opport nity to join service whenever an occasion to employ another hand arises. This section imposes a statutory obligation on the employer to give opportunity to the retrenched employees to offer themselves for re-employment. In order to claim preference in employment under this section a workman must satisfy the following conditions:-

1) He should have been retrenched prior to re-employment.

2) He should be a citizen of India.

3) He should offer himself for re-employment in response to the notice by the employer.

4) He should have been retrenchment from the same category of service in the industrial establishment in which the re-employment is proposed.

Only a retrenched workman can claim benefit under Sec.25-H. As dismissed, discharged or superannuated workman has no claim for preferential re-employment. When a notice is given to a workman and he fails to offer himself for re-employment, he is not entitled to claim benefit under this section.

Special provisions treatings retrenchment.

Sec.25-N of the 1976 Amendment Act lays down that no workman employment in an industrial establishment who has been in continuous service for less than one year shall be retrenched until.

(a) He has been given three month's notice in writing indicating the reasons for retrenchment and the period of notice has expired. If no notice is given, the workman is entitled to be paid in lieu of such notice, wages for the period of notice. But if the retrenchment is under an agreement which specifies a date for termination of service, no notice shall be necessary.

(b) Prior permission of the appropriate Government of such authority for the retrenchment is to be obtained by the employer. Such application for permission shall be made by the employer stating clearly the reasons for the intended retrenchment. A copy of the application shall also be served simultaneously on the workman concerned in the prescribed manner. On receipt of a notice, the appropriate Government or authority after making the necessary inquiry, grant or refuse, for reasons to be recorded in writing, the permission for the retrenchment.

Where the Government or authority does not communicate the permission or the refusal to grant the permission to the employer within three months of the date of service of the notice, the Government or authority shall demand to have granted permission for such retrenchment on the expiration of said period of three months. The penalty for illegal retrenchment is imprisonment upto one month or fine upto Rs.1000 or both. (Sec.25-Q)

Closure of an undertaking :- Sec.2(cc) of the Act defines the term closure. It means the permanent closing down of a place of employment or part there of. So closure is permanent and it is generally for trade reasons.

Procedure :- An employer who intends to close down an undertaking or an industrial establishment to which Chapter V.B. applies, shall serve a notice on the appropriate Government, for previous approval, at least ninety days before the date on which the intend closure is to become affective.

The notice shall be served in the prescribed manner and shall state clearly the reasons for the intended closure of the undertaking (Sec.25-O). However this section does not apply to an undertaking set up for the construction of buildings, bridges, roads, canals dams, or for other construction work.

On receipt of a notice the appropriate Government may, by order direct the employer not to close down such undertaking, if it is satisfied that the reasons for the intended closure of the undertaking are not adequate and sufficient, or such closure is prejudicial to the public interest.

Where an application for closure has been made and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period is sixty days.

Any employer who close down an undertaking without complying with the provisions of Sec.25-O(1) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 5000 or with both (Sec.25-R).

Unfair Labour Practices

Unfair labour practice means any of the practices specified in the Fifth Schedule [Sec.2(ra)] Sec.25-T of the Industrial disputes Act, prohibits unfair labour practice. The section lays down that no employer or workman or a Trade Union, whether registered under the Trade Unions Act, 1926 or not shall commit any unfair labour practice. Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with find which may extend to one thousand rupee or with both.

A new Schedule Fifth has been added by Industrial Disputes Amendment Act, 1982. It contains a list of such practices treated unfair on the part of workmen and their Trade Unions. Since the list is very exhaustive one, here let us consider only a few instances. In unfair labour practices on the part of employers and trade union of employers.

1. To interfere with or coerce workmen in their right to form, jointer assist a trade union. That is, threatening workmen with discharge or dismissal, if they join a trade union or threatening a lock-out or closure, if a trade union is organised.

2. To dominate, interfere with contribute, support, financial of otherwise to any trade union.

3. To establish employer sponsored trade union of workmen.

4. To discharge or dismiss workmen by way of victimisation etc.

Unfair labour practices on the part of workmen and trade unions of workmen.

1. To advise or support or instigate any strike deemed to be illegal under this Act.
2.. Tooerce workman or to indulge in acts of force or violence in connection with a strike against non-striking workmen or against managerial staff.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To encourage or instigate such forms of coercive actions as will full 'go slow' or 'gherao' of any of the members of are managerial or other staff.
5. To incite or indulge in willful damage to employers' property connected with the industry.

Suggested Questions

1) Explain the role of the statutory bi-partite and tri-partite committees?

2) Define the concepts, continuous service, lay-off, retrenchment and closure.

3) What are the unfair labour practices given under schedule Fifth of the Industrial Disputes Act, 1947.

Unit - 4

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

Object and Scope

Before passing of the Industrial Employment (Standing Orders) Act, 1976, the conditions of employment were governed by contracts either express or implied between the employers and their employees in different industrial undertaking. In many cases, these conditions were not well defined and suffered from doubt and ambiguity. With the result there were frequent friction between the management and workers in industrial undertakings in our country. In the Tripartite Labour Conferences, the importance of making a law defining precisely the conditions of employment was emphasised. With a view of achieve this object, the Industrial Employment (Standing Orders) Act, 1946 was enacted by the Central Government.

The object of the Act is to require employers in industrial establishments to define the conditions of employment of workers in industrial establishments and to make the said conditions known to workmen employed by them. The other object is to regulate the conditions of recruitment discharge, disciplinary action holidays etc, of the workers employed in industrial undertakings. The rules made in this regard are known as standing orders.

Application of the Act. Sec.1

The act extends to the whole of India. It applies to every industrial establishments where in one hundred or more workmen are employed, or were employed on any day of the proceeding twelve months. The appropriate Government may also, after giving not less than 2 months notice by notification in the official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

Once the Act becomes applicable to an industrial establishment it does not cease to apply on account of fall in the number of workmen in that establishment below 100, [Balakrishna Pillai and others, Vs. Anand Engineering Works (Pvt) Ltd.].

Definitions

Appellate Authority : It 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 function of an appellate authority under this Act.

Appropriate Government :- Sec. 2(b) it means in respect of industrial establishment under the control of the Central Government or a Railway Administration or in a major port, mine or Oil field, the Central Government. In all other cases, it means the State Government.

Certifying Officer [Sec.2(c)] It means a Labour Commissioner, or a Regional Labour commissioner, and includes any other Officer appointed by the appropriate Government, by notification in a official Gazette, perform all or any of the function of a certifying officer under this Act.

Employer : Sec.2(d) : It means the owner of an industrial establishment to which this Act for the time being applies.

Standing orders : Sec. 2(g) : The expression ' Standing Orders' means rules relating to matters set out in the Schedule of this Act.

Matters to be provided

1. Classification of workmen - e.g. permanent, temporary, apprentice etc.
2. Period and hours of work, holidays, pay days, and 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. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishments.
8. Termination of employment and the notice there of to be gives 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 wrong full exactions by the employer or his agents or servant.
11. Any other matter which may be prescribed.

Submission of draft standing orders (Sec.3)

Within six months of the application of the Act to an industrial establishment, the employer shall submit to the certifying officer, five copies of the draft standing order proposed by him for adoption in his industrial establishment. Such draft standing orders shall cover every matter set out in the schedule to the Act. The draft shall be account panied by a statement giving prescribed particulars of the workmen, employed in industrial establishment. The name of the Trade union if any which workmen belong should also be sent along with the Draft standing order.

Certification of standing orders (Sec.5)

When the draft standing order is submitted to the certifying officer he shall forward a copy of it to the Trade Union, or where there is no trade union to the workmen, along with a notice in the prescribed form requiring objection, if any, which the Trade union or workmen may desire to make to the draft standing orders. The workman or the Trade union is required to submit the objective to the certifying officer within fifteen days from the receipt of the notice. The certifying officer shall give the employer, Trade union or the representative of workmen opportunity of being heard. He shall there after decide whether any addition or modification is necessary to the draft order. The certifying officer shall after making modification, in any, certify the draft. He shall send the certified copies within seven days to the employer, Trade Union or the representative of the workmen.

The purpose of framing the standing orders and getting them Certified by the Certifying officer is that conditions of service of that employment shall be regulated by it. When certified, the standing orders will be binding on the employees, who are at time in service of the employer.

Appeals : Any employer, Workman, Trade Union or representative of the workmen aggrieved by the order of the certifying officer may, within 30 days from the date on which copies of the Draft Standing orders are sent, appeal to the appellate authority. The decision of the appellate authority is final. The appellate authority shall by order in writing confirm the standing orders either in the form certified by the certifying officer or after amending Standing orders by making such modifications as it thinks necessary to render the standing orders Certifiable under this Act.

The appellate authority shall within seven days of its order send copies of the Draft standing order to the certifying officer, employer, Trade Union or other prescribed representatives of the workmen. In case the appellate authority makes any modification in the Draft standing order, it shall send a copy of the amended standing order along with its order (Sec.6).

Date of operation of standing orders (Sec.7)

The standing orders certified by the certifying officer shall unless an appeal is preferred, come into operation on the expiry of thirty days from the date on which authenticated copies are sent. Where an appeal is preferred, it shall come into operation on the expiry of seven days from the date on which copies of the order of the appellate authority are sent.

Register of Standing Order (Sec.8)

A copy of all standing orders as finally certified under this Act shall be field by the certifying officer in a register in the prescribed form maintained for the purpose. A copy of the certified standing orders shall be furnished to any person applying for it on the payment of the prescribed fee.

Posting of Standing Orders (Sec.9)

The rest of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the Language understood be the majority of the workmen. On special Board to be maintained for the purpose at or near the entrance through which the major it of workmen enter the industrial establishment. A copy of such standing order shall also be posted in all departments where the workmen are employed.

Duration and modification of standing Orders (Sec.10)

The standing orders finally certified under the Act shall not be liable to modification will the expiry of six months from the date on which the standing orders or the last modification thereof come into operations. However, on agreement between the employer and the workmen or a trade union or other representative body of the workmen they can modify the standing orders and a copy of such agreement shall be filed along with the application for modification to the certifying officer.

In Shahadra Saharan Our Light Railway-Co Vs. S.S.Railway Workers Union AIR 1969 S.C. 513.

The standing order relating to the termination of service of a permanent workman was modified requiring the employer to give reasons and municating the same to the workman in addition to giving one month's notice or one month's pay in lieu of notice. The modification was held to be fair and reasonable.

In Andhra Scientific Co Employees Union Vs. Manager (1970) I LLJ 555(AP)

Andhra Scientific Company sought permission to amend the standing orders by reducing festival holidays from 17 to 10. It was held that entry 5 of Schedule to the Act does not empower prescription of number of holidays but only prescribes procedure for notifying holidays etc. 'Therefore' the modification purporting to prescribe the number of holidays would not be in conformity with the Act.

Where a modification in the existing Standing order has been agreed upon between the employer and the workmen, the certifying officer is not found to accept the changes if they are not in conformity the prescribed model Standing Order - United Glass Works Ltd. Bombay Vs. Their Workman (1955 II LLJ 327).

Powers of certifying officer and appellate authority (Sec.11)

Every Certifying officer and appellate authority shall have all the powers of a civil court for the purpose of receiving evidence administering thus, enforcing the attendance of witnesses and compelling the discovery and production of documents.

Every such authority is also deemed to be a civil court within the meaning of sections 345 and 346 of the criminal procedure code 1973. No oral evidence having the effect of addition to or otherwise varying or contracting standing orders finally certified under this Act shall be admitted in any court (Sec.12).

Temporary application of model standing order Sec.12 A. Till the standing orders as finally certified under this Act come into operation under Sec.7, the prescribed model standing orders shall be deemed to be adopted in an industrial establishment, to which this Act becomes applicable for the first time. However these provisions shall not apply to an industrial establishment in respect of which the appropriate Government is the government of Gujarat or Maharashtra.

Penalties and procedure : Sec. 13. An employer who fails to submit draft standing orders as required by Sec. 3 or who modifies his standing orders otherwise than in accordance with Sec.10, shall be punishable with fine which may extend to Rs.5000 and in the case of a continuing offence with a further fine which may extend to Rs.200 for every day after the first during which the offence continues.

An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to Rs. 100 and in the case of continuing offence with a further fine which may extend to Rs.25 for every day after the first during which the offence continues [Sec.13(2)] No court inferior to that of a metropolitan magistrate or a Judicial Magistrate of the Second Class shall try an offence under Sec.13 of the Act.

Suggested Question

Under what circumstances strike and lockout become illegal?

Unit - 5

THE FACTORIES ACT, 1948

The Factories Act 1948 consolidates and regulates the law relating to labour in Factories. With the introduction of the factory system and the development of modern industry bringing about great reconcentrating of labours in Industrial establishments the matter of health and safety of the workers became all pressing important. In recognition of the fact that the workers on account of their inferior economic position which they have hitherto occupied, would not as a rule, be able to secure proper condition of work without governmental aid. States have enacted many measures to regulate such conditions. These have had reference mainly to hazardous or unhealthful occupations and to the employment of women and children. Factory legislation in India has followed the same lines similar to English Legislation. The previous law relating to the regulations to labour employed in factories in India was embodied in the Factories Act 1934. The experience of the working of that act had revealed a number of defects and weaknesses which hampered factory administration and the present Act of 1948 was enacted to overcome those defects. The existing law applies to industrial establishments where manufacturing process is carried on with the aid of power where 10 or more persons are working and 20 or more workers in all other cases. The pith and substance of the act is the regulation of labour in factories and the ensuring of good working conditions. The act protects human beings from being subject to unduly long hours of bodily strain or manual labour. It also provides that employees should work in a healthy and sanitary conditions, so far as the manufacturing process will allow and though the precaution should be taken for their safety and for the prevention of accidents, to ensure those object, the State Govt. are empowered to appoint Inspectors. The act is applicable to the whole of India except the State of Jammu & Kashmir.

Scheme of the Act

1. Important Definitions
2. Approval, licencing and Registration of Factories.
3. Inspection
4. Health
5. Safety
6. Welfare
7. Working hours of adults
8. Employment of young persons
9. Annual Leave with wages
10. Special provisions
11. Penalties and procedures

1. Important Definitions (Section 2)

(i) The adult means a person who has completed his 18th year of age and the adolescent means a person who has completed his 15th year of age and who has not completed his 18th year. Child means who has not completed his 15th year of age. An young person means a person who is either a child or an adolescent.

(ii) Manufacturing process means [2(k)] any process for making, altering, repairing, ornamenting, finishing, packing, washing, cleaning, breaking up, demolishing or otherwise trading or adopting any article or substance with a view to its use, sell, transport, delivery or disposal. Pumping of oil, water, sewerage or an other substance or generating transforming or transmitting power or composing types for printing by letter press lithography, photography or other similar process or book binding, constructing, reconstructing repairing finishing or breaking up ships or vessels or preserving or storing any article in cold storage.

(iii) '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 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 it does not include any member of the armed Forces of the Union.

(iv) 'Factory' means [Section 2(m)] any premises including precincts thereof (i) where 10 of more workers are working or were working on any day of the proceeding 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 of (ii) where 20 or more workers are working or were working on any day of the proceeding 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 the factory does not include a mine subject to the operation of the Mines Act or a mobile unit belonging to the Armed Forces of the Union, a Railway running Shed or a Hotel, Restaurant or eating place. Reading the definitions of "worker", 'factory' and 'manufacturing process' together, it is quite reasonable and legitimate to hold that a person to be a worker within the meaning of the Factories Act must be a person employed in the premises or precincts of the Factory, In the case of State of U.P. Vs. M.P. Singh and other 1962 SCR 605, the Supreme Court held that the persons working in the field they are not workers hence, the provisions do not apply to them. In case of public emergencies, the State Govt. may, by notification, exempt any factory or class or description of factories from all or any of the provisions of the Act (Except Sec.67) for such period and subject to such conditions, and such notification shall not be made for a period exceeding 3 months at a time. Public emergencies means a state of emergency thereby the security of India or any part of the country thereof is threatened whether by war or by external aggression or internal disturbances.

Occupier Under Sec.2 (n) occupier of a factory 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.

2. Approval, Licensing and Registration of Factories (Sec.6)

State Govt may make rules requiring the submission of Plans of any clause or description of factories to the Chief Inspector of Factories requiring the previous permission in writing to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or clause or description of factories, require for the purpose of considering application for such permission, the submission of plans and specifications prescribe nature of such plans and specifications and by whom they shall be certified, requiring registration and licensing of factories of any clause or description of factories and prescribing fees payable for such registration and licensing and for the renewal of licences and also require that no licence shall be granted or renewed unless the notice specified in Section 7 has been given. The Tamilnadu Factories, Rules 1950 prescribes the procedure for approval of the site construction or extension of the Factory. Application for such permission and submission of plans shall be made in Form No. I in triplicate accompanied by a flow chart of the manufacturing process with a brief description of the process and the place proposed for effective removal of dust, fumes, gases and for effective disposal of trade wastes, and effluents, a certificate from the Directorate of Health Services and such other particulars as required by the Chief Inspector of factories. An application for Registration of a Factory and grant of licence shall be submitted to the Chief Inspector in form No.2 in triplicate. The Licence so obtained is renewable every year. The occupier shall atleast 15 days before the begins to occupy or use any premises as a factory a written notice containing name and situation of the Factory, name and trades of the occupier, owner of the premise, address to which communication may be sent, the nature of manufacturing process, the total horsepower installed or to be installed, name of the manager of the Factory, no of workers likely to be employed and such other particulars are to be furnished.

3. Inspection

The State Government may appoint Inspectors for the purpose of this Act and be assigned to them such local limits as they may think, fit (Sec.8). The State Government may also appoint Chief Inspector, Additional Chief Inspector, Joint Chief Inspector and Deputy Chief Inspector and assigned powers. All such Inspectors shall be deemed to be a Public Servant within the meaning of Indian Penal Code. The Inspectors are empowered to enter, make examination of the premises, Plant & Machinery, require, the production of any prescribed register and other documents relating to the factory and obtain on the spot or otherwise statements of any persons and exercise such other powers as may be prescribed. The inspectors are also empowered to prosecute conduct or appear before the Court and make any complaint or institute other proceedings arising under the Act or in discharge of his duties as the case may be.

The State Government may appoint qualified medical practitioners to be the certifying surgeons for the purpose of this Act. The Certifying surgeon, shall carry our the examination of young persons engaged in factories in such dangerous occupation and exercise such medical supervision as may be prescribed. (Sec.10).

4. Health (Sections 11-20)

(a) Cleanliness of the Factory

Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nascences. Accumulation of dirt and refuse shall be removed daily. The floor of every work room shall be provided All inside walls, partition ceilings and stair cases, if painted with washable water paint, or Varnish to be repainted or rewarm shed atleast once in every period of 5 years. Where they are painted with wash able water paint shall be repainted once in 3 years. In case of white washing and colour washing shall be carried out atleast once in every period of 14 months. (Sec.11). The employer should maintain a record of dates on which white washing, colour washing, Varnishing are carried out in form No.7.

(b) Disposal of wastes and effluents

Effective arrangements shall be made for the treatment of wastes and affluents due to the manufacturing process carried so as to render them innocuous and for their disposal.

(c) Ventilation and Temperature

The act also provides for effective and suitable provisions to secure and maintain in every work room adequate ventilation and such a temperature as to secure reasonable conditions of work and prevent injury to health. The State Government are empowered to prescribe standard of adequate ventilation and reasonable temperature.

(d) Dust and fume

The state Govt is also empowered to prescribe measures to prevent the presence of dust or fumes and other impurities and require the factory to provide for exhaust fans. The rules provide for specified standard of width and height in any building or structure so used as a factory.

(e) Over Crowding

No room in any factory shall be overcrowded to the extend injurious to the workers employed there in (Sec.16) There shall be in every work room of a factory atleast 500 cu.ft. of space for every worker employed there in provided where in the ceiling of the room is 14. and above the level of the floor, the space prescribed above shall not be taken into account.

(f) Drinking Water

In every factory the effective arrangements shall be made to provide and maintain suitable drinking water points conveniently situated for all workers employed there in and sufficient supply of whole some drinking water shall be provide (Section 18), All such points shall be legally marked as drinking water in the local language and in every factory where in more than 250 workers are ordinarily employed provisions shall be made for cooling drinking water.

(g) Latrines and Urinals

In every factory sufficient latrine and urinal accommodation of prescribed type shall be provided functionally situated and accessible to the workers at all times. Separate enclosed accommodation shall be provided for made and female workers and such accommodation shall be adequately, lighted and ventilated. Such accommodation shall be maintained in a clean sanitary conditions and sweeper shall be employed to keep clean the latrines, urinals and washing place. (Sec.19).

(h) Spittoons

In every factory there shall be provided a sufficient number of spittoons in convenient place and that shall be maintained in a clean and hygienic condition, No person shall spit within the premises of the factory except in the spittoons provided and who ever spits in contravention shall be punishable with a fine not exceeding Rs. 5/-

5. Safety (Sections 21-40)

(a) Fencing of Machinery

In every factory every moving part of a prime mover, and every fly wheel connected to a prime movers every head race and tail race of every water wheel and water turbines, every part of stock of a lathe and every part of electric generator motor rotary converter, transmission machinery and every dangerous part of any other machinery shall be securely fenced by safeguards of substantial construction which shall be continuously maintained and kept in position while the parts of machinery are running or use Sec.21.

Though the obligation to safeguard is absolute, it is qualified by the test of foreseeability and if protection is provided for by the employer by having a guard and other safe guards. If such safeguard is rendered nugatory by an unreasonable or perverted act on the part of workmen, even though such act is not done with any criminal intention there is no liability on the part of the employer (State Vs. Jehtu Jeblahi Patel 1962 2 LLJ 342). The Act specified that prime movers and transmissions machineries are dangerous machinery. The Act imposes a duty to fence whether the prime movers and transmission machinery are dangerous or not. Instructions have been issued to the employees is no defence for breach of statutory obligation to fence. The fence should be normal and that of a fixed guard. If owing to the nature of the

operation the safety of a dangerous spot to any machinery cannot be secured by a fixed guard, a device which automatically prevents the operator form coming into contact with the dangerous spot must be provided. A factory occupier does not discharge his machinery safe. Further it has no defence for a factory occupier to see that fence is commercially and or economically impossible or to see that fencing has been carried out by the best known method. The question as to whether a particular part of the machinery is dangerous or not has to be decided by the position of the machinery and the method of operation in ordinary course of operation and dangers which may result from its use.

The State Government are empowered to make necessary rules. The Tamilnadu Factories Rules 1950 has prescribed safety precaution for the various class of factories. Cotton Textiles (Schedule I), Cotton Ginning (Schedule II) weight Working Machinery (Schedule III) Wrapper Materials Schedule IV), printing presses Schedule V) and all other factories (Schedule VI) have been provided) with special provisions for the safety precautions. Centrifugal machines of Sugar Factories will have to be securely safeguarded as provided in Schedule VII.

(b) Work on or near machinery in motion

The Act also prescribes that whenever it becomes necessary to examine any part of machinery while in motion, or to carry out lubrication or other adjusting operation such examination shall be carried only by a specially trained male worker wearing a tight fitting clothing and the trained persons names should be recorded in the Register prescribed.

(c) Employment of young persons on dangerous machines.

No women or young persons shall be allowed to clean, lubricate or adjust any part of prime mover or of any transmission machinery while in motion (Section 22). No young person shall work at any machinery unless he has been fully instructed as to the dangers arising in connection with machines and the precautions to be observed and he has received sufficient training and is under adequate supervision.

(d) Striking gear and devices for cutting off flower

In every factory suitable striking gear or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery and such gear or appliances shall be constructed, placed and maintained as to prevent the belts from creeping back on to the fast pulley. In every factory suitable devices for cutting of power in emergencies for running machinery shall be provided and maintained in every work room and also should be provided with locking devices to prevent accidental staring of the machinery.

(e) Prohibition of employment of workman and children near cotton openers

The Ac. also specifically prohibits employment of woman and child in any part of the factory for pressing cotton, in which a cotton opener is at work. In every factory every hoist and lift shall be of good mechanical construction and sound material and adequately strength and which shall be property maintained and through examined by a competent person atleast once in every period of 6 months and a register shall be kept in for No.36. In ever factory every lifting machine (other than a hoist and lift) every chain rope and lifting tackle shall be of good construction, sound material and adequate months by a competent persons approved by the chief Inspector of Factories. The also prescribes standards for the operation of revolving machinery I any part of the plan or machinery used in a manufacturing process is operated at a pressure above the atmosphere pressure, effective measures shall be taken to ensure that the safe working pressure of such part is not exceeded. The pressure appliance should be examined by a competent person approved by the Chief Inspector of Factories. The Tamilnadu Rules prescribe various safety devices for the maintenance pressure appliances. The rule also prescribes that no man, woman of young person shall unaided by another person lift, limit in weight, set out in the schedule. The rule also prescribes that effective screens or suitable goggles shall be provided for mentioned is Schedule I of the rules. No person shall permitted to enter any chamber, tank, vat, pit or other coined space in which dangerous fumes are likely to be with a man whole of adequate size or other effective means of egress. Persons entering into such confined space shall to be allowed to use portable electric light or any other electrical appliances of voltage exceeding 24 volts.

(f) Precaution in case of fire

In every factory there shall be provided such means of escape in case of fire (Sec.38). The Act was amended in the year 1976 where in a provision to appoint Safety Officers where 1000 or more workers are ordinarily employed is made.

6. Welfare

Washing Facilities

In every factory adequate and suitable facilities for washing shall be provided and maintained. Separate and adequately screened facilities shall be provided for the use of male and female worker and such facilities shall be conveniently accessable and shall be kept clean. The Act also provides for the facilities of storing and drying of clothes and sitting facilities. In every factory, there shall be provided and maintained first aid boxes and cup boards equipped with the prescribed contents and number of such boxes or cub boards to be maintained shall not be less than 1 for every 150 workers. In every factory wherein more than 500 workers are ordinarily employed, There shall be provided and maintained an ambulance room and should be in charge of such medical and nursing staff as may be prescribed.

The State Governments are empowered to make rules requiring that in any specified factory where in more than 250 workers are ordinarily employed, a canteen or canteens shall be provided a maintained by the occupier for the use of the workers (Sec.4). The Tamilnadu Factories Rules 1950 prescribes procedures for the establishment and maintenance of canteen in rule 65 to 70. The rule prescribes various standards for the canteen buildings. Dining Hall and equipments to be provided at the canteen. Every member of a canteen staff be medically examined. The food, drinks and other items served in the canteen shall be served on a non profit basis, the price charged shall be fixed by the Canteen Managing Committee. The rule prescribes the procedure for the election of Canteen Managing Committee and its duties.

In every factory wherein more that 150 workers are ordinarily employed, adequate and suitable shelters or rest rooms and a lunch rooms shall be provided. The State Governments are empowered to prescribe standards in respect of construction of shelters etc. (Section 47) In every factory where in more than 30 women workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of 6 years of such women (Creches) the State Governments are empowered to prescribe the locations and standards. In every factory wherein 500 and more workers are ordinarily employed the occupier shall employ welfare officer as prescribed. The Tamilnadu Government has enacted the Tamilnadu Factories (Welfare Officers) Rules 1953 wherein the qualifications of welfare officer and their recruitment procedures have been provided. The conditions of services of a Welfare Officers and their duties are also prescribed.

The following are the duties of Welfare officers

The duties of Welfare officer shall be

(i) to establish contacts and hold consultations with a views to maintaining harmonious relations between the factory management and workers.

(ii) to maintain a liaison regarding grievance of workers and to interpret labour policies to the workers in a language they can understand.

(iii) to advice the factory management on obligations statutory or otherwise concerning the application of the provisions of the Factories Act 1948 and the rules made there under.

(iv) to promote relations between management and worker which will ensure productive efficiency and to help workers to adjust and adapt themselves to their working environments.

(v) to advise the management on provisions of amenities, such as sickness and benevolent scheme, gratuity payments, leave etc.,

vi) to advise on welfare provision such as housing facilities foodstuff, social and recreational facilities and sanitations.

vii) to advise factory management on questions relation to supervision and control of notice board and information bulletins to further education of worker and to encourage their attendance at technical institutes.

vii) to encourage the formation of work and form production committees, co-operative societies and safety and welfare committees and to supervise their work.

ix) to suggest measures which will serve to raise the standard of living of worker and in general promote their well being and

x) to work for the improvement of education facilities and to promote adoption of the family welfare measures amongst the workers.

7. Working hours

Sections 51 to 65 prescribe the hours of working in a Factory, weekly holidays, interval for rest, etc. These regulations relating to labour which are of great importance and which have evoked good deal of controversy and are designed to promote welfare of the labouring class by fixing the number of their working hours are provided in the Act. No adult worker shall be required or allowed to work in a factory for more than 48 hours in any week (Section 51) and no adult worker shall be required or allowed to work in a factory for more than 9 hours in and day (Sec.54). The first day of the week shall be allowed as weekly holiday provided substitution may be allowed on the day immediately before or after the said holiday. (Sec.52) The period of work of adult in a factory each day shall be so fixed that no period shall exceed 5 hours before he has availed an interval for rest atleast for 1/2 an hour. The period of work of a adult worker in a factory shall be so arranged that inclusive of his interval for rest shall not spread over more than 10 and 1/2 hours in a day. The Act also prohibits overlapping of shifts. Whenever a worker works in a factory for more than 9 hours in any day or for more than 48 hours in any week he shall be paid for overtime work be entitled to the wages at the rate of twice his ordinary rate of wages. (Section 59). The Manager of factory shall issue overtime slips immediately after the completion of the overtime work. The act also restricts double employment. The notice of periods of work shall be displayed and correctly maintained in form no.11. The register of adult workers shall be in form No.12. The Act also specifically provides that no woman shall be required allowed to work in any factory except within the hours of 6 A.M. and 7 P.M.

Note: The Madras High Court now allowed the women to work with Night Shift with protection provided by the Employer (The Hindu dt.12.12.2000)

8. Employment of young persons (Sec.67 to 71)

No child who has not completed his 14th year shall be required or allowed to work in a factory. A chile who has completed 14th year or a adolescent shall be issued certificate of fitness and such person should carry a taken giving a reference to such certificate while on work. No child shall be employer for more than 4 1/2 hours in any day and shall not be employed during the night.

The period of work of all children employed in a factory shall be limited to two shifts, which should not spread over more than 5 hours each. As in the case of adult notice of period of work for children should be displayed. The said notice should clearly show the periods during which children may be required or allowed to work.

The manager of every factory should maintain a register or child workers with the following particulars.

(a) The name of each child worker in the factory; (b) the nature of his work (c) the number of his certificate of fairness. The register of child worker shall be in the form No.14.

9. Annual Leave with wages (Sec.78 to 84)

Every worker who has worked for a period of 240 days or more in a factory during a calender year shall be allowed during the subsequent calendar year leave with wages for a number of days calculated at : (1) for an adult 1 day for every 20 days of work performed by him during the previous calendar year. (2) In the case of a child 1 day for every 15 days of work performed by him during the previous calendar year. The provisions of annual leave with wages will not affect pre-existing arrangements and does not allow prohibit future arrangements which would be more generous than provided under this Act. (Alembic Chemical Works Company Vs. Its workmen 1961 I LLJ 328) The leave provided under this Section arises as a matter of right to worker who works for a minimum number working days and is entitled to it. The whole of chapter 8 'Annual leave with wages' deals with the provisions for a certain number of holidays for the workers employed in factories. The provisions of this chapter are mandatory and more discretion is vested in the employer to with hold the benefits provided for the workers. Whereever cases arise in which the benefits provided for the workers. Wherever cases arise in which the workers get better terms of services by virtue of their contract of service then such workers shall be entitled to take advantage of their privileges under the contract not withstanding the provisions of this chapter. Where a worker on his own accord does not avail himself of the leave, he can accumulate the unexpired leave subject to maximum Sec.79(5) provides that the maximum leave that can be accumulated shall not exceed 30 in the case of adult or 40 in the case of a child Where, due to exigencies of situation a worker is not granted the leave, he can accumulate the same without any limit. In the case of termination of services special provisions are made for proportionate leave and

payment in lieu thereof. If a worker is discharged or dismissed from his service or quits his employment or is superannuated or dies while in services special provisions from his 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 get wages in lieu of the quantum of leave to his credit immediately before his discharge, dismissal quitting of employment, superannuation or death calculated at the rate specified even if he had not worked for the entire period making him eligible to avail such leave and such payment shall be paid before the expiry of the second working day from the date of such dismissal or quitting and in the case of superannuation or death before the expiry of two months from the date of such events.

Provision is also made for payment of advance wages for workers going on leave. What constitute wages payable to a worker is also clearly indicated (Sec.80). However, details concerning the calculation of number of holidays, exclusion of certain holidays like weekly holiday and festival holidays, absence without leave on reasonable grounds upto a certain number of days in a year are all provided in detail.

The State Govt. may make rules directing Manager of factories to keep, registers containing such particulars as may be prescribed. The Tamilnadu Factories Rules (Rule 87 to 94) prescribe various registers to be maintained and regulates the granting of leave. Leave with wages register shall be in form 15. Every worker shall be provided with leave book. Sec. 84 gives powers to State Govt to exempt factories if it satisfied that the leave rules applicable to workers in a factory provide benefit which in its opinion are not less favourable than those for which the act makes provisions where an exemption is granted the Manager of the Factory shall display notice giving full details of the system established in the factory for leave with wages and shall send a copy to the Inspector.

10. Special Provisions (Sections 85 to 91)

The State Government may by notification declare that all or any of the provisions of Act shall apply to any place where in the manufacturing process carried on with or without the aid of power not with standing the number of persons employed therein is less than 10 for working with the aid of power and less than 20 for working without the aid of power and also persons working with the permission of or under agreement with such owner. When the State Government declares by notification that all or any of the provisions of the Act shall apply to premises such premises shall be deemed to be a factory. While examining the question of the constitutional validity of this Section the Supreme Court held that the section itself is not discriminatory to as to infringe Article 14 of the Constitution (AIR) 1963 SC 806) nor does the provision amounts to authorising imposition of unreasonable restriction upon fundamental right of the owner of the Factory to carry on his business, Sec.85 is not ultra varies Article, 14 and the power conformed is not an unguided and uncanalised power, but

there is a policy and purpose underlying the Section which is to guide and govern the element of the legislative power as a whole and in modern times when the legislature enacts laws necessary to delegate subsidiary or ancillary power to delegates of their choice for carrying out the policy laid down by their Acts. In dealing with the question as to the vires of nay statute on the ground delegation of enunciated its policy and principle and delegated to the subordinate authority accessory or subordinate powers for the purpose of working out the details within the frame work of that policy in principle. (AIR 1963 SC 1591)

The State Governments may also exempt any work shop or work place where the manufacturing process carried on and is attached to public Institution maintained for the purpose of education, training Research or reformation from all or any of the provisions of this Act. However, no exemption shall be granted from the provisions relating to hours of work and holidays, unless the Institution gets specific approval.

Where the State Government is of the opinion that any manufacturing process or operation carried on in a factory expose any person employed in it to (a serious risk of bodily injury poisoning or disease it may make rules to) those factories specifying the operation as dangerous, prescribe or restrict employment of women, adolescents or children, provide for periodical medical examination, provide for protection of all persons employed prescribe; restrict or control the use of any specified material, require the provision of additional welfare amenities and supply of protective equipments and provide for directing the Manager or occupier to carry out such measures (Section 87)

Notice of Accidents (Section 88) Where in 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 period of 48 hours or more immediately following the accident or which is of such nature as may be prescribed, the Manages of the factory shall send notice to such authorities. The Manager of every factory shall maintain a register of accident in Form No.26 and Register of dangerous occurrence in From 26A. The notice of accident shall be in form no.18. Where any worker contracts any disease specified in the schedule, the Manager of the factory shall send notice to such a authorities, the State Government may of considers it expedient appoint competent person to enquire into the cause of any accident occurring in a factory or in any case where the disease has been or is suspected and also may appoint one or more persons possessing local or special [knowledge to act as assessors in such inquire] The State Governments are empowered to make rules regulating the procedures of inquiries.

The Inspector is empowered to take sufficient sample of any substance used or intended to be used in the factory which in the belief of the Inspector is in contravention of any of the provisions and in the opinion of the Inspector likely to cause bodily injury or to the health of workers. Before taking samples the Inspector should inform the occupier and taken the samples during the normal working hours.

11. Penalties & Procedures

If there is any contravention of any of the provisions of the Act or Rule made therein or to any order in writing given the occupier and Manager shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 2,000/- or with both and other contravention is continued after conviction, with a further fine which extent to Rs. 75/- for each conviction, with the contravention to Rs. 75/- is so continued (Section 92)

The reasonableness holdings the occupier and the Manager responsible for any contravention were examined by the courts and it was held that such imposition of sentence can not be regarded as unreasonable (1967-I LLI 44) Now with standing all that has been said regarding progressive legislation for protection of the workers, it is scarcely worth consideration if the laws are not enforced. More important than the hasty enactment of additional law is the adoption of method of administration that will enforce the existing once. In several instances and for various reasons the enforcement of labour laws by factory inspectors have been found to be ineffective. Officials some times point to their record of numerous prosecution as evidence of their efficiency in office. Such a record may prove exactly the opposite. An interesting method of unforeseen complaints which is more and more coming into prominence has to give the authorities powers to stop work of a machine or in an establishment which violates the law. The possibilities of detecting all violations by official inspection are obviously limited and the burden of proof is always on the prosecution. Section 92 is of penal section and it ought to be construed strictly. When the premises who has no control over the operation shall not be held liable. If any person who has been convicted of any offence is against found guilty of offence involving a contravention of the same provision shall be punishable in a subsequent conviction with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs.1,000/- or both. Whoever wantory obstructs the Inspector or fails to produce on demand any register or other document or conceals or prevents any worker in the factory shall be punishable with imprisonment which may extend to 3 months or with fine which may extend to Rs. 500/- or both. The Act also provides for a penalty for the offence committed by a worker if any worker contravenes any provision of this act and rules imposing and duty and all such workers shall be punishable with fine which may extend to Rs.20/-

Where the occupier or Manager of Factory is charged with an offence Punishable under this Act, he shall be entitled to have any other person whom he charges as the actual offender. No Court shall take conscience of an offence except on complaint by or with the previous sanction in writing of an Inspector. The Presidency Magistrate or a Magistrate of a Second Class shall the any offence and no cognizance shall be taken unless the complaint is made within 3 months of the date on which the alleged commission of the offence came to the knowledge of the Inspector.

The Tamilnadu Factories Rules provide for the submission of returns and maintenance or records. The Manager of every Factory shall send half yearly returns and annul returns in the prescribed forms. The Manager of the factory shall maintain a muster role of all workers in form No.25 and time card for each worker in form No. 25 B and the Manager shall maintain inspection books Appeals (Sec. 107) The Manager of a factory may appeal to the prescribed authorities to cancel or modify his order passed against him and the notice of hearing of appeal in mandatory.

The provisions of Factories Act is a piece of a progressive legislation and it should be construed in favouring of the workers but at the same time it should not be used merely for the purpose of harassing the employer and the employer position has to be considered. When the management acts reasonably and shows a genuine desire to meet any complaint to rectify any irregularity and he is no absence of good faith, technical infringement of the provisions is uncalled for. On the other hand if we see the work scheme of the act, learning the minor pricks in the administratives of the act as observed above the provisions of safety, health and welfare of the workers are certainly essential in view of the large and growing industrial activities in the country and the provisions of the factories. Act serves to achieve the aim of a welfare state as enunciated in directive principles of state police of our constitution.

Suggested Questions

1) Define the terms factory, young person and manufacturing process as used in the Factories Act, 1948.

2) What are the welfare measures to be adopted by the occupier of the factory as required in the Factories Act, 1948?

3) Explain the safety provisions of the factories Act, 1948?

4) State the restriction imposed by the Factories Act, 1948 in respect of the employment of young persons and women in a factory.

Unit - 6

THE MINIMUM WAGES ACT, 1948

The Minimum Wages Act of 1948 is a landmark in the history of labour legislation in the country as it recognises that wages cannot be left to be fixed by market forces or forces of supply and demand alone. The underlying idea or main objective of this legislation is to prevent exploitation of labour through payment of low or seating wages by fixing minimum rates of wages.

Scope and coverage

Since its enactment in 1948 the Act has been amended several times, As it stands at present, it extends to the whole of India. To start with it covered employment in agriculture and the following 12 other employments mentioned in its schedule:

Public motor transport; mica works; plantation; oil mills; tobacco, lac, tanneries and leather manufactories; woolen carpet making and shawl weaving; rice, flour and Dall mills; local authority, road construction and maintenance or building operations; and stone breaking and stone cursing.

During the last 25 years Central and State Governments have exercised their power under the Act to extend its coverage by adding a number of new employments to the Schedule Under this Act minimum wages can be fixed for all employees who are engaged to do any work, skilled, unskilled, manual or clerical, in a scheduled employment, including "out-workers" to whom articles or materials are given out by another person for manufacturing or processing in his own home or elsewhere, and any other employee declared to be an employee under the Act. The members of the armed forces are, however, excluded from the purview of the Act. (Sect.1,3)

Administration

It is a Central legislation, but is administered and enforced by both the Central and State Governments in their respective spheres. The Central Government is responsible for fixing minimum wages in respect of oil fields, major parts, mines, and any corporation established by the Central Government, and any the scheduled employments carried by or under the authority of the Central Government, in other scheduled employments the State Governments have to fix minimum wages. Both the Central and State Governments have the powers under the Act to appoint inspectors for enforcing the provisions of the Act, appoint an authority for hearing and deciding claims for short or non-payment of minimum wages, and make rules for carrying out the purpose of the Act. (Sec 2 (b), 19,30)

Definitions : (Sec .2)

1. Appropriate Government : (Sec 2 (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 relation to a mine, oil field or major port, or any corporation established by a Central Act the Central Government; and

2. Competent Authority : (Sec.2 (c)) : " Competent Authority" means the authority appointed by the Appropriate Government by notification in its official Gazette to as certain from time to time the cost of living index number applicable to the employees employed in the scheduled employments in such notification.

3. Cost of living Index number : (Sec. 2 (d)) : "Cost of living index number" means in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, 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.

4. Employer : (Sec.2(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. It includes:

(i) in a factory, where there is carried on any scheduled employment, any person named as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India, the person or authority appointed by such Government for supervision and control of employees. Where on person or authority is so appointed, the head of the department.

(iii) in any scheduled employment under any local of authority the person appointed by such authority for the supervision and control of employees. Where no person is appointed, the chief executive officer of the local authority'

(iv) in any other case, where there is carried on any scheduled employment, any person responsible to the owner for the supervision and control, of the employees or for the payment of wages.

In Re: Polisethi Lakshmayya. (1959-ILLK 556), it was held that when the work is given to the contractors who in turn engage workmen to operate the stone quarries, he cannot be considered to be the employer. The contractor is the employer.

5. Scheduled Employment: Sec 2(g) : "Scheduled Employment" means an employment specified in the Schedule of this Act or any process of branch of work forming part of such employment.

The definition of 'scheduled employment' is a very wide one which covers any process or branch or work which forms part of the employment specified in parts I and II of the Schedule. (Madhya Pradesh Mineral Industry Association. V. Regional Labour Commissioner - AIR - 1960- SC- 1068)

6. Wages : (Sec.2): 'Wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of contract of employment express or implied, were fulfilled, be payable to a person employed in respect of his employment or work done in such employment. It includes-

(i) House rent allowance:

(it is a part of an employee's wages when he has an absolute right to the same, either under service terms or under the rules Div. Engineer G.I.P. Rly Vs. Mehadeo - AIR-1955-SC-295)

(ii) Payment of remuneration in respect of day or rest. (Associated Cement Co. Ltd.Vs. Labour Inspector (Central) Coimbatore and Another, (1960-ILLJ 192)

But does not include:

(i) The value of :

(a) any house - accommodation, supply of light, 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 travelling allowance or the value of any travelling 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

The term 'wages' applies only to earned wages and therefore any claim for potential 'wages' not lie under this Act.

(Arumugham Vs. Jawahar Mills- AIR - 956- Mad.7). The above definition is different form the definition of 'wages' given in section 2 (iv) of the payment of wages Act, 1936 which has wider connotation and coverage.

7. Employee (Sec.2(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. It 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. It 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 Union.

If an out-worker prepares goods at his residence and then supplies them to the employer, he is to be treated as an employee for the purposes of this Act. (Koknath Nathu Lal v. State of Madhya Pradesh-AiR 1960 MP 181).

In Labour Enforcement Officer (Central) v. Labour Court Authority under Minimum wages Act, Patna and others (1976-LLJ-II-492), it was held that merely because in the definition of the worked 'employee', it has been mentioned that it is to mean a 'person who is employed', it cannot be held that merely because in the definition of the work 'employee', it has been mentioned that it is to mean a 'person who is employed it cannot be held that the person concerned must be in employment on the date of application under section 20(2) of the Act, or during the pendency of the proceedings. The expression, who is 'employed' may mean who is employed at any relevant time. The word 'employee' does not include an ex-employee (Municipal Committee Vs. SL. Kaura - 1966-ILLJ 674), though a dismissed employee or ex-employee can validly make an ex-employee. (Municipal Committee v. S.L. Kaura - 1966-ILLJ 674), though a dismissed employee or ex-employee can validly make an application to claim relief under this Act. (Wake-field Estate v. Marutham Uchi- 1959- 1 LLJ-393 Mad)

Fixation & Revision of Minimum Wages (Sec 3.5)

Section 3 provides that the appropriate Government shall;

(i) six 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 a notification.

The appropriate Government may, in respect of employes employed in an employment specified in part II of the Schedule, instead of fixing minimum rates of wages for the whole state, fix such rate for a part of the State or for any specified class of classes of such employment in the whole State or part thereof.

No difference is to be made in the point of the basic minimum wage between the men and women workers. (Arunit Banaspati Co. Vs. Workmen, (1948-ICR-726)

(ii) review at such intervals as it may think fit, such intervals not exceeding 5 years, the minimum rates of wages so fixed and revise the minimum rates, if necessary.

Where for any reason, the appropriate Government has not viewed the minimum rates of wages fixed by it is respect of any scheduled employment within any interval of 5 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 5 years and revising them, if necessary, Until they are so revised the minimum rates in force immediately before the expiry of the said period of 5 years shall continue in force.

In Paravur Coir Vyasaya Sungham V. State of Travancore, Cochin (1950-T.C. 136), it was held that if the rates once fixed can be revised and altered at any time within a period of 5 years, the fixation of rates themselves within a much shorter period of time beyond the date originally contemplated cannot be said to be illegal or ultravires.

Minimum Number of Employees: 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 1,000 employees engaged in such employment. If at any time, the appropriate Government comes to a finding after such inquiry as it may make 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 arisen to 1,000 or more, it shall fix minimum rates of wages payable to employees in such employment as soon may as be after such finding.

Principles of wage fixation : In Express Newspapers Pvt. Ltd., and another Vs. The Union of India and others (1961-1 LLJ -3391), certain principles were laid down in the matter of wage fixation;

1. There is a minimum wage, which in any event must be paid, irrespective of the extent of profits, the financial position of establishment or the availability of workmen at lower wages.

2. The wages must be fair, i.e., sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workmen.

3. A fair wage lies between minimum wage and the living wage which is the goal.

4. Wages must be paid on an industrywise region basis having due regard to the financial capacity of the unit.

Wage fixation is an important subject in any social welfare programme. The floor level is the bare minimum wage or subsistence wage in fixing which the position will have to be considered from the point of view of the workmen, the capacity of the employer to pay being irrelevant. The fair wage, which lies between the subsistence wage and the living wage,

must take not of the economic reality of the situation and the minimum needs of the worker having a fair - sized family with an eye of the preservation on his efficiency as a worker. Hindustan Hosiery Industries v. F.H. Lala and another 45- FJR - 1974 -234- SC)

While the question of the capacity of the employer to pay is irrelevant in the case of fixation of minimum wage, the matter of fair wage stands on a different footing. In the case of fair wage besides the principle of industry - cum region, the employer's capacity to bear the financial burden must also receive due consideration (Sangam Press Ltd., v. Their workmen 47-FJR - 1975-364)

The question whether the claim for a particular basic wage is just and reasonable or whether the employer has the capacity to pay the claimed basic wages is wholly irrelevant to the demand of the bare minimum wage. The bare minimum wage must be paid by the employer in spite of want of financial capacity. (Wool Combers of India V. Wool Worker's Union - AIR 1973-SC-2758)

Minimum wage does not mean wage just sufficient for bare sustenance. At present the conception of a minimum wage is a wage which is somewhat intermediate to a wage which is just sufficient for able sustenance and a fair wage. The concept includes not only the wage sufficient to meet the bare sustenance of an employee and his family, it also includes expenses necessary for his other primary needs such as medical expenses, (expenses to meet some eduction) for his children, in some cases transport charge, etc. The concept of minimum wage is likely to undergo a change, with the growth of our economy and with the change in the standard of living. It is not a static concept. Its concomitants must necessarily increase with the progress of the society. It is likely to differ from place to place and from industry to industry. (Chandra Bhavan Boarding and Lodging Bangalore v. Sate of Mysore -1969 (19) FLR -325)

Supreme Court has held that, having regard to the concept of minimum wages, if an employer is not able to pay such minimum wages to his employees, as if fixed by the Government, he can well close down his business. The only consideration relevant for fixation of minimum wage would be the necessity to pay certain minimum emoluments to an employee to enable him to live and work in the industry concerned. (T.P. Sukumaran and others v. State of Tamil nadu 53-FJR-1978-301). The Government has power to fix different minimum wages for different industries in different localities. The fixation of minimum wages depends on the prevailing economic conditions, the cost of living in a place, the nature of the work to be performed and the conditions in which work is performed. (Chandra Bhavan Boarding & Lodging, Bangalore v. State of Mysore 1970-(38)FJR)

Once the minimum rates of wages are fixed under the Act the capacity or otherwise of an employer to pay is of no consequence. (U. Unichyi v. State of Kerala - AIR 1962-SC-12)

Types of Minimum rates: The appropriate Government may fix

i) "a minimum time rate" i.e. a minimum rate of wages for time work.

ii) "a minimum piece rate' ie. a minimum rate of wages for piece work.

iii) " a guaranteed time rate" i.e. 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.

(iv) "over time' ie. 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.

In fixing or revising minimum rates of wages.

(i) different minimum rates of wages may be fixed for

(a) different scheduled employments:

(b) different classes of work in the same scheduled employments:

(c) adults, adolescents, children and apprentices;

(ii) minimum rates of wages may fixed by any one or more of the following wage-periods namely.

(a) by the hour

(b) by the day

(c) by the month or

(d) by such other larger wage - period as may be prescribed.

Where such rates are fixed by the day or by the month, the manner calculating wages for a month or for a day, as the case may be, indicated (Sec. 3(2-A): In what cases minimum rates fixed will not apply? The minimum rates of wages so fixed or so revise shall not apply to any of the employee employed in scheduled employment where:

(i) in respect of an industrial relating to the rates on wages payable to any of the employees.

(a) any proceeding is pending before a Tribunal or National Tribunal under the industrial Disputes Act, 1947, or

(b) before any like authority under any other law for the time being in force; or

(c) an award made by any Tribunal, National Tribunal or such authority is in operation; and

(ii) a notification or revising the minimum rates of wages respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award.

The rate of minimum wages fixed under the provisions of minimum wages Act would prevail over the rates of wages fixed under an award passed by the Industrial Tribunal under the provisions of the Industrial Disputes Act, where the rates fixed under the award are lower than the rates fixed under the provisions of the minimum wages act even during the period for which the award in force (S.I.L.R.O Vs. State of Madras -1954- 1 LLJ-8) In M/s.Jaydip Industries, Thana Vs. The Workmen (AIR-1972-SC-605) Supreme Court has held that in the light of the provisions of section 3(2A) of the Act, the Tribunal was not bound by the rates of minimum wages fixed by the Government under Section 3 of the Act and it was open to the Tribunal to fix rates of minimum wages to be paid to the workmen concerned in the dispute at figures higher than those fixed by the Government. The fixation may be interfered with by the Courts if the fixation is ultravires the powers of the Government. (Punehiri Bost Transport v. State of Travancore, Cochin - AIR -1955 . T.C. 97)

Where such proceeding or award relates to the rates of wages payable to the all employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.

Section 3(2A) of the Act classifies industrial establishments into two categories, viz., (1) Establishments in respect of which an industrial dispute regarding rates of wages payable to employees is pending before a Tribunal or National Tribuan, or in which an award of a Tribunal or National Tribunal regulating the rates of wages is in operation, or in which a settlement between the management and the employees regarding wages is in existence. The minimum wages fixed under the Act will not be applicable to such establishments during the pendency of the dispute before the Tribunal or National Tribunal and so long as the award or agreement is in operation; and (2) Establishments which do not fall under the above category to which the minimum wages fixed under the Act will apply. (Zahur Ahmed Vs. State of Karnataka and another (45-FJR-1974-164)

In Bhikusa Yumasa Kshatriya and Sangamner Akola Taluka Bidi Kamgar Union (1959-II LLJ-578), it was held that the Minimum Wages Act does not cast a statutory obligation upon the State Government to fix or revise the rates of minimum wages directly according to the cost of living index.

It should be noted that where any wage periods have been fixed under Section 4 of the Payment of Wages Act, 1936, minimum wages shall be fixed in accordance therewith.

The existence of awards regarding discrimination in rates of wages and on award linking dearness allowance with price index do not bar a claim of the workmen for minimum wages

prescribed under the Act as both the awards do not deal or revise the basic wages of the workers. (Khanna Silk Mills (P) Ltd., Amrisar Vs. Sohan Lal and Another -50 FJR - 1977-144) If the wages actually paid fall short of minimum wages then the employees would be entitled to get the amount by which the wages fell short. (Union of India and another, V B.D Rathi and others AIR -1963-Bom-54)

Minimum rate of wages : (Sec . 4) : Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Section 3 above may consist of -

(i) 'cost of living allowance' i.e., a basic rate to be adjusted at such intervals and in such manner as the appropriate Government any direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers ; or

This clause contemplates the fixation of a basic rate of wages and a special allowance at a rate to be adjusted with the variations in the cost of living index number. The adjustment of special allowance ought to be both ways, namely, increase or decrease depending upon the cost of living index number going up or coming down (Stanmore Estate, Yercaud and others, Vs. Commissioner of Labour Madras and others - 54 FJR -1979-23) . However, the Act does not cast a statutory obligation upon the State Government to fix or revise the minimum rates of minimum wages strictly according to the cost of living index. (Bhikusa Yamasa Kshatriya Vs. Sangamner Akoka Tuluka Bidi Kamdar Union-1959- II LLJ 578)

(ii) a basic rate of wages 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.

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates 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.

These wages should be fixed on realistic basis in order to partially neutralise the rise of piece of essential commodities, (Hydro Pvt. Ltd. V. Workmen - AIR - 1969 SC -182). When a minimum rate of wages is prescribed a payable to an employee, what he is entitled to get is wages, the total thereof at a rate not less than the minimum rate prescribed the rate itself being unitary whatever its component parts under the permissive provision of section 4(1) of the Act, (Chairman of the Madras Port Trust v. Claims Authority - 1957 Mad. 69)

Procedure for fixing and revising minimum wages (Sec. 5)

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 ariate Government shall either.

(i) appoint as many committees and sub-committees as it considers necessary to hold enquires and advice it in respect of such fixation of revision, as the case may be (a committee without men of experience and knowledge would be illegal- A.S.D.Basha Vs. State of Madras - 1962-63-23 FIR 50); or

(ii) by notification in the Official Gazette, Publish its Proposal for the information of persons likely to be affected thereby and specifies a date, not less than 2 months from the date of the notification, on which the proposals will be taken into consideration.

Consultation with the advisory bodies constituted under the Act has been made obligatory on all the occasions of revision of minimum wages. The Government is not bound to consult the Board for initial fixation. However, it is bound to consult the Advisory Board only in the case of revision, when it proceeds on the basis of notified proposals, Chandra Bhavan Vs. State of Mysore - AIR - 968 - Mys. 156). The Committee appointed under Section 5 is only an Advisory Body and the government is not bound to accept any of its recommendations. (Edward Mills Co. Ltd. Beawar Vs.. State of Ajmer AIR - 1954 -SC -25).

After considering the advise of the committee or committees so appointed, all representations received by it before the date specified in the notification, 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. Unless such notification otherwise provides, it shall come into force on the expiry of 3 months from the date of its issue. In State of a Madras Vs. PN. Ram Chandra Rao, (1956 LLJ 558), it was held that the notification not specifying in what manner and at what intervals special allowance made payable is to be adjusted is defective and is vitiated by an error of law apparent on the face of the record.

In Bengal Motion Picture Employees Union v. Kohinoor Pictures (Private) Ltd and others, (1968 ILLJ 387), it was held that employees who are in receipt of higher wages than those fixed under the notification should continue to enjoy the same was not warranted by the provisions of the Act. Government cannot either convert a voluntary payment into compulsory payment.

Where the appropriate Government Proposes to revise the minimum rates of wages in the manner specified in clause (ii) above, the appropriate Government shall consult the Advisory Board also where the Government follows the procedure laid down in clause (i) above,

consultation with the Advisory Board is no required though it is resorted to. (State of Rajasthan and Another Vs. Hari Ram Nathani and others 48 (FJR-1974-SC-176). The ultimate judge to fix or revise the minimum wages is not the Committee or even the Court, but it is the Government (Tourist Hotel, Vs. State of Andhra Pradesh and Another -46 (FJR-1974-98). An order fixing minimum rates of wages, without following the provisions of section 5(1) of the Act is invalid and void. (N.K.Jain Vs. Labour Commissioner - AIR - 1957-Raj - 35 (D.B.).

1. Committee & Sub-Committees : (Sec. 5(1) (a) : The appropriate Government shall appoints as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of such fixation or revision of the minimum wage, as the case may be.

In Tourist Hotel, Hyderabad Vs. State of Andhra Pradesh and another (ILLJ-1975-211), it was held that there is nothing in section 5 which prohibits the Government from approaching the Advisory Board for advice or receiving the advice of a Committee constituted under section 5 of the Act. The exercise of the power by the State Government under Section 5 is neither administrative nor quasi judicial but it is a legislative function delegated to the Government by Parliament.

2. Advisory Board: (Sec.7) : For the purpose of co-ordinating the work of the 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.

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 other independent persons not exceeding one third of its total number of members. One of such independent persons shall be appointed as the Chairman by the appropriate Government. (Sec. 9).

3. Central Advisory Board : (Sec.8) : For the purpose of advising the Central and State Governments in the matters of 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.

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 as Chairman of the Board by the Central Government.

The words 'independent person' indicate that such person should not represent either the employers or the employees. (Chandra Bhavan Lodging & Boarding v. State of Mysore - AIR 1968 Mys. 156).

4. Inspectors: (Sec19) : The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purpose of this act and define the local limits within which they shall exercise their functions. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Powers of Inspectors: Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed.

(i) 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 purpose of examining any register, record of wages or notice required to be kept or exhibited by or under this Act or rules made thereunder, and require the production there of for inspection;

(ii) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee therein or an employee to whom work is given out thereon;

(iii) require any person given out-work any out-workers to give any information, which is in his power to give, with respect to the names and addresses of 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.

(iv) seize or take copies of such register, record of wages or notices or portion 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

(v) exercise such other powers as may be prescribed.

The Inspector appointed under the Act is required to select a place where the employer is required to put up notices containing the minimum rates fixed together with abstracts of the Act. These notices; etc. are required to be in English and in a language understood by the majority of workers in the establishment.

Following are the penalties for offences under the Act (Sec.22)

a) Payment of wages less than the minimum rates of wages or fine of Rs.500/- or both fixed or due under the Act. Imprisonment up to six months,

b) Contravention of any rule order regarding normal working hours fixed under the Act.

c) Contravention of any other Fine up to Rs.500/- provision of the Act.

d) Power of the Government to exempt employers from liability in certain cases, where public interest may so require. (Sec.26)

e) Recovery of amount payable to workers under this Act together with compensation awarded by the Authority appointed under the Act, as a fine imposed by a magistrate. Every direction of the Authority appointed under this Act is to be final. (Sec. 20).

f) Appointment of inspectors by the State Government and vesting them with suitable powers for the proper enforcement of the Act. (Sec .19)

g) Application of payment of wages Act, 1936 to scheduled employments where minimum wages are to be fixed. (Sec.22(f)).

h) Declaration of any contract or agreement whereby an employee either relinguishes or reduces his right to a minimum rate of wages other privileges or concessions accruing to him under this act, as null and void, (Sec.25).

i) Payment of undisbursed amounts due to an employee under this Act either because of death before receiving payment, or an account of his whereabouts not being known, by depositing the same with the authority appointed under this Act. (Sec.22D).

j) Minimum wages for piece rate workers are not to be the less than the minimum time wages if minimum piece wages are not fixed. (Sec.17)

k) Amendment of the Act: There is a proposal to amend this Act so as to reduce time limit for revising wages, enhance penalties and making the Act work more effectively.

Obligations of Employers

It is obligatory for every employer covered by the Act to:

a) Pay to every employee engaged in a scheduled employment under him the minimum rates of wages that may be fixed by the Government under the Act without any deduction except as may be authorised under the payment of wages Act, 1936; (Sec.12)

b) Observe all directions which may be issued under the Act in regard to normal working hours, weekly day of rest with wages and over time rates;

c) maintain registers and records as required by the Government showing particulars of employees, work performed by them, wages paid to them and receipt given by them; (Sec.18)

d) issue wage books or slips to employees in respect of minimum rates if required by the Government, and make authenticated entries in such wages books or wage slips. (Sec.18)

Rights of Workers

Every worker has a right to:

a) receive minimum wages including overtime wages, as fixed and notified by the Government; and

b) file claim for short payments within 6 months from the date of the minimum Wages became payable. Delay in filing the claim may be condoned for any sufficient cause. (Sec.20)

General Remarks

The minimum wages have their own contribution to make towards harmonious industrial relations, particularly in developing countries where working class is largely literate and unconscious and collective bargaining is yet to emerge as a weapon for regulating labour management relations. In our country low or inadequate wages have been and are still an important cause of labour disputes and consequent loss of man days and production. A legislation like the Minimum Wages Act, which improves the level of wages, is bound to improve industrial relations provided it is administered and part in this respect, particularly in carrying out effectively the above mentioned obligations of the employer. Even in fixing minimum wages a supervisor can be of considerable help, as on account of his daily close personal contacts with his workers he can form a fair idea about the pattern of living and consumption of his workers, which cannot be lost sight of in determining minimum wages.

Suggested Questions

1) Explain the procedure for fixing and raising the minimum wages.

2) What are the functions of the Central Advisory Board?

3) Explain the concept of Fair wage and the role of Wage Board.

Unit - 7

THE PAYMENT OF WAGES ACT, 1936

As observed by the National Commission on Labour, the purpose of laying down a machinery for evolving a proper wages structure is defeated if malpractices in regard to payment of wages are no checked. The exploitation of workers through non-payment, or short payment or irregular payment or payment in kind rather than in cash, or short measurement or work of piece rate workers has been too well known to need any elaboration. Wide prevalence of all these unfair practices was highlighted by the Royal Commission on Labour in 1931. Their findings and recommendations in the regard led to the enactment of the payment of wages to certain classes of persons employed in industry. Its main objective is to eliminate all malpractices by laying down wage periods and time for making payment and regulating impositions of fines and deductions from wages.

Scope and Coverage

The Act came into force from March 1937, and since then it has been amended not less than 16 times, and that mostly by the State Governments. As it stands at present, it extends to the whole of India. It applies to the payment of wages of persons employed in any factory to persons employed upon any railway by railway administration or, either directly or through a sub-contractor by a person filling a contract with railway administration. The Act also applies to persons employed in an industrial or other establishments like tram-way or motor omnibus service, dock and wharf or jety inland steam vessel mine and quarry, oil field, plantations, workshop or other establishments engaged in construction, development or maintenance of buildings roads, bridges or canals and generation, transmission and distribution of power or any other energy and to any other establishment of any class of workers engaged in it which the Government concerned applicable to wages payable in wage period which coverage Rs. 1600/- per month or more.

For the purposes of this Act the term "Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, expressed or implied, were fulfilled, be payable so a person employed in establishments covered by the Act. It includes any bonus and any sum payable for termination of service and any other additional remuneration so payable, but does not include of any house accommodation, supply of light, water medical attendance or any other amenity contribution to any pension or provident fund, travelling allowance any sum paid to the person employed to defray special expenses, entailed on him by the nature of employment and any gratuity payable on discharge. (Sec.12)

Administration

It is a Central legislation, but it is administered by State Governments, except in the case of railways, mines, oil-fields and Central air transport service, where it is enforced by

the Central Governments. Both the Central and State Governments are empowereded to appoint inspectors under the Act to ensure its enforcement and make rules for carrying out the Purposes of the Act. (Sec. 24 and 26).

Principle provisions

The Act provides that:

1. Every employers is responsible for the payment to persons employed by him of all wages required to be paid under this Act. He must also fix the period in respect of which wages are payable, and no wage period is to exceed on month Sec. 2 and 4)

2. Wages must be paid on a working day and in current coin or currency notes or in both. After obtaining the written authorisation of the employed person, the employer may pay him the wages either by cheque, or by crediting the wages in his bank account (Sec. 5and 6)

3. All wages must be paid before the expiry of the 7th day in establishments employing less than one thousand workers and in other (cases before the expiry of the 10th day of after the last) day of wage period for which wages are payable (Sec. 5(1)).

4. The discharged workers are to be paid their wages due before the expiry of the 2nd working day from the day on which their employment is terminated. (Sec. 5(2)).

Deduction from Wages (Sec.7)

No deduction are to be made from wages except those authorised under the Act. Important permissible deductions are on account of fines, absence from duty, damages from loss of goods and money entrusted to employees custody, or for which the employee is accountable, recovery of advances or adjustment of over-payment, income tax provident Fund, pension and ESI contributions, deductions required to be made by the Court or other competent authority premium for postal insurance scheme or any other insurance scheme establishment by the Government for the benefit of the employees, for co-operative societies approved Government and other amenities and service supplied by the employers, as authorised by the Government, with the written authorisation of employees concerned deductions can also be allowed for contributions to the National Defence Fund and (Government approved defence savings schemes Prime Minister's Relief Fund and) to such other funds as may be notified by the Central Government Payment of fees payable by an employee, for the membership of any Trade Union registered under the Trade Unions Act of 1926 and payment of less contributions to any fund constituted by the employer for the welfare of employees and their families.

Deduction for any loss or damage can be made only up to the actual damage or loss caused and that also after the worker has been given an opportunity to show cause against

such deductions and it is established that the damage or loss was due to his negligence or default. Deductions for absence from duty is to be in the same proportion to the total wages payable in the wage period for which deduction is made as the period of absence from duty bears to the period during which the employee is required to work.

Deduction for recovery of advances shall be made, from the first payment of wages in respect of a complete wage period, but no recovery is to be made of such advances of wages not already earned shall be subject to rules made by the Government who may regulate the extent to which such advances may be given and the installments by which they may be recovered. Deduction for payment to cooperative society and insurance schemes will also be subject to such condition as may be imposed by the Government. (Sec. 7,9 to 13).

Fines are to be imposed for such acts and omissions on the part of employees as are specified by the employer by a notice to be displayed with the permission of the Government, and that also after giving the worker concerned proper opportunity of being heard. No fine is to be imposed on a worker under the age of 15 years. The total amount of fine which may be imposed in any one wage period on any worker must not exceed three percent of the wages earned in the wage period. (Sec. 8).

No fine imposed on a worker is to be recovered from him by instalment or after the expiry of 60 days from the day it is imposed. All realised fines are to be recorded in register, and these are to be utilised for the purposes beneficial to the workmen in the factory or establishment as may be approved by the Government. (Sec.8)

Any contract or agreement whereby an employed person relinguishes any right conferred by this Act shall be null and void in so far as it aims to depriving him of such right.

The State Government has to appoint an officer of the rank of a Civil Judge or Workmen Compensation Commissioner or a stipendiary magistrate to hear and decide claims arising from deductions from wages or delay in payment of wages. The person concerned has to file his claims within six months either jointly or individually arising from short or delayed payments or from unauthorised deductions or excessive fines or for recovering any other dues under the act. After giving hearing to both, the parties and making necessary enquiries the Authority may direct the refund to the employed person, of the amount deducted unauthorisedly or the payment of delayed wages, together with compensation as the authority may think fit, not exceeding ten times the amount can be recovered as if it was a fine imposed by a magistrate. If the application is found to be malicious or vexatious, the Authority may direct the person filing the application to pay upto Rs.50 to the person responsible for the payment of wages. The authority can entertain claim even after the expiry of six months limit, if it could be satisfied that the delay was for a sufficient cause (Sec. 15,17,18,19).

If the wages due to the employee cannot be paid on account of his death before payment or on account of his whereabouts not being known, the same are payable to the person nominated by him or where no such nomination has been mad the amount do is to be deposited with prescribed authority and the latter will deal with the amount so deposited in such manner as may be prescribed. The form and manner in which nomination is to be made by the employee are to be such as prescribed by the Government (Sec. 25A)

Appeal. The employer can appeal against the orders or directions of the Authority to the District Court if the total sum directed to be paid as wages and compensation exceeds Rs.300, and the worker can appeal if the amount of wages claimed exceed Rs. 100. The workman can also appeal if he is directed to pay any penalty. (Sec. 17)

Penalties have been provided for contravention of various provision of the Act varying from a fine of Rs. 500/- to Rs. 1,000/- for failing to maintain the prescribed registers and records and refusal to furnish the required information and for obsturing or non cooperation with an Inspector, minimum fine of Rs. 200 which may extend upto Rs. 1,000/- has been provided. Minimum imprisonment of one month which can be extended upto six months and a minimum fine of Rs. 500/- extending upto Rs. 3,000/- may be imposed if a person fails or wilfully neglects to pay the wages of any employed person by the date fixed the Authority. He shall be punishable with an additional fine of Rs. 100 for each day such failure of neglect continues (Sec. 20).

Equal Remuneration for Men and Women

The Equal Remuneration Ordinance was promulgated in September 1975, and it was replaced by an Act of Parliament on 11th February 1976. This Act puts an end to another unfair practice in regard to payment of wages, that is discrimination between men and women workers in the rates of wages paid to them. The Act provides for the payment of equal remuneration to men and women workers for the same work of a similar nature, and for the prevention of discrimination against women in the matter of recruitment. The Act also provide for setting up of advisory committee for promoting employment opportunities for women, appointment of authorities for hearing complaints, appellate authorities inspectors, etc.

Obligations of Employers

Every employer covered by this Act has to see that:

a) all his workmen are paid their wages regularly and in time and required under the Act; (Sec.3)

b) no unauthorised deductions are made and fines are imposed only for permissible acts and omissions and that also after the workers have been given adequate opportunity to show cause against the fines and deductions; (Sec. 7,8)

c) registers are maintained with the person responsible for payment of wages given particulars of employees, their work and wages paid to them, and showing all the fines imposed and realisations made and also deductions made from wages; (Sec. 8,10,13A).

d) an obstruct of the Act and the Rules made thereunder is displayed at a prominent place in the establishment (Sec.25).

Right of Employers

Every employer has the right to :

a) deduct from the wages of a worker an amount not exceeding his wages for 8 days as may, by any terms, by due to the employer in lieu on due notice, if the worker together will 10 or more workers absent himself from duty without notice or without any reasonable cause, to go or strike or resort to stay-in strike, (Sec.9(2) and,

b) appeal to District Court against the direction made by the Authority appointed under the Act to payment of wages and compensation, if the amount of these sums exceeds Rs. 300/- (Sec. 17)

Rights of Employees

Every workman has the right to:

a) receive his wages in the prescribed wage period in cash or by cheque or by credit to his bank account,

b) refuse to agree to any deductions and fines other than those authorised under this act:

c) approach within six months the authority appointed under the Act to claim unpaid or delayed wages, unauthorised deductions and fines along with same compensation that may be awarded by the Authority appointed by the Government for considering such claims. The time limit of six months for filling claims may be relaxed for a reasonable cause. (Sec. 15,16)

d) appeal against the direction made by the Authority appointed under the Act for payment of wages and compensation, if the amount of the wages claimed exceeds Rs. 100/- (Sec. 17)

General Remarks

The payment of Wages Act is a protective legislation which saves the workers from being exploited by ensuring them regular, timely and correct payment of their earned wages in cash rather than in kind and by regulating deductions and fines which have been eroding the wages so long. Recently the Act has been amended extending its scope covering more

employees as well as establishments other than industrial establishments. Importance of such a legislation for improving about and management relations is too obvious to need any comment. The age-old malpractices in regard to the payment of wages have been responsible to not a small extent for deterioration of labour and management relations.

On the whole the working class has benefited from the operation of this act, as now non -payment of wages or unauthorised deductions and excessive fines are not so common as before. But still these malpractices do prevail in many industrial pockets. This is particularly so in mines and plantations where there is still no guarantee that work is properly measured or weighted, especially when the payment is on the basis of piece rates. Some more improvements in administration strengthening of inspectorate, enhancement of penalties for offences under the Act, better vigilance and the part of workers and their unions would go a long way to check these malpractices and protect the wages more effectively.

Suggested Questions

1. Enumerate the salient features of the Payment of Wages Act, 1936.
2. The Payment of Wages Act, 1936 provides that the wages should be paid in a particular form at regular intervals and without any unauthorised deductions - Explain.

Unit - 8

THE PAYMENT OF BONUS ACT, 1965.

The term Bonus is not defined in the Act. Bonus in its etymological meaning suggests mere matter of boundary, gratuitously made by the employer to the employees. It has been held by the Supreme Court in MUIR Milles Company Ltd v. Sutri Mills Madzoor Union Kanpura that the term bonus is a cash payment made in addition to the wages and it generally represents the cash incentive give additionally on certain attendance and efficiency being attained.

The payment of bonus had its origin in the generosity of the Textiles Employers during the first World War, when they gave way additional wages as war Bonus. During 1919 and 1920, the Textile Mills in Bombay and Ahmedabad made huge profits and war bonus to the extent of 15% to 35 % were given to the Textile Workers. The became a regular feature and the Trade Unions and the Mill Owner Association Bombay Vs. Rashtriya Mill Mazdoor Saug, Bombay.' This payment acquired the character of right to share in the Profit under the Full Bench Formula and it became a statutory obligation. In order to uplift the Industrial Relations and peace, the Government had set up Bonus Dispute Committee in 1924 and then a Bonus Commission was formed in 1961. The Commission after a long consideration of the concept of Bonus, the basis for payment of Bonus was evolved, taking the clue from the Full Bench Formula and the Supreme Court Judgement in Associated Cement Companies Case. The concept of Bonus is that there is a available surplus out of the Profit from which bonus can be paid and that there is a gap between the Standard Wages and living wages which bonus is intended to shorten. Hence, the Bonus partakes the character of the employees sharing in the property of the concern to which profit they have contributed. In order to establish an enforceable claim-customary, legal and equitable, the Government of India came out with a Bill in the year 1965 land an enactment was made for the payment of Bonus in the year 1965.

Object and the Scheme of the Act.

The payment of Bonus Act provides for the payment of Bonus of persons employed in certain establishment, on the basis of profit or on the basis of Production or Productivity and for matter connected therewith. The Scheme of the act is four dimensional:

1. Statutory Liability upon the Employer of Establishment covered by the Act to pay Bonus.
2. Payment of Bonus according to a formula or based on productivity.
3. Payment of minimum and maximum Bonus with the Scheme of set off and set on.
4. Enforcement Machinery.

(a) AIR 1951 S.C.P. 170 (b) 1950 LLJ 1247 (c) 1959 ILLJ 644.

Salient Features

The Payment of Bonus Act provides for payment of bonus to persons employed in factories as defined in Section 2 (m) of the Factories Act and in certain establishment wherein 20 or more persons are employed. The appropriate Governments are given power to apply the provision of the Act to certain establishments where in less than 20 persons but not less than 10 are employed. Accordingly the Government of Tamilnadu by a notification - G. O. MS No. 833 Labour and Employment dt. 2.8.1978 notified that the provision will apply to certain establishment in which not less than 10 workers are employed or were employed on any day during the accounting year. Establishment includes Departments of the establishment and its undertakings and Branches. Accounting year means an year ending on the date on which the books of accounts are closed and balanced. The accounting year is fixed as from 1st April to 31st March of every year. For the purpose of calculating Bonus it is necessary to find out the available surplus and allocable surplus. Section 2(4) and 2(6) defines the available surplus and allocable surplus. The Word employee is defined under Section 2(13) means any person other than the apprentice employed on salary or wages not exceeding Rs. 2500/ - per mensem and the person should have worked minimum 30 days in an accounting year to become eligible to get bonus. Section 2(21) deals with Salary or Wages which means remuneration capable of being expressed in terms of money which would, if the terms of employment express or implied were fulfilled be payable to an employee in respect of his employment or all 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 rise in the cost of living, but does not include certain specified allowances, commission value of amenities, etc. The expression salary or wages as defined in Section 2(51) of Payment of Bonus Act and wages as defined in 2(rr) of Industrial Dispute Act varies as follows:

1. Salary or Wages under the Bonus Act does not include any other allowance which the employee is for the time being entitled to, whereas the expression wages in the I.D. Act include all such allowances.

2. Wages under the I.D. Act includes value of any house accommodation, supply of light, water, medical attendance or other amenities or Services, etc.

3. Under the Bonus Act Commission payable to the employee is not wages. But under the I.D. Act, it is wages.

Payment of Bonus

Bonus is paid on the following basis:

1. Based on Profits (Section 10)
2. Based on productivity or production (Section 31A)

Generally the following are common questions that would arise in the matter of Payment of Bonus.

1. Who should pay Bonus.
2. To whom should Bonus be paid.
3. When should the Bonus be paid
4. What is the amount of Bonus.
5. What is the adjustments/deductions that can be made from the Bonus.
6. What are the records to be maintained
7. Consequences of contravening provisions
8. How to settle the Disputes?
9. Why should pay Bonus.

Factories as defined in the factories Act 1948 and establishments wherein 20 or more persons are employed are liable to pay bonus. The Governments of Tamil Nadu by a notification made applicable the Act to establishment wherein not less than 10 workmen are employed. Factories Act defines a Factory as any premises including precincts thereof wherein 10 or more workers were working on any day of the preceding 12 months and in any part of which "manufacturing process being carried on with the aid of power" or "is ordinarily so carried on" or wherein 20 or more workers are working" or were working on any day of the preceding 12 months and in any part of which the manufacturing process is being carried out without the aid of power or is ordinarily so carried on. The Bonus Act does include a mine subject to the provisions of the Mines Act 1952. The act is not applicable to Mobile Unit belonging to the Armed Forces of the Union, a Railway Running Shed or the Hotel or Restaurant or eating place. Act shall not apply to (Sec32)

1. Employees employed by the Life Insurance Corporation of India.
2. Seamen as defined in the Marine Shipping Act 1958.
3. Employees registered under the Dock workers (Regulation of Employment) Act 1948.
4. Employees employed in any industry carried on by or under the authority of any department of the Central Government or the State Government or a local authority.
5. Employees employed by Indian Red Cross Society, Universities and other Educational Institutions, Institutions, establishments not for the purpose of profit, etc.

1. An establishment if newly setup shall pay bonus as per sec. 16(1) of the Act

In the first 5 accounting year, following the accounting year in which employer sells goods / renders services, the bonus shall be payable in respect of the accounting year in which the employer derives profits. The question of set-off and set-on does not apply as this is the first accounting year of profit. The set off and set on are applicable for subsequent years. Mere change of location, management, name of ownership will not be deemed to be an establishment newly set up. Where the exemption under Section 16(1) is not available bonus shall be paid irrespective of the Profit within 8 months from the close of the accounting year (Section 19). In the case of Public Sector undertakings if they sell goods render services in competitions with the Private Sector and if the income from the above is not less than 50% of the Gross Income the Provision of the Bonus Act is applicable to such public sector Undertakings.

2. To whom should the Bonus be paid (Sec. 8)

The Bonus shall be paid to the employee who has worked for not less than 30 working days in that accounting year. There are distinctions between an 'employee' in Sec.2(13) of Payment of Bonus Act and Workman in Sec.2(S) of the Industrial Dispute Act.

a) Employee does not include an apprentice whereas a workman includes an apprentice.

b) 'Employee' includes any person employed in the industry drawing a salary upto Rs. 25000/- per mensem to do any skilled or unskilled, manual, supervisory, managerial administrative, technical or clerical work. Whereas a workman means a person who is employed in the industry to do any skilled or unskilled, manual, supervisory, Technical or clerical work but does not include any such person.

i) Who is employed mainly in a managerial or administrative capacity or

ii) who being employed in a supervisory capacity draws wages exceeding Rs. 1600/- per mensem or exercises either by the nature of the duties attached to the Office or by reason of the powers vested in him the functions of a Managerial nature.

c) A Workman excludes persons who are subject to Army Act, or the Air Force Act or the Navy (Discipline). At or persons employed in the Police Service or as Officers or other employees of a Prison. But the employee does not exclude such persons, if they work in establishment which can be termed as Industry within the meaning of Sec. 2(j) of I.D. Act.

3. When should the bonus be paid

Bonus shall be paid for each accounting year. All amount payable to an employee by way of bonus under the Act shall be paid in cash within a period of 8 months from the close

of accounting year. If a dispute regarding payment of Bonus is pending before any authority, within one month from the date on which the award becomes enforceable or the settlement comes into operation in respect of such dispute. If the employer gives sufficient reason the appropriate government by order extend the period as if it thinks fit; however the period extended shall not in any case exceed two years.

4. What is the amount of bonus

Available Surplus and Allocable Surplus

As a first step the available surplus shall be worked out according to Section 3. For this purpose, gross profit has to be worked out according to Section 4 in the manner specified in first schedule in the case of banking Company and in the manner specified in the second schedule for other cases. The formula under the Second Schedule are as follows:

1. Net Profit as per P & L Account.
2. Add back provisions for
   a) Bonus to employees
   b) Depreciation
   c) Direct Taxes
   d) Development rebate reserves of the investment allowance
   e) Any other reserves.

   The Total of item No.2
3. Add back also
   a) Bonus paid to the employees in respect of previous accounting year.
   b) Excess gratuity provided
   c) Donation in excess of amount admissible for Income-tax
   d) Any amount due or paid under Income Tax Act.
   e) Capital expenditure or capital loss.
   f) Loss or expenditure relating to a business situated outside India.

   The Total of item No.3
4. Add also

Income directly credited to reserve other than capital gain and profit relating to business situated outside India.

5. Grand Total of 1,2,3 and 4.

6) a) Deduct expenditure directly debited to reserves other than capital expenditure and loss relating to business situated outside India.

b) Refund of direct tax paid.

c) Cash subsidy received from Government.

7. Gross profit - Item 5 - total of item 6.

Then from the gross profit, the following prior charges shall be deducted as per Section.

a) Depreciation admissible in Income Tax Act.

b) Development rebate reserves / Investment allowance allowed in IT Act.

c) Direct tax as per Section 7.

d) All such other sums are as specified in the third schedule, dividend payable on preferential shares, 8.5% of its paid up equity shares at the commencement of the year, 6% of its reserves shown in the year Balance Sheet at the commencement of the accounting year. Then add adjustment of Direct Taxes, as per provide to Section 5 namely an amount equal to the difference between the direct taxes calculated in accordance with the provisions of the Section 7 for such preceding accounting year after deducting from the amount of Bonus paid to the Employees.

The resultant figure is the available surplus 60% of the available surplus shall be the allocable surplus and the Bonus shall be paid from the allocable surplus.

When the profit and Loss account and Balance Sheet are certified by the Auditors duly qualified, the accuracy of the accounts can not be questioned (Sec.23). The allocable surplus shall be divided by the total wages paid to the eligible employees and the percentage of bonus is thus arrived at. If the percentage of Bonus worked out to less than 8.33% minimum bonus of 8.33% shall be paid subject to a minimum of Rs. 100/-. If the percentage works but to more than 20%, the employer is liable to pay only 20%. The deficiency in the former case shall be carried forward for 'set-off' during the next year and the surplus in the latter case can be carried forward for 'set - on' during the next year as per Sect. 15.

If any employee has not completed 15 years of age at age at the beginning of the year, the minimum bonus payable shall be subject to a minimum of Rs. 60/-. Where the salary of the employees exceeds Rs. 1600/- p. m. the Bonus payable to such employee under Sec. 10 shall be calculated as if the salary is Rs. 1000/- p.m. (Sec.12).

5. Disqualification for Bonus (Sec. 9)

An employee shall be disqualified from receiving bonus if he is dismissed from service for

a) fraud, b) riotous, violent behaviour while on the premises of the establishment, c) theft, d) Misappropriation or sabotage to any property of the establishment, Section 8 specified eligibility for bonus and immediately following it, Section 9 lays disqualification for Bonus. Disqualification is not limited to receive bonus for the particular year. This Section intends to deprive the worker of his right to receive whatever he was entitled to. Absence of any reference to any particular accounting year in vivid contrast with the use of clear expression in Section 18 providing for the deduction of the amount for the loss caused to the employer by the misconduct of the employee in the particular accounting year only. The nature of acts and misconducts enumerated in Section 9 are serious and opposed to the principle of sharing in the prosperity of the management which is the fundamental concept of bonus. Accordingly, it empowers the employer to forfeit the entire amount of bonus which should have become due to the employee notwithstanding the fact that such amount did not become due to him in the accounting year in which the misconduct was committed but not in the year or years preceding it.

This view was taken by the Madras High Court in *Wheel and Rim Company of India Ltd Vs. Government of Tamilnadu.*[a] But the Karnataka High Court took a contrary view in the Himalaya Drug Compay Case[b] and held that the disqualification would be only with reference to the accounting year in which the said act of misconduct was committed.

Section 9(b) disqualifies an employee if he indulges in riotous or violent behaviour while on the premises of the establishment. If the same act is committed outside the premiss of the establishment and the act is connected outside the employment, that does not disqualify him. It is an anomoly in the Act and requires reconsideration. The act of theft, misappropriation and sabotage disqualify an employee if such acts are committed with respect to the property of the establishment.

Minimum and Maximum Bonus - Constitutional Validity.

Sections 10 and 11 deal with minimum and maximum bonus. The validity of the Provisions of Section 10 with reference to Article 14 and Article 31(1) was challenged in Jalan Trading Company Vs. Mill Mazdoor Sabha. The grounds of attack were that-

a) The concept of minimum bonus unrelated to profit, makes the payment an accretion to wages and leads indirectly to the erosion of capital since such payment, if does not came from profits must come from reserves and capitals. Hence, the prevision is a fraud on the constitution of colourable exercise or power.

b) It offends Art 14 in as much as it makes no difference between companies making profits and the companies having losses.

Considering the Scheme, the Supreme Court observed "Equal protection of the laws in denied if in achieving a certain object persons, objects or transaction similarly circumstances are differently treated by law and the principle underlying that different treatment has no rational relations to the object sought to be achieved by the Law. Examined in the light of the object of the Act and the scheme of 'set on' and 'set off', the provision of Payment of Minimum Bonus cannot be said to be discriminatory between different establishments, which are unable on the profits of the accounting year, to pay bonus merely because a uniform standard of minimum rate of bonus is applied to them. Plea of invalidity of Sec. 10 on the ground that it infringes Act 14 of the Constitution must, therefore, fail, "Classification can only be insisted upon when it is possible to classify and a power to classify need not always be exercised when classification is not reasonably possible. Sec. 10 does not lead to such inequality as may be called discriminatory".

The Act empowers an employer to adjust any pooja bonus or other customary bonus or interim bonus paid to an employee before the date on which such bonus becomes payable. The act also provides that if an employee is found guilty of misconduct causing financial loss to the employer, the employers can deduct the amount of loss from the amount of bonus payable by him in respect of that accounting year and the employee is entitled to receive the balance. As already stated the Bonus should be paid within 8 months from the close of accounting year (Sec. 19). If the employer requires extension of time he should make on application to the appropriate government disclosing sufficient cause and the total period so extended shall not exceed 2 years. If there is any dispute between employer and employee in respect of the Bonus payable under the Act, such dispute will come under the purview of the definition of the Industrial Dispute as defined in Sec. 2(k) of the Industrial Disputes Act.

6. Records to be Maintained (Sec.26)

The Act requires that every employer should maintain records and registers as prescribed in the payment of Bonus Act. Rule 4 of the Tamilnadu Rules prescribes the following registers:

1. The register showing the computation of allocable surplus.
2. The register showing the set off and set on of the allocable surplus U/S 15.
3. The register showing the details of amount of bonus paid to each of the employees, deduction made U/S 17 & 18.

---

a) 1971 II LLJ 299 (b) 1987 LIC 514 (c) 1966 II LLJ 546

7. Consequences of Contravention & Authorities (Sec. 28 - 31)

The Act empowers appointment of Inspectors for the purpose of implementation of this Act. To get information from the employer to enter any establishment and to order production of document to examine any person in charge of establishment to take extracts from the records and to exercise such other power prescribed under the Rules. The act prescribes Penalty for contravening the provisions of the Act and any person contravening the provisions shall be punishable with imprisonment upto 6 months or fine upto Rs. 1,000/- or with both.

Bonus on the Basis of Productivity

Section 31 (a) inserted in the Act in the year 1976 provides for payment of bonus linked with production or productivity. The pre-conditions for these are

1. An Agreement or a settlement should be entered into by the employees with their employer for payment of Bonus linked with production in lieu of Bonus on Profits.
2. Such Bonus shall be subject to a minimum of 8.33% and a maximum of 20% of the Salary.

General

The provision of this Act will prevail against any law for the time being in force to the extent such law is inconsistent with the provision of this Act. The Act vest the appropriate Government with power to exempt an establishment or a class of establishment from any or all the provisions of the Act. Before exercising this power Government has to take into consideration the financial and other relevant circumstances or an establishment or a class or establishment which will not be in the public interest to apply all or any of the provisions of the Act. While giving such exemption the Government may impose such conditions as it may think fit to impose. This Act shall be in addition to and not in derogation of the Industrial Dispute Act or any corresponding law relating to investigation and settlement of Industrial Disputes in force.

Suggested Questions

1) What is "Set - on" and "Set - off" and explain the relevant provisions of the Bonus Act?
2) How to calculate the bonus amount payable to the workers?

Unit - 9

THE PLANTATION LABOUR ACT 1951

Introduction & Object

The Plantation Industry provides employment for more than a Million workers. There was no comprehensive legislating the conditions of labour in that Industry prior to 1951. The Tea Districts Emigrant labour act, 1932 applies only to Assam and regulates merely the condition of recruitment of labour for employment in the Tea Gardens of Assam. The Workmen's Compensation Act 1923 does not confer any substantial benefit on Plantation labour. The other Labour Acts like the Payment of Wages Act 1936. The Industrial Employment Standing Orders Act 1946 and The Industrial Disputes Act 1947 benefit Plantation labour only to a very limited extent. As the conditions of life and employment to Plantations were different from those of other industry, it was very difficult to fit Plantation Labour in the general framework of the Industrial labour Legislation. The labour Investigation Committee recommended a Plantation labour code covering all Plantation Areas. In those circumstances, the Plantation Labour Act was enacted and the Act came into force from 1.4.1954. It provides for the Welfare of Labour, and regulates the conditions of work, in Plantations.

Scope and Coverage

The Act applies at the first instance to the land where in Tea, Coffee, Rubber, Cinchone or Cardamom are grown which admeasures '5' hectares* or more and in which 15 or more persons are employed or were employed on any day of preceding 12 months. The State Governments are given power to extend the provisions to any land used or intended to be used for growing any other plant which admeasures 5 hects. or more and where in 15 or more persons are employed. The State Governments are also empowered to extend the provisions of the Act to the land measuring less than 5 hectares and the number of persons employed therein less than 15. The Plantation includes Office, Hospitals, Dispensaries, Schools and any other premises for and purpose connected with such Plantation but it does not include and factory on the premise to which the provisions of Factories Act apply. The Act could broadly be classified as follows :

1. Authorities
2. Health
3. Welfare
4. General Working Conditions
5. Penalties & Procedures

---

* amended by Act 58-1981 w.e.f. 26-1-82

1. Authorities and Registration

The State Government is empowered to appoint Chief Inspector of Plantation and Inspectors of plantations.

The Inspectors may make such examination to ascertain whether the provisions of the Act and the Rules are being observed. He may examine the crops grown or workers employed therein and require the production of any Registers or other documents maintained. He may satisfy himself that the adolescent and children employed in the Plantation have been granted the Certificate of fitness and no adolescent or child is employed who is obviously unfit. Every employer of plantation shall register the plantation and obtain registration certificate.

2. Health

a) *Drinking Water :* In every plantation effective arrangements shall be made to provide and maintain at convenient places, sufficient supply of drinking water for all workers. The site at which drinking water for workers is provide has to be approved by the Inspector. All practical steps shall be taken to preserve the water and vessels from contamination and to keep the vessels in scrupulously clean. Drinking water shall not be supplied from any open well or reservoir unless it is protected and maintained free from the possibility of pollution and extraneous impurities and water should be sterilised periodically. The Inspector may require the employer to obtain a certificate from the Health Officer as to the fitness of water for human consumption.

b) *Conservancy :* A separate latrine for the each sex shall be provided on the scale of one latrine for every 50 hectares of the area of Plantation, and it should conform to the Public Health requirements and the privacy should be secured. Sign Boards should be displayed for each sex and sufficient water should be available. Urinal accommodation shall be provided on the scale of one urinal for every 20 hectares of the area of the cultivation.

c) *Medical facilities :* Every plantation shall provide and maintain medical facilities for the workers and their families. There are two types of hospitals in Plantations namely Garden Hospital and group hospital. Garden hospital will deal with Out patients & in patients not requiring any elaborate diagnosis and treatment. Group Hospital shall be capable of dealing efficiently with all types of diseases. Admission to group hospital shall be on the recommendations of a garden hospital Doctor. The Act and the Rules provide various standards for the establishment of garden hospitals and group hospitals.

3. Welfare

a) *Canteen :* Every plantation where in 150 workers are ordinarily employed, one or more canteens shall be provided and maintained by the employer. The price to be charged at the canteen shall be on the no profit basis.

b) *Creches :* In every plantation where in 50 or more women workers are employed or were employed on any day of the preceding 12 months employer should provide and maintain suitable rooms for the use of their children who are below the age of 6 years. The Tamilnadu Plantation Labour Rules prescribes various standards and facilities to be provided in such rooms. The rule also prescribes provision of wash room supply of milk and refreshment, supply of cloths, soap and oil, etc.

c) *Recreation facilities :* Every employer shall provide and maintain a recreation centre for workers with facilities of outdoor and indoor games.

d) *Educational facilities for worker's Children :* Where the children between the ages of 6 land 12 of workers employed in any plantation exceed 25 in number the employer should provide and maintain a primary school for imparting primary education to them. If there is a school already in existence under the Direct Management of the State Govt. or any local Body within a distance of 1.6 kms. the employer is required to pay cess or tax on primary education. A group of employer may jointly provide and maintain primary schools and share its expenses. Every School shall be conveniently situated within a distance of 1.6 kms from the workers quarters Curriculum duration standard and syllabus of the course of instructions to be imparted in the school shall be such as may be approved by the State Govt. No fee should be charged from the workers children.

e) *Housing facilities :* It is the duty of every employer to provide and maintain for every worker and his family residing in the plantation necessary housing accommodation, as near as possible to the place of work. If a worker who has put in 6 months continuous service and residing outside plantation, gives in writing his desire to stay in the plantation, house shall be provided.

Houses may be constructed in a phased manner but shall be built for at least 8% of the resident workers, every year. The housing accommodation shall confirm to the standards recommended by the advisory Board constituted for this purpose. The employer should maintain the house on his own expenses and the accommodation shall be rent free. Tamilnadu Plantation labour Rules specifies various standards for the housing accommodation and regulates the allotment to the workers and also provides for constitution of a Advisory Board for consultation in regard to the matters connected with Housing. The rule also prescribes the composition of Advisory Board, term of office, members and procedure relating to meetings. If a death or injury caused due to collapse of house, and the collapse is not due to the fault of occupant and due to natural calamity, the employer is liable to pay compensation.

Note : In Tamil Nadu Joint Commissioner of Labour (Administration) Madras shall be the Chief Inspector of Plantations.

f) *General Welfare:* The act also empowers the State Government to make rules requiring that in every plantation the employer shall provide such number and type of umbrellas, blankets, raincoats or other like amenities for the protection of the workers from rain or cold. When an accident occurs, notice shall be sent.

g) *Welfare Officer :* Where there are 300 or more workers ordinarily employed, employers should employ Welfare Officers. But so far no rule has been framed by the State Government.

4. General Working Conditions

a) *Working hours and limitation:* No adult worker shall be required or allowed to work on any Plantation in excess of 48* hours a week and the period of work shall not exceed 5 hours on each day continuously without giving 1/2 an hour's rest and the spread over shall not exceed 12 hours in a day including the time spent for waiting in work in any day.

No adolescent or child should work more than 27* hours a week. Child is a person who has not completed 14th year of age. Adolescent is a person who has completed his 14th year and has not completed his 18th year of age.

b) *Weekly Holidays :* No worker shall be required to work on any plantation on a Sunday except when he will have day of rest on one of the 3 days immediately preceding or succeeding that Sunday. A worker if works on the day of rest, he shall be paid at the overtime rate prevailing in that area as fixed under the Minimum Wages Act and where there is no such rate, at double the ordinary rate. If a worker is prevented from working in any plantation by the reason of tempest, fire, rain or other natural causes that day may be treated as his day of rest for the relevant period of 7 days.

c) *Leave with wages:* Every worker shall be allowed leave with wages at the rate of one day for every 20 days of work in the case of adult workers and in the case of young persons day for every 15 days of work. The period of leave shall be exclusive of any holiday which may occur during such period. For the purpose of calculating leave, any day on which no work or less than 1/2 days work is performed shall not be counted. The unavailed leave may be carried over to the next succeeding year and the maximum accumulation of leave is limited to 30 days. For the leave allowed and availed the workers are entitled to get full wages. If a worker dies or terminated from service, his nominee or the worker may encase the unavailed leave in his credit.

---

*Amended by Act of 58/8 WEF 26.1.82

d) *Sickness and maternity benefits :* The worker obtaining sickness certificate from the Qualified medical practitioner is entitled to sickness allowance from his employer for a total period of 14 days in a year at the rate of 2/3rd of his daily wages subject to a minimum of Rs. 1. No sickness allowance shall be paid to a worker is entitled to get maternity allowance for a period of 4 weeks immediately preceding the expected day of delivery and for a period of 8 weeks immediately following the day of delivery. Such women shall not be entitled to get such allowance is she has not worked for a minimum period of 150 days in the 12 months preceding the expected day of delivery. She would also be not entitled to claim maternity allowance unless the subjects herself for medical examination as specified. The Act specifically prohibits the employer to employ woman during the maternity leave period. In case of miscarriage she will be entitled to 2 weeks leave with pay from the day of her miscarriage. During the period of pregnancy she shall not be engaged on work which is cardious or which requires long hours of standing at work place. If a woman absences herself from the work due to her pregnancy and she is in maternity leave, she shall not be terminated / dismissed from services because of her absence.

5. Penalties & Procedures

For implementation of the Act certain procedures and penalties are prescribed.

1. If an Inspector is obstructed in the discharge of his duties or if an employer refuses to produce any register or documents required by the inspector or whoever contravenes the provision relating to employment of labour shall be punishable with imprisonment for a term not exceeding 3 months or with fine which may extend to Rs. 500/- or with both.

2. Whoever knowingly uses or attempts to use any other person's certificate of fitness she/ he is punishable with imprisonment which may extend to 1 month or with fine which may extend to Rs. 50/- or both.

3. *Limitation of prosecution :* Unless the complain is made within 3 months from the date of alleged commission of the offence, no court shall take cognizance.

4. An appeal against the order of inspector shall be to the Chief Inspector of Plantation.

General

Applicability of other Acts to Plantation Labourers

Regarding the fixation of minimum wages and regularisation of payment thereof, the provisions of the Minimum Wages Act 1948 will be applicable, since the plantation is included as scheduled employment in the schedule item 4 of the said Act. The Plantation workers are

---

*Amended by Act of 58/8 WEF 26.1.82

entitled to Bonus as per. The payment of Bonus Act even if the workers employed therein are less than 20 but not less than 10 or any day of the accounting year. Other Labour enactment like the Workman's compensation. Act and the Industrial Disputes Act are applicable to the Plantation labourers.

THE MINES ACT,1952

Historical Background and Object of the Act

Indian Mines Act relating to the regulation and inspection of mines was passed in the year 1923. The Original Act was amended several times. But the general framework has remained unchanged. The 1923 Act has number of defects and deficiencies which hampered effective administration. Therefore, it was considered necessary to thoroughly overhaul the original act and hence the present Mines Act (XXXV of 1952) was passed in the year 1952. The present Act covers the workshops and all other activities including power stations relating to Mines. Provisions regulating labour and safety in Mines are largely on the lines of those contained in the Factories Act, 1948.

Salient Features

The Act provides for the issue of certificate of fitness to adolescence and the appointment of Certifying Surgeons, and for more definite arrangement for drinking water, latrine, urinal, etc. and it has been made obligatory on the enquiry relating to the cause of contraction of ported diseases has also been made. First aid appliances should be made available underground and that they should be kept in charge of qualified persons. The Act also provides for grant of compensatory holidays and holidays with pay. The presence of children in part of the mine is prohibited and the employment of women labours on the underground work is also prohibited.

Mine - Definition

"Mine" Means, Any excavation where any operation for the purpose of searching for or obtaining minerals has been or being carried on and includes (i) all borings, bore holes, oil wells (ii) all shafts in or adjacent to a mine (iii) all open cast workings (iv) all machinery, works, railways and siding in or adjacent to and belonging to a mine (v) all works with in the precincts of a mine (vi) all power stations solely for the purpose of working of a mine and other places as notified by the Central Government.

Mine does not include any mine or part thereof in which the excavation is being made in prospecting purposes only and not for the purpose of obtaining minerals for the use of sale, provided

i) not more than 20 persons are employed on any one day.

ii) depth of the excavation measure from lowest point no where exceeds 6 meters or in the case of coal 15 meters.

iii) no part of such excavation extends below superjacent ground.

b) Any mine engaged in the extraction of bolder, gravel, ordinary sand, ordinary clay, building stone, road metal, earth fullers and lime stone, provided.

i) the working do not extend below superjacent ground.

ii) where it is a open cast working, the depth of excavation no where exceeds 6 meters, number of persons employed in any one day does not exceed 50 and explosive are not used in connection with the excavation.

The Central Govt. is empowered to notify and declare any of the provisions to any such mines or part thereof.

Minerals means all substance which can be obtained from earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oil like natural gas and petroleum.

Scheme of the Act

The act provides for,

a) Appointment of Inspectors and Certifying Surgeons

b) Constitution of Mining Boards and Committees

c) Mining operations and management of mines

d) Health and safety

e) Hours and Limitation of employment

f) Leave with wages

g) Regulations, rules and by laws and penalties and procedures.

Inspectors and Certifying Surgeons

The Central Govt. is empowered to appoint Chief Inspector of Mines and Inspectors of Mines. They shall be deemed to be public Servants. They may make such examination and enquiry as they think fit to ascertain whether the provisions of this Act and Rules and observed. They may enter, inspect and examine any mine at any time. They also may examine the health provisions, safety and welfare of the persons employed and exercise such other power as may be prescribed.

The Central Govt may appoint qualified medical practitioners to be Certifying Surgeons. The Certifying Surgeons may examine and issue certificate to the adolescent, examine persons engaged in a mine in such dangerous operations or process. He may exercise such other medical provisions as may be prescribed. The Certifying Surgeon shall issue to every adolescent a mental taken.

Mining Boards and Committees

The Central Govt is empowered to constitute a Mining Board for any group or class of mines. The Board will consist of a Chairman, Chief Inspector or Inspector, person appointed by Central Govt., two persons nominated by owners, two persons to represent the interest of minors. The Mining Board may exercise the powers of a Inspector or exercise for the purpose of deciding or reporting upon any matter referred to them and will have the powers of a Civil Court, for the purpose of enforcement of attendance of witness and compelling the production of documents.

The Central Govt. may also constitute the Committee and refer any question relating to a mine. The Committee shall consist of a Chairman appointed by the Central Govt. the Chairman may nominate a person qualified by experience to dispose of the question referred, two persons to represent interest of the employed in the mine.

Mining Operations and Management of Mines

Before the commencement of any mining operations, the Owner, Agent, or Manager shall give notice in writing to the Chief Inspector the Director, Indian Bureau of Mines and the District Magistrate. The Owner, agent and the Manager shall be responsible for all operations carried on. In the event of any contravention each one shall be deemed to be guilty of such contravention.

Health and Safety

a) *Drinking Water :* Effective arrangements shall be made and provided and maintain sufficient supply of cool and wholesome drinking water on a scale of at least 2 litres for every person employed where 100 persons or more are employed, the Inspector may require the provisions of drinking water to be effectively cooled by mechanical or other means available.

b) *Conservancy:* Sufficient number of latrines and urinals shall be provided separately for males and females on a convenient place. The Mines rules prescribes standards of construction of latrines and urinals, sign boards to be displayed, provision of water for washing and underground latrines.

c) *Medical Appliances :* In every mine there shall be provided and maintained such no of first aid boxes or cup boards, clubbed with such contents as may be prescribed. It

shall be the duty of the owner to post trained persons and for the speedy removal from the mines.

d) *Accidents :* Whenever there occurs any accident causing loss of life or serious bodily injuries or an explosion or a influx of inflammable noxious gases or a breakage of ropes or gear by which persons or materials are lowered or raised, or a premature collapse of any part of working or any other accident, the owner, agent or manager shall give notice and paste a copy of notice on special notice board. Where any such accident occurs the Central Govt may constitute a court of enquiry, to find out the causes and circumstances of the accident. Where any person employed in a mine contracts any disease notified by the Central Govt, the owner shall send notice to the Chief Inspector and other authorities Central Govt may appoint competent person to enquire into the disease notified.

Hours and Limitation of Employment

No person shall be allowed to work in a mine for more than 6 days and 48 hours in a week and no adult employed below the ground in a mine shall be allowed to work more than 8 hours a day. When a person works above ground for more than 9 hours or works below ground for than 8 hours a day, he will be entitled to twice his ordinary rate of wages for the period of overtime work. No person shall be allowed to work who has already been working in any other mine within the preceding 12 hours. Notice regarding hours of work shall be given. These regulation will not be applicable to Supervisory or Managerial Staff or persons employed in a confidential capacity. No adolescent shall be allowed to work below ground unless he has completed 16th year and obtains a medical certificate. No woman shall be employed in any part of a mine which is below ground and in any mine above ground except between the hours of 6 AM and 7 PM. The employer should maintain registers of persons employed.

Leave with wages

Every person employed in a mine who has completed a calender year of service shall be allowed at 1 day for every 16 days of work, in cases of persons employed below the ground and in other cases at 1 day for every 20 days of work of leave with wages. The total number of days of leave which may be accumulated by any person shall not at any one time exceed 30 days.

Welfare Amenities

Provision of Shelters

Where more than 50 persons are ordinarily employed adequate and suitable shelters at or near loading wharves, open cast working workshops and mine entrance for taking food and rest. If there is a canteen there is no necessity for providing a separate shelter. Where

250 or more persons are employed a canteen shall be provided. The employer should maintain and round the canteen. The canteen Managing Committee shall supervise the working of the canteen.

Welfare Officer

Where 500 or more persons are ordinarily employed there shall be one Welfare Officer. If the number exceeds 2000 additional Welfare Offices on a scale of one for every 2000 shall be employed.

The Central Govt. may by notification make regulation consistent with the Act and also frame rules thereunder for all or any of the purposes numbered under the Act.

It is obligatory on the part of owner, Agent or Manager of a mine to frame bye-laws for the control and guidance of the persons acting in the Management of or employed in the mines to prevent accident, provide for safety convenience and discipline of the persons employed. The draft bye-laws should be submitted to the Chief Inspector or Inspector of Mines and got it approved. The bye-laws then so approved is being effected as if enacted in this Act. In the cases of factories and industries, the Industrial Employment (Standing Orders) Act makes it obligatory to frame standing orders for those industries. But in the case of mines, the provisions of frame bye-laws in specifically provided in the Mines Act itself. The provisions of framing bye-laws and amendment there to are just like provisions provided for the framing and amendment of the Standing Orders under the Industrial Employment Standing Order Act.

The amendment Act provides penalties for the contravention of the procedures there of and the mines rules provided for the maintenance of various registers and notices.

General

Apart from the welfare amenities to be provided under the Mines Acts and Rules, 'there are separate rules for the provisions of Creches, Mines Vocational Training, coal mines pit head and Coal Mines rescue rules. The Mines Act and Rules made thereunder are the pieces of social legislation which regulates the employment or labour and safety in mines. Though he provisions of health, working hours, leave with wages and welfare are analogous to that of provisions in the factories Act 1948, special working conditions prevailing in the Mines warranted a separate enactment. Prior to the enactment of Mines Act 1952 workshop and Power House attached to the Mines were covered under the Factories Act, since the activities carried on there were different to that of mines activity. However workshop and Power houses function only as ancillaries connected to the work of mines. Hence, in order to avoid multiplicity of supervision by various authorities, the present act covers within it, scope the activities of working of power house attached to the mines. In case of accidents

the provisions of workman's compensation Act is applicable to mine workers. Regarding the fixation covers those mines. The Mines Act and Rules have their contribution towards regularization of working condition of labours working in Mines and their safety. A legislation like the Mine Act improves the level of safety and healthy environment which are bound to improve industrial relations provided it is administered and implemented effectively.

Suggested Questions

1) Explain welfare provisions mentioned in the Plantation Labour Act, 1951.

2) Discuss the provisions of the leave and wages of workers in the Mines Act, 952.

Unit - 10

THE EQUAL REMUNERATION ACT, 1976

Scope & Object

This Act provides 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 mater of employment and for matters connected there with or incidental thereto. This act came into force from 11.2.1976. Participation of women in economic activity is common in all countries, whereas social conditions do weigh oppressly against the women in employment and there is justification for protective registration for women and this is recognised in all Societies. The right of Women for public employment is recognised under the constitution Article 16 (1) and (2) of the constitution grant the right of equal opportunities in regard to employment of men and women without any discrimination. The directive Principles of State policy speaks on this issue in Article 39 (a) Traditionally the bulk of employment of women are in agriculture sector and that continued for a long time. It is also true that in cottage and small industries there is a large measure on self-employment in the sense that women contribute to the Industrial chores of the family. Due to modern trend and higher literacy factors among the women, the total picture shows a rise in employment of women in the modern Society. However, discrimination existed in the matter of salary paid to the women employees. In the above circumstances All India Women's Conference urged that the right of a women to employment should in no way considered subordinate or secondary to that of a man. Fair wages Committee (1946) stated that where employment is on piece rate or where the work done by men and women is demonstrably identical on differentiation should be made between men and women workers regarding the wages payable.

Article 39 (d) of the Constitution suggests a move in the direction of equal pay for men and women for the work of equal value. The progress in the implementation of this directive principle has been described in the words of the memorandum of the All India Women's Conference. While generally conceding that the wages of women workers have been lower than those of men, the differences have tended to narrow down in recent years mainly for the reasons.

1. Fixation of statutory minimum wages under the Minimum Wages Act.

2. Standardisation of wages for different jobs thro' the operation of the Industrial Relations machinery.

The provisions of equal Remuneration Act specifies the above said object. The Provisions of equal remuneration Act is applicable thro' out the territories of India.

Important Definitions

'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 is such employment for the terms of contract of employment express or implied, were fulfilled. Sec. 2(g).

'Same work or work of 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 woman or a man and the differences if any between skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment, Sec.2(h).

The words and expression used in the Act and not defined but defined in the Industrial Dispute Act. 1947 shall have the meanings but defined respectively assigned to them in the Act. The Provisions of this Act shall have the effect notwithstanding any thing consistence there with contained in any other law or in 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 (Sec.3).

Payment of Equal Remuneration

Section 4 of the Act provides that on 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 the remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or the work of similar nature. While complying with the above said provisions no employer shall reduce the rate of remuneration to any worker. Where, in an establishment, or employment the rates of remuneration payable before the commencement of the Act for men and women workers for the same work or the work of a similar nature and different only on the ground of sex, then the higher)in case where there are two rates) or, as the case may be, the highest (in case where are more than 2 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.

The Act also specifies that on employer shall while making recruitment for the same work or work of the similar nature make any discrimination against women except where 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 (Sec.5) shall not affect any priority reservation for SC/ST, Ex-service men, retrenched employees or any other class or category of persons in the matter of recruitment to the post in an establishment or employment.

Advisory Committee

For the purpose of providing increasing employment opportunities for women, the appropriate Govt. shall constitute one or more Advisory Committee to advise it with regard to the extent to which women may be employed in such establishment or employment as the Central Govt may be notification specify in this regard (Sec.6) Every Advisory Committee shall consist of not less than 10 persons be nominated by the appropriate Govt. of which one half shall be women.

In tendering its advise, the Advisory Committee shall have regard to the no 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 woman 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 Govt. after considering the advice tendered 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 the employment of women workers as the appropriate Govt. may think fit.

Complaints & Redressal

The appropriate Govt. may appoint such Officer not below the rank of labour Officer to be the authorities for the purpose of hearing and deciding.

1. Complaints with regard to the contravention of any provisions of this Act.
2. Claims arising out of non payment of wages at equal rate to men and women as worker for the same work or work of the similar nature.

The equal remuneration rules 1976 provides the procedure for making the complaints. The complaints shall be made in triplicate in form 'A'. Complaint may be made by the Worker himself or herself of by any legal practitioner or by any Official of Registered Trade Union authorised in writing to appear and act on their behalf or by any Inspector appointed.

If any question arises as to whether two or more works are of the same nature or of a similar nature which shall be decided by the authority and where the complaint or claim is made to the authority appointed, it may after giving opportunity the party may direct.

i) In case of claim arising out non-payment of wage 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.

AUTHORITY APPOINTED UNDER THIS ACT shall have all powers of a Civil Court. Any aggrieved party may prefer the appeal within 30 days to the Appellate Authority.

The provisions in sub Sec of 1 Sec.33(c) of the Industrial Dispute Act 1947 shall apply for the recovery of monies due from an employer arising out the decision of an authority appointed under this Act.

The Act also provides for the maintenance of such records and registers by the employers and the appropriate Govt may be notification appoint such persons as Inspectors for the purpose of making the investigation as to whether the provisions of this Act are being complied with by the employer.

Penalties

If the employer fails or omits to maintain a register or other documents or produce any register or master role, or refuse to give any information shall be punishable with fine which may extend to Rs.1000/-. If an employer makes any recruitment in contravention of this Act and makes any payment of remuneration at unequal rate to men and women workers for the same work or work of a similar nature of makes any discrimination between men and women workers in contravention of the provisions of this Act or omits or fails to carry out any direction made by the Appropriate Govt he shall be punishable with fine which may be extended to Rs. 5000/-. If a person being required so to do omits or refuses to produce an inspector any register or other document or to give any information shall be punishable with fine which may extend upto Rs.500/-. When an offence has been committed by a Company, every person present at the time the offence was committed, was in charge and was responsible to the company shall be deemed to be guilty of offence and shall be liable to be proceeded against, provided that if the said person proves that the offences was committed without his knowledge or that he had exercised all due diligence to prevent the commission the above said provisions will not be liable.

No Court interior to that of Metropolitan Magistrate or Judicial Magistrate of a first class shall try any offence punishable under this Act and no court shall take cognizance except upon a complaint made with the sanction of the appropriate Govt and no cognizance will be taken unless the Complaint is preferred within 3 months from the date on which sanction is granted. The Central Govt is empowered to make Rules for carrying out the provisions of this Act and the Central Govt may give directions to State Government as to the carrying into execution of this Act in the state.

Non-Applicability of the Act

In so far as the terms and conditions of the women employment are in any respect affected by compliance with the law regulating the employment women or any special treatment is accorded to women in connection with the birth or expected birth of a chile then to that extent the requirement of equal treatment for men and women shall not apply.

The appropriate Govt is also empowered to make declaration on consideration of the circumstance and satisfy that the differences in regard to the remuneration or a particular species of remuneration, of men and women workers is based on the factor other than sex. It may make the declaration to that effect and any act of the employer attributable to such a difference, shall not be deemed to be a contravention.

The Contract Labour (Regulation and Abolition) Act, 1970

Scope and Object

The Contract Labour (Regulation and Abolition) Act 1970 regulates the employment of contract labour in certain establishment and provides for the abolition in certain circumstances and for matters connected therewith. This act came into force from 10th Feb, 1971. It extends to the whole of India. The At applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour. It also applies to every contractor who employs or who employed on any day of the preceding 12 months, 20 or more workmen. The Govt may, after giving 2 months notice of its intention so to do, by notification in Official Gazette apply provisions of this Act in any establishment or contractor employing such number of workers less than 20 as may be specified in the notification. The Act shall not apply to establishments in which work only of an intermittent or casual nature is performed. If any question arises whether work performed in any establishment is of an intermittent or casual nature the appropriate Govt shall decide the question after consultation with the Central Board, or as the case may be, a State Board and its decision shall be final. If the work is performed in an establishment for more than 120 days in the preceding 12 months or if it is of seasonal character and is performed for more than 60 days in a year the work shall not be deemed to be of an Intromittent nature. On a question of unreasonable restrictions on the right of employer Article 19(I)(g), it was held that the statute is constitutional and valid. (Gammon India Limited Vs. Union of India 1974 SCC 252)

Definitions

'The appropriate Govt' means in relation to any establishment pertaining to any industry carried on by or under the authority of the Central Govt. or pertaining to any such controlled nature, as may be specified in this behalf by the Central Govt or any establishment of any Railway, Cantonment, Board, Major Port, mine, Oil field or any establishment of a Banking or

Insurance Company the Central Govt will be the appropriate Govt. In relation to any other establishment, the State Govt. in which the other establishment is situated the State Govt shall be the appropriate Govt (Sec.2(i) According to Section 2(2) (6) a 'workmen' 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 thro' the Contractor, with or without the knowledge of the principle employer. The contractor in relation to an establishment means the person who undertakes to produce a given result for the through contract labour or no supplies contract labour for any work of the establishment and includes a sub contractor 2(wc). A Controlled industry means any industry which is declared so by the any establishment to do any skill, semi-skill 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 who is employed mainly in a Managerial or administrative capacity of who being employed in a Supervisory Capacity draws wages exceeding Rs. 500/- p.m. or exercises either by mainly of a Managerial nature or who is a 'out worker' that is a person to whom any articles or materials are given out by or on behalf of the Principal Employer be made up, cleaned, washed, altered, ornamented, finished, repaired, adopted 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 being the premises under the Control and management of the Principal Employer.

Advisory Boards

A Central Advisory Board: The Central Govt shall constitute a Central Advisory Contract labour Board to advise the Central Govt on such matters arising out of the Administration of this Act and to carry out other functions assigned to it under this Act. The Central Board shall consist of a

1) Chairman to be appointed by the Central Govt.

2) Chief Labour Commissioner (Central -Ex-Office)

3) Other members not exceeding 17, not less than 11 the Central Govt may nominate s members to represent the Govt. Railways, Coal Industry, Mining Industry, Contractors Workmen and any other interest. The terms of Office and procedure, conditions of service and discharge of functions are to be done in accordance with the prescribed rules.

2) **The State Advisory Board:** The State Govt may constitute a Board to be called the State Advisory Contract Labour Board to Advise the State Govt on such matters arising out of the Administration of this Act and to carry out other functions under the Act.

1) Chairman to be appointed by the State Govt.

2) The Labour Commissioner (Ex-Office) or in his business any other officer nominated by the State Govt.

3) Such number of members not exceeding 11 but not less than 9 nominated by the State Govt.

The number of workmen appointed on the Board shall not be less than number of members nominated to represent the Principal Employers and the Contractors.

Power to Constitute Committees

The Central Board or State Board may constitute such Committees and for such purpose or purposes as it may think fit.

Registration of Establishments employing contract labour

a. Appointment of Registering Officers

The appropriate Govts. may appoint registering Officers to carry on the performance mentioned in the chapter III of the Act.

b. Registration of certain Establishments

Every principal employer of an establishment to which this Act applies shall within such period as notified make an application to the Registration Officer for Registration of the establishment. The Registering Officer shall register an establishment if the application is complete. If a registration is obtained by mis-representation or suppression of any material fact or the registration has become useless or ineffective, the registering Officer may revoke the Registration. The effect of non-registration is that no Principal Officer of an establishment to which this Act applies shall employ contract labour in the establishment (Section 7,8,9)

c. Prohibition of Employment of Contract Labour

The appropriate Govt may after consultation with the concerned Board, prohibit employment of Contract Labour in any process, operation, or other work in any establishment. Before issuing any notification the appropriate Govt shall have record the conditions of work and benefits provided for the contract labour in the establishment and other relevant factors like the process and operation of work incidentally to the main work, nature of industry, seasonal or perennial, etc. (Sec. 10). An Industrial Tribunal has no jurisdiction to go into the question of abolition of Contract labour since the power is exclusively vested with the Appropriate Govt.(Vegoils (P) Ltd. Vs. Workmen 1971 - 2 LLJ 567)

d. Licensing of Contractors

Sections 11 to 15 deals with the Licensing of Contractors in chapter IV. The appropriate Govt are empowered to appoint Licensing Officers. The Govt may prohibit the Contractors to whom this act applies from undertaking any work thro, contract labour except under and accordance with the Licences issued by the Licensing officer. The Licence may contain conditions as to hours of work, fixation of wages, essential amenities in respect of contract labour, deposit security money for the performance of the conditions. Application for getting licence shall be made in a proscribed form mentioning the location of the establishment, the nature of the process, operation of work for which contract labour is to be employed and such other particulars as may prescribed. The Licensing Officer may make investigation in respect of the application according to the procedure prescribed. The licence may be issued only on payment of prescribed fees. The Licensing Officer may revoke, suspend or ban the licence if it is obtained by coercive or suppression of any material fact or the holder of a licence failed to comply with the conditions subject to which Licence has been granted or has contravened any of the Provisions of the Act or rules made thereunder. In addition to the revocation, penalties are prescribed under Act. An appeal can be preferred to an Appellate Officer who is nominated by the Appropriate Government. The appeal should be preferred within 30 days from the date of the order. The Appellate Officer shall give the Appellant an opportunity of being heard.

Welfare and Health of Contract Labour

Sections 16 to 24 in Chapter V deal with the Welfare and Health of Contract Labour. The appropriate Govt may make rules requiring that in every establishment in which this Act applies where in the work requiring employment of Contract Labour, is likely to continue and also where the Contract Labour numbering 100 or more ordinarily employed by the Contractor, 1 or more Canteens shall be provided and maintained by the Contractor. The Rules may provide :

1) The Date by which the canteen shall be provided

2) The number of canteens, standards in respect constructions accommodation, furniture and other equipments of canteens.

3) The food stuffs which may be served there in and the charges which may be made. In all Establishments governed by this Act and in which work requiring employment of contract labour is likely to continue for such period as may be prescribed the Contractor has to provide and maintain number of rest rooms, or suitable alternative accommodations to halt at night in connection with the work and sufficient light and ventilation must be provided and maintained in clean and comfortable conditions. Under Section 18, the Contractor has to provide and maintain other facilities like.

1) Sufficient supply of wholesome drinking water at convenient places.

2) Sufficient number of latrines and Urinals.

3) Washing facilities, Section 19 prescribes for the provision of first aid facilities readily accessible during all working hours. The Principal Employer is liable to provide the facilities, if for any reason the contractor employed does not provide. The principal employer can recover all the expenses incurred in providing amenities from the Contractor and can deduct from amounts payable to the contractor as if they are debts payable by the Contractor.

Payment of Wage

Sec.21 deals with the responsibility of the Contractor for payment of Wages. A contractor shall be responsible for payment of wages to worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed. Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of the by the Contractor and it shall be the duty of such representative to certify the amounts paid as wages. It shall be duty of the contractor or ensure the disbursement of the wages in the presence of the authorised representative of the principal employer. In case the contractor fails to make payment within the Prescribed period or takes short payment then the Principal Employer shall be liable to make payment in full or the unpaid balance due to the contractor labour employed by the Contractor and recover the amount so paid from the Contractor either by deduction or from any amount payable to the Contractor under any Contract or as a debt payable by the Contractor.

Penalties & Procedures

Penalties are provided for obstructing the Inspector in discharge of his duties for contravention of provisions regarding employment of Contract Labour. For other offence by the Company,3 months imprisonment or fine upto Rs.500/- or both are provided as punishment for any person who obstructs an Inspector in the discharge of his duties. The same punishment is provided for refusing to produce registers or other documents which are to be kept under the Act by the Employer whenever the Inspector demands for them. For the violation of the Provisions regarding employment of Contract labour provided under this Act punishment with imprisonment for 3 months or fine upto Rs.1000/- or both in provided. For any continuous violation, for every day of violation Rs.100/- fine will be imposed and imprisonment upto 3 years if the violation takes place by the Company, the Officer in charge of the Company is liable for the punishment. The Presidency Magistrate or a Magistrate of a First class the Company is liable for the punishment. The Presidency Magistrate or a Magistrate or a Magistrate of a First class shall try any offence punishable under this Act and no cognizance shall be taken except on a complaint made and no cognizance of the offence shall be taken unless the complaint is made within 3 months from the date on which the alleged commission of offence came to the knowledge of the Inspector.

Inspecting staff

The appropriate Govt may appoint Inspectors of the purpose of this Act prescribing their local limits and their powers. The Inspectors may enter at all reasonable hours any premises or place where contract labour is employed to examine the registers and records. He can make queries with the workmen to give any information. Every Principal employer and every contractor shall maintain registers and records giving particulars of contract labour employed. The appropriate Govts are empowered to make Rules for carrying out purposes of this Act. The Tamilnadu Government framed the rules and the same is called Tamilnadu Contract Labour (Regulation and Abolition) Rules 1975 and it was notified in the gazette on 17.12.1975. The rule prescribes manner of making application for registration and licencing and specifies the fees for a grant of Certificate of Registration and for the grant or renewal of the Licence, Rule 24 prescribes the payment of security a Rs.20/- each of the workmen employed as contract labour be deposited along with the licence application.

THE EMPLOYMENT OF CHILDREN ACT, 1938

The Employment of Children Act regulates employment of children in certain Industrial establishments. The main object of the Act is to check the abuses arising out of the employment of children in workshops which are outside the scope of the factory legislation. The act regulates the employment of children in occupations connected with.

1. Transport of passenger goods or mails by Railways and connected with a Port authority. No child who has not completed his 15th year shall be employed or permitted to work in any occupation specified above. (Sec.3). The Act further lays down that the extend of children employed as Apprentice or trainees on child between 15 and 17 can be employed or permitted to work in this occupations unless he is allowed a rest interval of at least 12 consecutive hours a week. This period of rest is to include at least 7 such consecutive hours between 10 P.M. and 7 A.M. as may be prescribed by the appropriate Govt. The Govt. may relax restrictions relating to rest period in case of emergency. No child who has not completed his 14th year of age shall be employed or permitted to work in any workshop wherein any of the following process is carried on. The list of process are

1. Beedi Making
2. Carpet Weaving
3. Cement manufacture including bagging of cement
4. Cloth printing, dying and weaving
5. Manufacture of matches, explosives and fire works
6. Shellack Manufacture
7. Mica Cutting and supplying

8. Soap manufacture

8. Tanning

10. Wool cleaning.

However, these provisions shall not apply to any workshops where in any process is carried on by the occupier with the aid of his family only and without employing hired labour or to any school established by or receiving assistance or recognition from the State Govt. The State Govts are empowered to extend the scope of this provision of this Act to any other employment after one notification.

Before going into the various provisions of this Act it is necessary to understand the background of passing of this Act. In India many children are placed in the most disadvantageous position duty to their familiar economic condition among them young girls are forced to meet the unequal treatment and the majority of children live under abominable conditions and suffer malnutrition and often number of children are forced to work for their living at the tender age of 6 of 7 for their proper up bringing' it is essential to bring about basic transformation in our social and economic structures as it would be an end to their exploitation and oppression. The worst of child labour were found in unorganised industries and workshops wherein larger majority at children are employed. These factories and workshops do not come under the Factories Act and separate legislative provisions existed very rarely. Child labour is great social ill. A National commission on Labour observed that the employment of Children is indeed more of a economic problem than anything else. Nevertheless, it was considered congenial atmosphere to children for their physical development and education be an issue of a serious nature keeping in view the large interest of the society. While the economic difficulties are real, a way has to be found to give the child the necessary education in his more receptive year. This can be ensured by fixing the employment hours of children so as to enable them to attend the schooling. Where a number of children is adequate the employers, with the assistance to the State Govt, shall make arrangements to combine work with education. The 23rd sessions of the international labour conference adopted a resolution in which a special remark for India was inserted fixing a minimum age, as large children may be employed or may work in the transport of passengers, the above objects and reasons, the act of Employment of children was enacted. A simple procedure enarrbling employers to safeguard the violation this Evil against prohibition of the Act by furnishing the required details with or requiring candidates for employment to possess certificate of age is provided. Before work of any of the processes stated above is carried, or the occupier shall send to the Inspector, notice containing particulars regarding situation of the workshop, nature of process to be carried on. The occupier is expected to maintain registers showing the name and date of birth of a child under 17 years of age. The periods of work intervals of rest, nature of work and such other particulars are to be maintained in a register. They are also required to display notice containing relevant abstracts of the Act at a

conspicuous and accessible place in a language known to the majority of the workers. The act prohibits employment of children between 15 and 17 years during night in the Railways and Ports. Any person contravening the provision of this act is liable to be punished with imprisonment which may extend to one month or with fine which may extend to Rs. 500/- or with both.

Most of the provisions of this act remain underforce in unprotected industries. Only when a few flagrant violations are brought to the notice of the Govt necessary actions thereon are taken. This is due to the fact that the enforcement of child labour standards is more difficult in the widely scattered villages in the country and is domestic service and the sheet trades than in manufacturing establishments.

The Presidency Magistrate or a Magistrate of a first class shall try any offence under his Act and no prosecution shall be instituted except by or with the previous sanction of an Inspector.

Suggested Questions

1) Explain the salient feature of Equal Remuneration Act, 1976.

2) What are the evils of the system of contract labour. Explain the schemes of regulation and abolition of such labour according to the Act.

3) How the employment of children is regulated by the Employment of Children Act, 1938.

Note : The Employment of children Act, 1938 (26 of 1938) was repealed and the following "The Child Labour (Prohibition & Regulation) Act, 1986 was passed (61 of 1986) by Parliament.

The Child Labour (Prohibition and Regulation) Act, 1986

Scope and Object

This Act has been enacted for the welfare of the children of India. This Act also one of he best social legislations in the field of child workers. This Act prohibits the child employment, specifying the age of the child labour and also regulates employment of young person. Eventhough such prohibitions and regulations are in force, practically it is impossible to eradicate the child employment.

Definitions

Section 2 (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.

Section 2 (ii) "child" means a person who has not completed his fourteenth year of age.

Section 2 (iv) "establishment" includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.

Section 2 (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.

Child Labour Technical Advisory Committee:

Section 5 of the Act says that :

1. The Central Government may by notification in the official Gazette, constitute an advisory committee.
2. The Committee shall consist of a Chairman and such other member not exceeding ten.
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 constitute one or more sub-committee for the consideration of any particular matter.
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.

Child Labour

Section 3 of the Act says that no child who has not completed his fourteenth year shall be required or allowed to work in a factory set forth in part A of the schedule or in any work shop wherein any of the process set-forth in Part B of the Schedule.

a) Work of Part A Schedule

Occupations

1. Transport of passengers, goods or mails by railway
2. Cylinder picking, cleaning of an ash pit or building operation in the railway premises.
3. Work in a catering establishment at a railway station involving movement of a vendor or any other employee of the establishment from one platform to another.
4. Work relating to construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines.

a) Work of Part B Schedule Processes

1. Beedi Making
2. Carpet Weaving
3. Cement bagging.
4. Cloth printing and weaving
5. Explosives of fire works.
6. Mica-cutting
7. Shellac Manufacture
8. Tanning
9. Building & Construction Industry
10. Wool cleaning, and
11. Soap manufacture

Hours and period of work of child labour

Section 7 of the Act explains the working hours of the child labour.

The period of work shall not exceed 3 hours at a stretch and the interval for rest shall be not less than one hour. The spread over for including rest hour and waiting hour for work shall not exceed 6 hours. No engagement of child shall be made between 7 p.m. and 8.a.m. and no over time work is allowed. The child shall be allowed a weekly holiday of one whole day.

Engagement of child labour shall be informed to the Inspector of Labour within 10 days by providing following particulars :

1. Name and situation of the establishment
2. Name of the person in actual management of the establishment
3. The address for communication, and
4. The nature of the occupation or the process carried on.

This Act is not applicable to

1. The establishments, wherein the process is carried on by the employer with the aid of his family, or
2. To any school established by or receiving assistance or recognition from Government.

The occupier shall maintain a register for the inspection with the following details:

1. Name and date of birth of every child labour.
2. Hours and periods of work
3. Intervals for rest
4. Nature of work, and
5. Other required particulars as may be prescribed.

Section 13: Health and Safety

The Government is empowered to make Rules for Health and Safety of the children employed and for any or all of the following matters:

a) cleanliness in place of work and its freedom from nuisance;

b) disposal of wastes and effluents;

c) ventilation and temperature;

d) dust and fume;

e) artificial humidification;

f) lighting;

g) drinking water;

h) latrines and urinals;

i) spitoon

j) fencing of machinery;

k) work at or near machinery in motion;

l) employment of children in dangerous machines

m) Instruction, 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 faccesses;

r) pets, sumps, opening in floor etc.,

s) excessive weights

t) protection of eyes

u) explosive or inflammable dust gast, etc.

v) precautions in case of fire

w) maintenance of building; and

x) safety of building and machinery.

Penalties

According to the Section 14 of the Act the employment of children in contravention of the provision of this Act is punishable with imprisonment not less than 3 months and may extend to one year or with a fine not less than ten thousand rupees an may extend to Rs. 20,000/- (Twenty thousand only) or with both.

Commission of second offence under section 3, and after having convicted, be punishable with imprisonment with not less than 6 months and may extend to two years;

Whoever

a) fails to give notice under section 9 or (b) fails to maintain register under section 11 or makes any false entry or (c) fails to display a notice in the local language and in the English language containing an abstract of sections 3 and 14 of this Act, or (d) fails to comply with or contravenes any provisions or rules be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

In view of the definition of 'child', 'adult', and 'adolescent' under this Act, the respective definitions under the minimum wages Act, 1948, Plantation Labour Act, 1951; Merchant Shipping Act, 1958; and Motor Transport Workers Act, 1961 are amended with the respective definition under this Act.

If any question arises between an Inspector and an occupier as to the age of any child labour will be decided by the prescribed medical authority under section 10 of this Act.

Unit - 11

THE WORKMEN'S COMPENSATION ACT, 1923

Introduction

With the industrialisation of the economy and the advancement of the technology, the industrial accidents were on the increase. Such accidents resulted either in death or permanent / temporary disablement of the workers as also loss of their earning capacity. Therefore, the need for legislation provision for the payment of compensation in such eventualities was felt necessary. The enactments of the legislation of this kind on the one hand would create awareness in the mind of the employers to provide such condition of work whereby accidents could be minimised and on the other hand, workers would also be attracted to even those industries which are prone to industrial accidents. The Workmen's Compensation Act was passed in India in 1923 to achieve these ends.

In the Gazette of India 1922, Part V, Page 313, the need for such a legislation has been emphasized as under.

"The growing complexity of industry in this country with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of workmen themselves renders it advisable that they should be protected as far as possible from hardship arising from accidents. A legislation of this kind helps to reduce the number of accidents in a manner that cannot be achieved by official inspection and to mitigate the effect of accident by provision for suitable medical treatment, thereby making industry more attractive to labour and increasing its efficiency. The Act provides from cheaper and quicker disposal and disputes relating to compensation through Special Tribunals than possible under the civil law".

The theory of workmen's Compensation was expressed in the slogan attributed to David Lloyed George. "The cost of the product should bear the blood of the workmen".

History

Though the need for a legislation providing for compensation for total or serious accidents was felt as early as 1884, the question of framing legislation was taken up by the Government of India only in 1920. Prior to the enactment of this Act, workers heirs could claim compensation under Fatal Accidents Act, 1865. This Act was limited in its application as compensation under this Act was payable only if the accident was use to wrongful act, neglect or default of the employer or person who caused the death or on the basis of proof of negligence under Civil Law.

Towards the end of 1920, the Government of India with a view to framing legislation and granting compensation to the workmen for fatal or serious accidents appointed a small

committee consists of Legislative Assembly Members Employer's and Worker's representatives and medical and insurance experts. Based on the committee recommendations a bill was introduced in the Central legislature in 1922 and was passed with some modifications in 1923. The Act came into force from 1st July 1924. The Act marked the first step towards the introduction of social security legislation in India.

In the beginning as an experimental measure, the Act was made applicable only to workers whose occupation was hazardous and who were engaged in an organised industry. The Act was Amended several times, important of them being amendment Act of 1959, for the first time removed the distinction between an adult and a minor and provided for penalty in the event of failure to pay compensation. The waiting period of 7 days was reduced to 5 days for claiming compensation and the Schedule was also widened. The amendment Act of 1962 revised the scales of compensation and specified the injuries leading to permanent disablement.

The Amendment Act of 1976 widened the scope of 'workman'. Any person employed on a monthly wage upto Rs. 1600/- in any such capacity as specified in Schedule II of the Act is now covered under the Act as against limit of Rs. 500/- prior to 1st October, 1975. This has been done in the context of the wage levels prevailing at the time of 1966 amendment in private as well as in public sectors. The Amendment Act also substituted a new schedule for Schedule IV which was given retrospective effect from Ist October, 1975 whereby the amount of compensation payable in the event of death total disablement temporary disablement to workman was considerably increased.

Object

"The object of the Workmen's Compensation Act is to provide social security, ensure social justice and not to punish and employee".

The object of the Act laid down in the Permeable to the Act which reads: "An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

From the object of the Act it is clear that unlike the English Law, this Act applies only to certain classes of workmen as it provides for the payment of combination only by certain classes of employers to their workman. Persons excluded from the scope of this Act is discussed under the heading Applicability of the Act. Further this Act provides for compensation for injury by accident. The essential feature of this clause is that injury should occur by accident while the workmen is in employment underlying this principle the Legislature has thought it fit to state "Whereas it is expedient to provide for the payment of certain classes of employers to their workmen of compensation for injury by accident".

The Act recognises the fact that a workman who is open to hazardous risks should be adequately protected in case of accident which disable him partially or totally. The Act therefore is a piece of social security legislation which ensures security and justice to the workman. At the same time, it does not punish an employer as the employer is liable to pay compensation only when personal injury is caused to the workman by accident which has arisen out of and in the course of his employment. Moreover, the worker is very often adequately insured by the employer to protect himself against the liability.

The object of the Workmen's Compensation Act has been best expressed by the Royal Commission on Labour in India in the following words, "Moreover, provisions for compensation is not the only benefit flowing from workmen's compensation legislation; it has important effects in furthering work on the prevention of accidents, in giving workmen greater freedom from anxiety and inrendering industry more attractive".

In Executive Engineer PWD (B&R), Udaipur and Anothe Vs. Narsin Lal (52-FJR-1978-67) it was laid down that the theme of the Workmen's Compensation Act, 1923 is to provide security to a workman who sustains partial incapacity resulting in a loss in his earning capacity. The protection so afforded to the workman is independent of the Acts of grace or mercy which the employer might show to him. In a welfare state, the protection offered to a disabled workman cannot be allowed to rest on the mercies and grace shown by the employer. If the employer does so, it is commendable, but the workman has still a stake in his employment which is granted to him under the Act.

1. Object and Scope

The Act is a social security legislation. In it's preamble provides for the payment by certain classes of employers to their workmen of compensation for injury accident. The Act impose statutory liability upon an employer to discharge his more obligation towards his employees when they suffer from physical disabilities and diseases during the course of employment in hazardous working conditions. The Act also seeks to help the attendants of the workmen rendered destitute by the 'accidents' and quicker mode disposal of disputes relating to compensation through special proceedings than possible under the civil law. The Act extends to the whole of India.

Definitions (Section 2)

Some important definitions are given below:

1) Dependent (Section 2(1) (d))

Section (2) (1) (d) of the Act defines "dependent" as to mean any of the following relatives of a deceased workman, namely:

(i) a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or daughter who has attained the age of 18 years and who is infirm; and

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death;

a) a widower.

b) a parent other than a widowed mother.

c) a minor illegitimate son, unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and are minor, or if widowed and a minor.

d) a minor brother or an unmarried sister or a widowed sister if a minor.

e) a widowed daughter -in-law.

f) a minor child of a pre-deceased son.

g) a minor child f a pre-deceased daughter where no parent of the child is alive on.

h) a paternal grandparent, if no parent of the workman is alive.

The expression, "widowed mother" was clarified by Calcutta High Court in Munado Dev Vs. Bengale Bone Mills; A.I.R. Cal. 85, that widowed mother does not include widowed step mother'. Similarly minor brother means minor uterine brother only as was held in General Manager Gwalior Sugar Co. Debra Vs. Sri Lal, AIR 1958 M.P. 133.

In Kaveri Structurals Vs. Bhagyam 1977 II LLJ 529, it was held that when a "dependent" as defined in section 2 who preferred a claim died during the pendency of the proceedings, his or legal representatives could prosecute the claim for compensation as the right remained vested in the dependent upto the time of death and upon death passed to his/her heirs or legal representatives. It was held in B.M. Habbebullah Maricar Vs. Periaswamy 1977 II LLJ 322 that under the Act benefits is not intended to be given to all heirs of a deceased workman but only to those who, to some extent depend upon him for their daily necessities. Kinship, coupled with dependency is criterion for a person to fall within the ambit of definition. The benefit is provided for the workman himself and his dependents and to no others. Otherwise the object of the Act will not be achieved if the benefit is provided by the Act to persons altogether **** the class contemplated by it.

(ii) Employer (Section 2(1) (d)

The following persons are included in the definition of employer:

a) any body of persons incorporated or not;

b) any managing agent of the employer.

c) legal representative of a deceased employer. Thus, one who inherits the estate of the deceased is made liable for the payment of compensation under the Act. However, he is liable only upto the value of the estate inherited by him

d) any person to whom the services of a workman are temporarily lent or let on hire by a person with whom the workman has entered into a contract of service or apprenticeship.

A contractor falls within the above definition of the employer. Similarly, a General Manager of a Railway is an employer - Baijnath Sing Vs. O.T. Railway AIR 1960 ALL 362.

(iii) Managing Agent (Section 2(1) (f)

Section 2(1)(f) defines 'Managing Agent' as to mean any person appointed or acting as the representative of another persons for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer.

(iv) Minor (Section 2(1) (ff)

In terms of section 2(1) (ff) 'minor' means a person who has not attained the age of 18 years.

(v) Qualified Medical Practitioner Section 2(1) (i) Qualified Medical Practitioner means any person registered under any Central Act an act of the legislature of a State providing for the maintenance of a medical practitioners, or any area, where no such last mentioned Act is in force, any person declared by the State Government by modifications in the official Gazette to be a qualified medical practitioner for the purpose of this Act.

(vi) Seaman (Section 2(1) (k)

'Seaman' under Section 2(1)(k) means any person forming part of the crew of any ship but does not include the master of the ship.

(vii) Wages Section 2(1) (m)

According to Section 2(1) (m) the "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or a provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment. Wages include dearness allowance, free accommodation, overtime pay, etc.(Godawari Sugar Mills Ltd Vs. Shauntal; Chitru Tanti V. TISCO; and Badri Prasad Vs. Trijugi Sitaram).

While driving the bus, on account of an accident, the driver of the bus died, on a claim for compensation made by widow was held that line allowance and might out allowance came under the privilege or benefit which is capable of being estimated in money and can be taken into consideration in computing the compensation as part of 'wages'..... KSRTC Bangalore Vs. Smt. Sundari, 1982 Lab. L.C.230.

3. Workman (Section 2(1) (n)

Workman has been defined under Section 2 (1) (n) as to mean 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 Section 3 of the Indian Railway Act 1890, not permanently employed in any administrative, district or sub divisional office of a Railway and not employed in any such capacity as specified in Schedule II; or

ii) employed on monthly wages not exceeding Rs. 1000 in any such capacity as is specified in Schedule II. Whether he contract of employment was made before or after the passing of this Act and whether such 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 and any reference to a workman who has been injured shall, where the workman is dead, includes a reference to his dependent's or any of them.

However, the State Government has been empowered after giving not less than three months notice of its intention so to do may be a like notification add to Schedule II any class of person employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply within the State to such classes of persons :

Provided that in making such addition the State Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only.

4. Disablement

The Act has classified disablement into two categories viz.

i) Partial Disablement and *(ii) Total Disablement*

i) Partial Disablement (Section 2(1) (g)

"Partial Disablement" means

a) **Where the disablement is of a temporary nature :** Such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and

b) **Where the disablement is of a permanent nature :** Such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time. But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

Schedule I contains list of injuries to result in Permanent Total / Partial Disablement.

In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the workman's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity is not only the employment in which he was engaged at the time of accident but in all other employment.

Whether the disablement is temporary or permanent and whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in part II of Schedule I. In the case of Sukhai Vs. Hukam Chand Jute Mills Ltd., A.I.R. 1957 Cal. 601, it is observed.

"If a workmen suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsalable in any marker reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when defect makes his labour salesable for less than it would otherwise fetch. The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensure by the reason reduced the capacity of the workman to work. He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away an account of the results of the accident visible on his person.

If after the accident a worker has become disabled, and can not do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement General Manager, GIP Rly. Vs. Shankar, AIR 1950 Nag 307.

Deemed to be Permanent Partial Disablement; part II of Schedule I contains the list of injuries which shall be deemed to result in permanent partial disablement.

Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

Note to Schedule I - On the question whether "eye" is member or limb" as used in the note to Schedule I if was held that considering the meaning as stated in the Oxford Dictionary

as also in the Medical Dictionary it would be said that the words "limb or member " include any organ of a person and in any case it includes the ye" Lipton (India) Ltd. Vs. Gokul Chandran Mandal : 1981 Lab I.C. 1300.

(ii) Total Disablement (Section 2(1)(i)

"Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates a workman for all work which he was capable of performance at the time of accident resulting in cash disablement. Provided further that permanent total disablement shall result from any combination of injuries specified in part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said part II against these injuries amount to one hundred percent or more.

Some judicial Interpretations on the subject are as follows

The expression "incapacitates a workman for all work" does not mean capacity to work or physical incapacity. If due to any physical effect a workman is unable to get any work which a work man or his class ordinarily performs, and has thus loss the power to earn he is entitled to compensation for total disablement : Ball V. William Hunt & Sons Ltd., 1912 A.O. 496. It is immaterial that the workman is physically fit to perform some work. Thus, where a workman, through physically capable of doing work cannot get employment in spite of his best efforts : he become incapacitated for all work and hence entitled to compensation for total disablement.

Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, he got pain in his left hand and experiencing difficulty caused to a workman in accident while working on ship, he got pain in his left hand and experiencing difficulty in lifting weights. Held that workman can be said to have lost his earning capacity even though getting same amount of wages as before : Mangrupalji Vs. Robinson 1978 Lab. I.C. 1567 (Bom)

Where the worker lost his vision of one eye permanently in accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 part II in schedule I. Katras Jherriah Coal Co. Ltd., Vs. Kamakhya paul, 1976 Lab I.C.751.

In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the S. C. in Pratab Narain Singh Deo. Vs. Sriniws Sabta; 1971 Lab L.J.235 that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident. Divisional Manager KSRTC Vs. Bhimaiah 1977 II LLJ 531. (Kant)

Position of a Casual Workman

In popatalal Maya Ram Vs. Bai Lakhu (AIR 1952, Saurashtra 57) where the widow of the deceased labourer who was engaged by an agriculturist for the purpose of deepening an old well for purposes of irrigation, as a casual worker; being employed for employer's business is a workman, his employment must be both of a casual nature and who must be employed otherwise than for the purpose of the employer's trade or business. In fact casual worker is a question of fact which depends on the individual facts of each case.

In Baj Chandra and others Vs. Godhra Borough Municipality 48 FJR 1947-165) it was held that if a person is continuously serving his employer for a period of 3 or 4 years on daily wages he cannot be said to be a casual employer. In Smt. Kamala Dev and others Vs. Bengal National Textile Mills Limited and Another (47-FJR-1975-14) it was held that for taking out a labourer from the category of "workman" both two condition viz. (1) that the employment was of casual nature and (2) that the employment was otherwise than for the purpose of the employer's trade or business must be proved. The mere fact that a worker worked for only two days before he died in an accident would not automatically show that his employment was of casual nature (Patel Engineering Co. Ltd. Vs. Commissioner for Workmen's Compensation Hyderabad 5 J FJR - 1977 - 348)

Employer's liability to pay compensation to workman

If personal injury is caused to a workman by accident arising out of and in the course of, his employment, his employer shall be liable to pay compensation (Sec 3(1).

The following conditions must concur in order that an employer may be held liable to pay compensation to a workman:

1) Some personal injury must have been caused to a workman.

2) Such injury must have resulted either in the death of the workman or in the total or partial disablement.

3) Such injury must have been caused by an accident.

4) Such accident must have arisen out of the workman employment and

5) Such accident must have arisen in the course of the employment of workman.

Mere death in ordinary course by some bodily ailment even in the course of employment cannot attract liability of the employer. The words 'injury' and 'accident' in section 3 of the Act imply the existence of some external factor to cause death apart from internal deceased employee could not have directly or indirectly contributed to the injury nor was it shown that the employee had to undergo any special strain on the fatal day it cannot be inferred that there was casual connection between the employment and the injury just because the workman died during office hours. Some casual connection between the employment and the injury, independent of the bodily ailment must be shown for invoking section 3 of the Act (Municipal Corporation for Greater Bombay Vs. Sulochanabai Sadashiv Joil 52 - FJR 1978-360).

In Budheli Jena Vs. Deulbera Colliery, national Coal Development Corporation Ltd(49 FJR - 1976-414), it was held that in order to get compensation under the Act it must be shown that there was some proximate or at lest fundamental connection between the accident and the employment and if the primary casual connection between the accident and the employment is absent, no liability can be foisted on the employer.

The words 'in the course of employment, mean " in the course of the work which the workman is employed to do and which is incidental to it". The words 'arising out of employment' are understood to mean that " during the course of the employment", injury has resulted from some risk incidental of the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words, there must be a casual relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such, to its nature its conditions, its obligations and its incidents; If by reason of any of those factors the injury would be one which arises out employment.

(Mackinnon Mackenzie and Co. pvt. Ltd. Vs. Ibrahim Mohammed Issak - AIR - 1970 - SC-1906).

DOCTRINE OF CONTRIBUTORY NEGLIGENCE

'Contributory negligence' means that the employer raises the defences that the accident has occurred purely due to the negligence on the part of the employee. Such a defence has been given no footing under the Act. The main purpose is to safeguard the workers and not to deprive them of their rightful claim under the Act otherwise every employer would escape the claim by raising the defence of contributory negligence.

IN Badma Devi Vs. Raghunath Roy (AIR 1950 Orissa 20), the defence of "contributory negligence" was given no footing. No amount of negligence in doing an employment job can change the workman's action into a non-employment job and contributory negligence is no defence. In another case also Sunderdasa Mudaliar v. Muthiammal (1956 - II -LLJ 52), it has

been held that doctrine of contributory negligence has no place without the Act. In Urmila Desai and Another Vs. Tata Iron & Steel Co. Ltd (AIR 1928 Patna 528) it was held that a workman would not lose his right to compensation only by reason of the fact that he had acted thought lessly or foolishly.

Doctrine of added peril

The principle of added peril has been dealt within Bharangya Coal Co. (Ltd) Vs. Sabeb Jan Main and another (TCR 1956 Labour 128). In this case, the principle of added peril was laid down as under :

" The principle of added peril contemplates that if a workman while doing his master's work undertakes to do something which he is not ordinarily called upon to do and which involves extra danger, he cannot held his master liable for the risks arising therefrom. This doctrine therefore comes into pay only when the workman is at the time of meeting the accident performing his duty".

Personal Injury : Sec 3(1)

Personal injury caused by accident arising out of and in the course of employment means contracting occupations disease peculiar to that employment.

Personal injury is not necessarily confined to physical bodily injury. If an occurrence is unexpected and without design on the part of workman, it is an accident (Jankiammal Vs. Divisional Engineer, Highway Kozhikod-2 MLJ 19).

Difference between 'Accident & Injury'

Accident means an untoward mishap which is not expected or designed by workman. Injury means physiological injury. Accident happens externally to man However, there accident may be an event happening internally to a man, accident and injury may then coincide (Smt. Sunderbai Vs. The General Manager, Ordinance Factory, Khamaria Jabalpur 1956-LAB I.C 1163(M.P)

In Smt. A. Seetharammamma Vs. General Manager, Sough Eastern Railway (47-FJC-1915-468) it was held that there need not by any viable external injury on the deceased if the death was due to heart failure. Any Physiological injury causing he rupture of he deceased's veins, which results in his heart failure is sufficient to bring it within the expression personal injury.

When a factor like disease, infirmity or old age exists, such pre-existing factor would not necessarily rule out the possibility of death having been accelerated by even ordinary strain and the crux of the matter in such cases would be whether the deceased had worked at the

relevant time on a job which would cause some strain that would accelerate his death in view of the pre-existing factor (Bhagwanji Murubhai Sodha and others Vs. Hindustan Tiles and Cement Industries (50-FJR -1977-97)

In Pratap Narain Singh Deo Vs. Srinivas Sabata and Another (1975 - 48- FJR -296), it was held that under sub-section (1) of section 3 of the Act the compensation has to be paid as soon as the personal injury was caused to the concerned workman. The levy of penalty would be justified where the employer did not pay the compensation at the rate provided in section 4 as the personal injury was caused to the employee and did not even make a provisional payment under sub-section (2) of section 4.

If there is a casual and proximate connection between the accident and the employment, the personal injury shall arise on of and in the course of employment of the deceased workman (Natima Bibi Vs. Lodhne Collierty C. (1970) Ltd 50 FJR 1977 - 242) where workman is not required to discharge his duties on the fatal day he does not suffer the injury in course of his employment, (Executive Engineer, Rajasthan Canal Project v. Smt. Veera 47-FJR-1975-397). If the workman does as a natural result of the disease from which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer (Mackimon Mackenzie & Co P. Ltd. Vs. Smt. Ritta Fernandes 1962 (2) LLJ - 812).

Injury arising out of and in the course of employment

A person is in the course of his employment as soon as he reaches the particular point of area of only about 10-15 feet of the entrance gate because it is only the incident of employment which brings him into the danger zone. The employer becomes liable to pay compensations to the dependents of the deceased workman where both the conditions (in the course of employment and 'arising out of employment') laid down in Section 3(1) the Act are fulfilled. Dubbien Dharamshi and others Vs. Jeheangir Vakil Mills Co. Ltd. Bhawanagar - 50-FJR-1977-207).

Workmen are in the course of employment if they meet with fatal accident while they travel to their work spot in the principal employer's lorry (Patel Engineering Co. Ltd. Vs. Commissioner for Workmen's Compensation, Hyderabad 51 FJR 1977-348)

In one of the leading cases on the subject, a boy returning to the factory canteen after having served tea in his usual round to certain persons in the factory premisses was struck by a bullet and he died the following day. It was held that death of the boy was due to accident arising out of and in the course of his employment.

The bonus of proving that the accident arose in the course of employment is upon the workman. In Prakash Chandra Gangully Vs. Jawahir Prem (10 LLJ 159), where a workman

leaves an employer and he alleges that he contacted disease under employer of his previous master, it has been held that burden of proof is upon the workman. However, if a worker wilfully disobeys a rule he is not entitled to compensation.

In Laxmibai A. Karangatkar Vs. The Chairman and Trustees, Bombay Port Trust (55 BLR 924). Bombay High Court has held that where as 'the course of the employment' emphasises there must be a casual connection between the employment and the accidental injury. The Bombay High Court has in Trustees of the Port of Bombay v. Yamunabai (54 BLR 421) held that the words arising out of his employment' were wide enough so as to over a case, where there may not be necessarily be a direct connection between the injury caused as a result of an accident and the employment of the workmen concerned. In Laxmibai's case, the Court held that if the employment is a contributory cause, or if the employment has accelerated the death, or if it could be said that the death was not only due to the disease but the disease coupled with the employment then the employer would be liable and it could be said that death arose out of the employment to the deceased workman.

INJURY BY ACCIDENT - OCCUPATIONAL DISEASE: Sec. 3(2)

In the following cases the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

1) If a workman employed in any employment specified in A part of Schedule III Contracts any disease specified therein as an occupational disease peculiar to that employment; or

2) if a workman, whilst in the service of an employer in whose service he has been employed for a continous period of not less than 6 months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in part B of schedule III, contracts any disease therein as an occupational disease peculiar to that employment; or

3) if a workman whilst in the service of one or more employers in any employment specified in part C of schedule III for such continous period a the central Government, may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment; or

4) if it is proved that a workman whilst in the service of one or more employees in whose service he has been employed for a continuous period which is less than 6 months, in any employment specified in part C of schedule III has contracted a disease spiced therein as on occupational disease peculiar to that employment.

5) if it is proved that the disease has arisen out of and in the course of the employment; the contracting of such disease shall be deemed to be an injury by accident ;

6) if it is proved that a workman who;

(a) having served under any employment specified in part B of schedule III; or,

(b) having served under one or more employers in any employment specified in part C of that Schedule (i) for a continuous period of 6 months for that employment and has after the cessation of such service contracted any disease specified in the said part B or the said part C, as the case may be as occupational disease peculiar to the employment and that.....;

(iii) such disease arose out of the employment; then the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

In Laximbai Atma Ram Vs. Bombay Port Trust (AIR 1954 Bom 180) it has been held that where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or walking the accident has arisen out of employment. It is not only that while working in the factory premises or at the job that accident will be deemed to arise in the course of his employment. The workman while returning from his duty was crushed by an engine, it was held that he met with an accident in the course of his employment.

If an occurrence is unexpected and without design on the part of workman, it is an accident. The facts and circumstances of each case shall have to be examined very carefully.

Theory of notional extension of employment

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when each was doing master's job.

It is well settled that the concept of "duty" is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment that would be sufficient to deem the accident as having occurred in the course of employment; Wever Vs. Tradegar Iron and Coal Co. Ltd. (1940) All 3 ER 15.

It is known as doctrine of notional extension of employment : whether employment extends to the extent of accident depends upon each individual case.

In the case of Works Manager, Carriage and Wagon shop E/R Vs. Mahabir the Work shop was situated at about a mile from the railway station. The workman used to come from

a nearly town and travel by the workman's special train provided by the railways. The workers usually reach the factory after crossing the railway lines in preference to the alternative sub-way and over-bridge routes. A Workman after finishing his duty wile returning to railway station to catch the rain was crossing railway lines, that he was runover by shunting engine and received injures. Held employer was liable.

In another case, the workman suffered injury by capsizing of the lorry belonging to the employer and driven by his driver when the lorry was carrying the workmen to the place of work. I was held where the kind of transport provided by the employer was the only means available to workmen, the accident was held to be in the course of employment because not only the lorry provided by the employer was the most reasonal and feasible means or transport but also that there was not other means of conveyance on and from the workshop being a hilty tract : Varadarajula Vs. massaya Boyan AIR 1954 Mad 1113.

In Saurashtra Salt Mfg. Co. Vs. Bai Velu Raja AIR 1958 a workman was drowned while returning home from salt works on a public ferry boat. Held, that on the facts of the case, the accident could not be said to have arisen out of and in the course of employment while crossing the creek in as much as the theory, of notional extension could not extend to the point where the boat capsized. Thus, where accident occurs on a public road while going to place of employment, the employer not liable. Here Proximity of place is not relevant (AIR 1961 Cal. 310)

In another case of BEST undertaking Bombay Vs. Mrs. Agnes, AIR 1961 SC 193 the drivers of BEST undertaking were given free transport facility in buses belonging to the employer from depot to his house and vice-versa. A driver was injured in an accident with the bus to which he was travelling while going home from his depot. It was held that accident occurred during the course of employment and the employer liable for compensation. The Supreme Court observed that the question when employment begins and ends depends on the facts of each case. Employment does not necessarily end when the 'tool down' signal is given or when the workman leaves the workship. It may begin when be used the means of access and agrees to and from the place or employment. A contractual obligation to use only a particular means of transport extends the area of field of employment.

In the case of Dedhiben Dharamshi Vs. New Jehangir Vakil Mills Co. Ltd. Bhavnagar, 1977, Lab I.C. 10, company has two separate gates for going and coming for convenient egress and ingress of employee. An employee who was standing outside the gate just five minutes before the start of his shift was knocked down by a cyclist and died. It was held that it is obvious that there was sufficient proximity both in time and place with his employment. The place clearly come within the theory of notional extension because of the sufficient proximity both in time and place when he was obtaining access through the specified gate. The entry gate and the timings had been specified by the employer and it was only at ordinary incident of his employment that he had at that fatal hour to come to that fatal place.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot for his employment and his wife is entitled for compensation: Naima Bibi Vs. Lodhne Colliery (1920) Ltd, 1977 Lab : I.C. (NOC) 14).

When the workmen loses compensation - Defences to an employer Sec. 3 (1) Proviso (4) & (5)

The employer shall not be liable to pay compensation to a workman under the following circumstances :

1) Where the injury does not result in the total or partial disablement of the workman for a period exceeding 3 days.

   i) the workman having been at the time there of under the influence of drink or drugs; or

   ii) the willful disobedience of the workman to an order expressly given to a rule expressly framed, for the purpose of securing the safety of workman, or

   iii) the willful disobedience of the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

3) that the accident which caused injury arose outside the scope of employment and did not arise out of and in the course of employment of workman ;

4) that an order or rule was in fact already in force at the time when the accident happened;

5) that the substantial purpose of the rule or order was that of securing the safety of workman as such ;

6) that the order or the rule was couched in words which on their face fairly and clearly indicated that purpose;

7) that its terms and were brought to the notice of particular workman who was the individual injured in a case;

8) that disobedience of the rule or order was willful and deliberated and not only the result of mere negligence or due to a mistaken mode of doing a particular task or due to a wrong decision in an emergency;

9) that the accident was directly attributed to the aforesaid disobedience;

10) where a workman while doing his master's work under takes to do something which he is not ordinarily called upon to do and which involves extra danger;

11) in respect of any disease, which is not directly attributable to a specific injury by accident arising out of and in the course of his employment (Sec.3(4).

12) in respect of any injury, if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person. (Sec. 3(5).

It should be not that no suit for damages shall be maintainable by a workman in any Court of Law in respect of any injury.

i) if he has instituted a claim to compensation in respect of the injury before a Commissioner;

or

ii) if an agreement has been entered into between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of the Act. (Sec. 3(5).

It will therefore be observed that a workman can elect to avail himself of any other remedy other than provided by the Act but he cannot have double payments and employer is protected from double proceedings.

It should however be noted that the workman's dependents are not debarred from instituting suit in civil of a claim filed before the commissioner has been withdrawn before the commencement of he proceedings. (S. Sippiah Chettiar Vs. Chinnathura and others AIR-1957-Mad-216).

Employers Liability when contractor is engaged (Section 12)

i) sometimes, employer may engage a contractor instead of employing his own workman for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of workman engaged by him. If any injury is caused by an accident to any of these workers, the employer cannot be held liable because they are not employed by him and hence are not workmen. But now Section 12 (1) makes the employer liable for compensation to such workman hired by the contractor under following circumstances:

(a) The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).

(b) The workmen were engaged in the course of or for the purpose of his trade or business.

(c) The accident occurred in or about the premises on which the principal employer has undertaken or ununderstaken or execute the work concerned. The amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

ii) According to Section 12(2), where the principal is liable for pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnity a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the workman could have recovered compensation and all question as the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

iii) The above provision, however, does not prevent a workman from recovering compensation from the contractor instead of the employer, ie., the principal; Section 12 (3).

iv) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be to execute the work or otherwise under his control or management; Section 12(4).

Following illustrative case will further clarify the law laid down in Section 12.

a) A Municipal Board entrusted the electrusted the electrification work of the town to State employees. A workman received injuries while performing his work. Held, it is the State and not the Board, liable to pay compensation because execution of electrical project is not the ordinary business of the Municipal Board (AIR 1960 All 408).

(b) A contractor was entrusted with the repairs of a defective chimney. A workman engaged by him was injured while carrying out repairs. Helled mill was not liable for compensation as the repairing chimney is not the part of company's trade or business, whether ordinarily or extraordinarily,

(c) A cartman was engaged by a Rice Mill to carry rice bags from mill to railway station. The cartman met with an accident on a public road while returning back from railway station and this resulted in his death. There was no evidence to show that workman was engaged through contractor. In a suit for compensation against the mill owner was observed that Section 12 is not applicable where accident arise out of and in the course of employment of contractor engaged by the employer the liability of the owner was clear from Section 12 (1) and it had not been excluded by reason of Section 12(4).

Remedies of Employer against Stranger Section (13)

Section 13 of Act provides that where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid, to pay damages in respect there of, the person by whom the compensation was paid any person who has been called on to pay an indemnity under Section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

Time of Payment - Compensation : (Sec.4A)

As a regard rule compensation under Section 4 shall be paid as soon as it falls due.

In cases where the employer does not accept the liability for compensation to the extent climbed, he shall be bound to make provisional payment based on the extent of liability which he accepts and such payments shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

Penalty : Where any employer is in default paying the compensation due under this Act within one month from the date it becomes due, the commissioner may direct that in addition to the amount of the arrears simple interest at the rate of 6 percent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding 50 percent of such amount shall be recovered from the employer by way of penalty.

Calculation of Wages (Sec. 5)

The expression 'Monthly Wages' under the Act means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates) and is calculated as follows:

(a) where a workman has during a continuous period of not less than 12 months immediately preceding the accident been in the service of the employer who is liable to pay compensation the monthly wages of the workman shall be 1/12th of the total wages which have fallen due for the payment to him by the employer in the last 12 months of that period.

(b) where the whole of the continuous period of service immediately preceding the accident during which the workmen was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wage of the workman shall be the average monthly amount which during 12 months immediately preceding the accident, was being earned by a workman so employed, or if there was no workman so employed, by a workman employed on similar work in the same locality.

(c) in other cases including cases in which it is not possible for want of necessary information to calculate the monthly wages under Clause (b) above the monthly wages shall be 30 times the total wages earned in respect of the list continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

A period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days ie. no period of the sense shall exceed 14 days.

Power to add to schedules : Sec. 3(3)

The State Government in the case of employment specified in part A and part B of Schedule, III, and the Central Government in the case of employment's specifies in part C of the Schedule, after giving by notification in the Official Gazette, not less than 3 month's notice of its intention so to do, may, by a like notification add any description of employment to the employments specified in Schedule III and shall be deemed for the purposes of this section to be occupational diseases peculiar those employment respectively. There upon the provisions relating to occupational disease shall apply as if diseases had been declared by this Act, to be occupational diseases peculiar to those employments.

Review of half monthly payment (Sec. 6)

Any half monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the commissioner, or the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner; or on an application made with out such certificate subject to rules made under this Act that there has been a change in the condition of the workman.

Under Rule 3 of the Workman's Compensation Rules, an application for review can be made without a medical certificate in the following cases :

a) by the employer, on the ground that since the right to compensation was determined, the workman's wages have increased.

b) by the workman, on the ground that since the right to compensation was determined his wages have diminished;

c) by the workman, on the ground that employer having commenced to pay compensation, has ceased to pay the same, not withstanding the fact that there has been no change in the workman's condition such as to warrant such cessation;

d) either by the employer or by the workman, on the ground that the determination of the rate of compensation for the time being in force was obtained by fraud or undue influence or other improper means;

e) either by the employer or by the workman on the ground that in the determination of compensation there is a mistake or error apparent on the face of the record.

Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lumpsum to which the workman is entitled less any amount he has already recovered by way or half monthly payments.

Commutation of half-monthly payments (Sec.7)

Any right to receive half-monthly payments may, by agreement between the parties, or if the parties cannot agree and the payments have been continued for not less than 6 months, on the application of either party to the commissioner be redeemed by the payment of a lumpsum of such amount as may be agreed to by the parties or determined by the Commissioner as the case may be.

When such an application for communication of half-monthly payments is made to the Commissioner, he shall estimate the probable duration of the disablement and shall determine the lumpsum payable on the basis of half-monthly payments which will have to be paid during the estimated period. (Rule 5 of the Workmen's Compensation Rules).

Distribution of Compensation (Sec. 8)

Compensation payable in respect of a workman whose injury has resulted in death, and compensation payable as a lump sum to a woman or a person under a legal disability, shall be made by depositing with the Commissioner. No such compensation shall be paid to a workman or a person under a legal disability directed by an employer to the workman. Any such payment made directly by an employer shall not be deemed to be a payment of compensation.

However, in case of deceased workmen, an employer may make to any dependent advances on account or compensation not exceeding an aggregate of Rs. 100/- so much of such aggregate as does not exceed the compensation payable to that dependent shall be deducted by the commissioner from such compensation and repaid to the employer. Any other sum amounting to not less than Rs. 10/- which is payable as person entitled thereto. The receipt of the commissioner shall be sufficient discharge in respect of any compensation deposited with him.

Disbursements by Commissioner in case of a deceased workman.

On the deposit of nay money as compensation in respect of a deceased workman, the commissioner shall deduct there from the actual cost of the workman's funeral expenses, to an amount not exceeding Rs. 50/- any pay the same to the person by whom such expenses were incurred.

The commissioner shall, if he thinks necessary, cause notice to be published or to served on each dependent in such manner as he thinks fit calling upon the dependents to appear before him on such date as he may fix for determining the distribution of the compensation. If the commissioner is satisfied after any inquiry which he may deem necessary, that no dependent exists, he shall repay the balance of the money to the employer by whom it was paid. The commissioner shall, on application by the employer furnish a statement showing in detail all disbursements made.

Compensation deposited in respect of a deceased workman shall, subject to any deduction made as stated above, be apportioned among the dependants of the deceased workmen or any of them in such proportion as the commissioner thinks fit, or may, in the commissioner, be allotted to any one dependant.

Where any compensation deposited with the commissioner is payable to any person, the commissioner shall pay the money to the person entitled thereto except in the cases where the compensation is payable to woman or a person under a legal disability.

Disbursement by commissioner in case of compensation payable to a woman or person under a legal disability :

Where any lump sum deposited with the commissioner is payable to a woman or a person under a legal disability such sum may be invested, applied or otherwise death with for the benefit of the woman or of such person during his disability, in such manner as the commissioner may direct.

Where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on the application made to him in this behalf, order that the payment be made during the disability to any dependent of the workman or to any other person, whom the Commissioner thinks best fitted to provide for the welfare of the workman.

Variation of the Order

Where on an application made to the Commissioner in this behalf or otherwise, the Commissioner is satisfied that on account of neglect of children on the part of parent or on

account of the variation of the circumstances of any dependent or for any other sufficient cause, an order to the Commissioner as to the distribution of any sum paid as compensation or as to the commissioner may make such orders for the valuation of the former order as he things just in the circumstances of the case.

However, no such order prejudicial to any person shall be made unless such persons has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

Where the Commissioners varies any order by reason of the fact that payment of compensation to any person has been obtained by fraud, impersonation or other improper means, and amount so paid to or on behalf of such person may be recovery as an arrear of land revenue.

Compensation not to be assigned, attached or charged (Sec.9)

No lumpsum or half monthly payment payable under this Act shall in any way be capable of being assigned or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Claim for compensation : (Sec. 10(1)

Claim for compensation shall be entertained by a commissioner only when

(i) notice of the accident has been given in the manner provided as soon as practicable after the happening thereof, and

(ii) the claim preferred before him within 2 years of the occurrence of the accident; or

(iii) in case of death, with 2 years from the date of death.

A claim application for compensation under the Act signed by a non-dependent major son instead of the widow of the deceased as required is only a procedural defect which would not affect the validity of the claims (Bhagwanji Murubhai Sodha and others Vs. Hindustan Tiles and Cement Industries 50 FJR -19/7-97).

A commissioner has incidental power to allow an amendment of the original claim petition filed under section 10 of the Act within the period of limitation (Kanwaljit Singh Vs. Khuranna Shuttle Manufacturing Co. 53 FJR- 1978-11)

Computation of the Period

In case where the accident is due to the contracting of a disease, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease.

In case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of 2 years shall be counted from the day workman give notice of the disablement to his employer.

If a workman who having been employed in an employment for a continuous period, ceases to be so employed and develops symptoms of an occupation disease peculiar to that employment within 2 years of the cessation of employment, accident shall be deemed to have occurred on the day on which the symptoms were first detected.

However, the Commissioner may entertain and decide any claim to compensation in any case, though the notice has not been given or the claim has not been preferred in due time as stated above, if he is satisfied that the failure so to give the notice or prefer the claim as the case may be was due to sufficient cause Obligations and Responsibility of Employer.

i) To submit statement of fatal accidents (Section 10A)

a) Where a commissioner receives information form any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, with in the prescribed form giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

b) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

c) If the employer is of opinion that he is liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

d) Where the employer has to disclaimed liability, the commissioner, after such inquiry as he may inform any of the dependents of the dependents of the deceased workmen, that it is open to the dependents to prefer a claim for compensation and may give them further information as he may think fit.

ii) To submit report of fatal accident and serious bodily injuries (Sec. 10 B)

a) Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring in his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury.

"Serious bodily injury" means an injury which involves or in all probability will involve, permanent loss of the use of permanent injury to, any limb, or the permanent loss if or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days (Expl to Section 10 B(1).

b) The state Government may, by notification in the Official Gazette, extent the provisions of Sub Section (1) to any class of premises other than those coming within the scope of the sub section, any may, by such notification specify the persons who shall send the report to the Commissioner.

c) Nothing in this section shall apply to the factories to which the Employees State Insurance Act, 1948 (34 of 1948) apply. Notice and Claim (Section 10).

(a) No claim for compensation shall be entertained by a Commissioner unless the notice of the accident has been given in the manner hereinafter provided as soon as practical after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the occurrence of the accident or, in case of death, within two Provided that

(i) Where the accident is the contracting of a disease the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease;

(ii) in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman gives notice of the disablement to his employer.

(iii) if a workman who, having been employed in an employment for a continuous period specified under Section 3(2) in respect of that employment ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day not which the symptoms were first detected.

(iv) the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim.

(a) if the claim is preferred in respect of the death of a work man resulting from an accident which occurred in the premises of the employer, or at any place where the workman at the time of the accident was working under the control or of any person employed by him and the workman died on such premises, or at such place, or any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurs, or

(b) if the employer or any one of several employers or any persons responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed had knowledge of the accident from any other source at or about the time when it occurred.

(v) the Commissioner may entertain and decide any claim to compensation in any case not withstanding that the notice has not been given, the or claim, has not been preferred in this subsection, if he is satisfied that the failure to give the notice or prefer the claim, as the case may be, was due to sufficient cause. Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date in on which the accident happened and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for he management of any branch of the trade or business in which the injured workman was employed.

The State Government may required that any prescribed class of employers shall maintain their premises as which workmen are employed a notice-book in the prescribed from, which shall be readily accessible at all reasonable times to any injured workman employed ion the premises and to any person acting bonafied on his behalf.

A notice under this section may be served by delivering it at, or sending it by registered post addressed to the residence, or any office or place of business of the person on whom it is to be served or, where a notice book is maintained by entry in the notice book.

Medical Examination

A workman who is injured and has given notice of accident to the employer is to submit himself or medical examination if offered by employer. Any such offer made by the employer must be free of charge and is to be made within 3 days from the date of receipt of notice of accident. The purpose of medical examination is to prevent a dishonest worker having an opportunity of cancelling the nature of injury from any impartial observer. But the certificate or evidence given by the employer's doctor cannot, however, be considered conclusive. In respect of such medical examination, Government has framed rules and the employer has to observe those rules and cannot go beyond those rules. The rules lay down that if the injured workmen is present on premises, the workman must immediately submit himself to such examination. In other case the employer has to send the medical practitioner to the place where the workmen is residing for the time being and the workman has to submit to a medical examination when required by the medical practitioner. The employer may also inform the workman in writing that the medical examination would take place in the vicinity as specified in the intimation. In the cases the workman must submit himself for examination at the time and place specified in he intimation. In cases where the condition of the injured workman is such as to make it impossible or inadvisable for the workman to leave the place where he is,

he has to be examined at the place of his residence. Similarly a workman who is securing monthly payments may be required to submit to medical examination. In his case medical examination has to be held at the place where he is residing. He can be examined twice in the first month following the accident and once in any subsequent month. The Commissioner may also require an injured workman to submit to medical examination.

Provision for examination Females

A female can be examined by a medical practitioner only in the presence of some other women unless the female worker consents otherwise. A female worker can insist on being examined by a female medical practitioner but in that case the female worker will have on deposit a sum sufficient to cover the expenses of an Examination by a female practitioner.

Consequences of non-submission to medical examination

If a workman refused to submit himself to medical examination or in any way obstructs such examination, his right to compensation is suspended during the period of such refusal or obstruction. In the case of refusal, however, this result will not follow if the workman, establishes that he was prevented from submitting himself to medical examination on account of sufficient cause. The right of a workman to receive compensation is also suspended if the workman, who has been asked by his employer to submit to medical examination within 3 days from the receipt of notice of accident voluntarily leaves the place without having been so examined. In such case the suspension, shall continue till the workman concerned returns and submits to medical examination. Such medical examination has to take place within 72 hours after the workman has offered himself for examination.

Moreover, in cases where a workman's right to compensation is suspended the employer will not liable to pay compensation for the period during which the suspension continued. If the period of suspension commences before the expiry of waiting period of 3 days, the waiting period will be increased by the period during which the suspension continued.

If the workman, whose right to compensation is suspended dies without submitting to medical examination, the Commissioner has been given the discretion to direct payment of compensation to the dependents of deceases workmen in fit cases.

The aggravation of any injury suffered by a workman is not to be taken into consideration in the assessment of compensation in the following cases :

i) where an injured workman has refused to be attended by a qualified medical practitioner whose service have been offered to him by the employer free of charge; or

ii) Where the injured workman has deliberately disregarded the instructions given by the qualified medical practitioner.

Provided it is proved hat such refusal, disregard of failure a unreasonable under the circumstances of the case.

In such case compensation would be paid fork injury caused by accident of the original stage and any aggravation would be ignored.

Preference : (Sec. 19)

If any of the following question arises in any proceedings under this Act, then in default of agreement, it shall be settled by a Commissioner.

i) liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman); or

ii) as to the amount or duration of compensation including any question, as to the nature or extend of disablement).

No Civil Court shall have jurisdiction to settle, decide or dealt with any question, or enforce any liability incurred, which is required to be settled, decided, or dealt with by the Commissioner.

In Pratap Narayan Singh, Deo Vs. Srinivas Satata (1969-48-FIR-396), it was held that it cannot be contended that compensation does not fall due until it was settled by the Commissioner and that therefore on penalty can be levied for non-payment of the compensation before such settlement.

Venue of proceedings (Sec. 21)

Where any matter under this Act is to by or before a Commissioner, the same subject to the provision of this Act and to any rules made thereunder, be done by or before a Commissioner for the area in which the accident took place, which resulted in the injury.

In case, where the workman is a master of a ship or a seaman, any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship resides or carries on business.

Appointment, Powers and Duties of the Commissioner

Appointment: Commissioners has been defined under sub-clause (B) of sub-section (1) of section 2 of the At as a Commissioner for workmen's Compensation appointed under Section 20.

The State Government may, by notification in the Official Gazette, appoint any person to be the Commissioner for Workmen's compensation for such area as may be specified in

the notification. Where more that one Commissioner has been appointed any area the State Governments may be general or special order, regulate the distribution of business between them.

Any Commissioner may for the purpose of deciding any matter referred to him for decision under this Act; chose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry. Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Powers and Duties : The Act gives wide powers to the Commissioner under the Act. The following powers may be noted :

1) Distribution of compensation.

2) Power to required from employers statement regarding fatal accidents (Sec. 10A)

3) Power of Settlement of dispute (Sec.19(1)

4) Power of transfer (Sec.21(2)

5) Power of Commissioner to require further deposit in cases of fatal accident (Sec. 22A)

6) Powers of Civil Court (Sec.23). The Commissioner shall have all the powers of a Civil Court under the Code of Civil procedure 1908, for the purpose of

   i) taking evidence on oath;

   ii) enforcing the attendance of witnesses; and

   iii) enforcing he production of documents and material objects.

The Commissioner shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXXV of the code of Criminal procedure, 1898.

7) Power to order costs (Sec. 26)

8) Power to submit cases (Sec.27)

9) Power to with hold certain payment pending decision of an appeal; (sec. 30A)

10) Power of recovery; (Sec. 31)

11) Duty to record evidence (Sec 25)

Transfer of proceedings : (Sec. 21)

It was observed above that one of the powers of the Commissioner is to transfer the proceedings. As stated, if the Commissioner is satisfied that any matter arising out of any

proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules under this Act or such matter to be transferred to such other Commissioner either for report or for disposal the Commissioner shall also transmit in the prescribed manner any ;money remaining in his hands or invest by him for the benefit of any party to the proceedings, has appeared before him, make any order of transfer relating to the distribution among dependents of a lumpsum without giving such party an opportunity of being heard.

Further, no matter other than a meter relating to the actual payment to a workman or the distribution among dependants of a lumpsum shall be transferred for disposal to a Commissioner in the same state without the previous sanction of the State Government or to a Commissioner in another State without the previous sanction of the State Government of that State, all the parties to the proceedings agree to the transfer.

The Commissioner to whom any matter is so transferred shall subject to rules made under this Act, inquire there to and if the matter was transferred for report, return his report there on or, if the matter was transferred for disposal continue the proceedings a if they had originally commenced before him.

On receipt of a report from a Commissioner to whom any matter has been transferred for report, the Commissioner by whom it was referred shall decide the matter in conformity with such report. The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

Appearance of Parties : (Sec. 24)

Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purposes of his examination as a witness, may be made or done on behalf of such person by)

i) a legal practitioner; or

ii) by an official of an Insurance Company or registered Trade Union; or

iii) by an Inspector appointed under sub section (1) of section 8 of the Factories Act, 1948, or under sub-section (1) of Section 5 of the Mines Act, 1952; or

iv) by any other officer specified by the State Government in this behalf, authorised in writing by such person; or

v) with the permission of the Commissioner by any other person so authorised.

It should be noted that none of the above persons shall be authorised to appear on behalf of any person, where an appearance of a party is required in person, for the purpose of his examination as a witness.

Appeal : (Sec. 20)

An Appeal shall lie to the High Court. It shall be lie from the following orders of the Commissioner namely;

i) an order awarding compensation of lumpsum whether by way of redemption of a half monthly payment or other wise or disallowing a claim full or in part for a lumpsum;

ii) an order awarding interest or penalty under Sec. 4A.

iii) an order refusing to allow redemption of a half- month payment;

iv) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent.

v) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 12;

vi) an order refusing to register a memorandum of agreement or providing for the registration of the same subject to the conditions.

An appeal would lie against any of the above orders only if it involves a substantial question of law, Once the condition that the appeal much involve a substantial question of law was satisfied, the High Court was entitled to consider the whole case and for that purpose to review the evidence on record and to decide question of fact (Central Glass Industry Ltd., Vs. Abdul - Hossain - ILR 1958(Cal.12).

In Bai Chandan and others Vs. Godhra Borough Municipality (46-FJR-1974-164) it was held that the, decision of the Commissioner under the Act though styled by the Act as an award is indeed a judgement not in any way different from the judgement of a Civil Court. In chatiya Devi Gowalin and another Vs. Rub. Lal and another (33-FJA-1978-272) it was held that there is nothing in Clause (a) of sub section (1) of Section 30 (Clause (i) above, of the Act to restrict its application only to the employer and under appropriate circumstances, even an employee or his heirs, if aggrieved with the order awarding compensation, can legitimately come up on appeal. On death of a workman in course of employment while performing his duties when compensation was awarded by the Commissioner and appeal was preferred in High Court, death of the respondent does not debar the dependants of the deceased workman to claim compensation money (Manager Sericulture Fisheries Vs. Mansaram and others - 1976 LAB I.C. 957. Moreover the Act provides an appeal against an order disallowing a claim in full or in part for a lumpsum.

Circumstances in which no appeal shall lie; No Appeal shall lie

a) against any order, unless a substantial question of law is involved in the appeal.

b) in the cause of any order other than;

   i) an order refusing to allow redemption of a half monthly payment; or

   ii) where the amount in dispute in the appeal is less than Rs. 300/-

c) in any case in which the parties have agreed to abide by the decision of the Commissioner; or in which the order of the Commissioner gives effect to an agreement reached to by the parties;

d) no appeal by an employer against an order awarding a compensation a lumpsum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lumpsum; shall lie unless the memorandum of appeal is accompanied by a certificate by the commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against;

In Ramnivas Khandelwal and another Vs. Mt. Mariam (AIR-1951- Patna- 260) patna High Court has held that such a certificate was no doubt a material document which the law enjoins to be filed in order that the appeal may be entertained, but it was doubtful whether merely because of the non-production of the certificate within the period of limitation the appeal would be barred.

e) no appeal shall lie after the period of limitation for an appeal, ie. after the period of 60 days.

The provision of Section 5 of the Indian Limitations Act, 1908, shall be applicable to appeals under this section.

Power of the State Government to make rules (Sec.32&34)

The State Government may make rules to carry out the purpose of this Act. The power to make rules conferred by Section 32 shall be subject to the condition of the rules being made after previous publication.

The date of specified inaccordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 32 will be taken into consideration, shall not be less than 3 months from the date of which the draft of the purposed rules was published for general information rules so made shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act.

Transfer of money paid as compensation to her country (sec.35)

The Central Government may, by notification in the official gazette, make rules for the transfer to any party of His Majesty's Domintons or to any other country, or money deposited with a Commissioner under the Act which has been awarded to or may be due to, any person residing or about to reside in such part of country, and, for the receipt distribution land administration in and State of any money deposited under the law relating to workmen's compensation in any part of His Majesty's compensation in any part of His Majesty's domintons or any other country which has been awarded to or may be due to any person residing or about to respect in any State. However, on sum deposited under this Act in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders determining it distribution and appointment.

Where money deposited with a Commissioner has been so transferred in accordance with rules made under this section, the provisions regarding distribution of the money by the Commissioner deposited with him shall cease to apply in respect of any such money.

Rules made Central Government to be laid before Parliament (sec. 36)

Every rule made under this Act by the Central Government shall be laid no sooner it is made before each House of parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions, before the expiry of the session immediately following the session or the successive session aforesaid, both House agree in making any modification in the rule or both House agree in Making any modification in the rule or both House agree that the rule should not be made shall thereafter have effect only in such modified form or be of on effect, as the case may be. Any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Suggested Questions

1) Explain how the Workmen's Compensation Act has advanced the cause of social security in India.

2) Explain the minimum conditions necessary for claiming compensation in cases of industrial injuries under the Workmen's Compensation Act.

3) How the theory of Notional extension of time and place of employment enlarged the scope of compensation under the Worksmen's compensation Act?

4) Enumerate the provisions of the Workmen's Compensation Act relating to distribution of compensation?

Unit - 12

THE EMPLOYEES STATE INSURANCE ACT, 1948

Object and Scope

The Employees State Insurance Act is a Social Security and Welfare Legislation. This Act provides for certain benefits to employees in case of sickness, maternity and employment injury and to make Provision for certain other matters in relation thereto. The Act extends to the whole of India. The Central Govt is empowered to enforce the different provisions of the Act in different states or parts thereof, on such different dates as may be notified by it (Sec.1(3). The Act initially was applicable to factories (exclusing seasonal factories, mines, Railway Running Sheds) with 20 or more employees and using power in the manufacturing process. The act is now extended to the following establishments.

1) Small Power Factories with 10 or more persons employed for wages on any day of the preceding 12 months.

2) Non-Power Factories with 20 or more persons employed for wages on any day of the preceding12 months.

3) Hotels and Restaurant wherein 20 or more persons are employed on any day of the preceding 12 months.

4) Shops wherein 20 or more persons employed for wage on any day of the preceding 12 months.

5) Cinemas including theatre

6) Motor Transport undertakings

7) News Paper establishments as defined under Section 2(d) of Working Journalist (Conditions of Service) and miscellaneous Provisions Act 1955.

In Tamilnadu, the extension of the scheme to this new Sectors has been effected from 16.01.1977 in Madras city and its suburbs. Coimbatore City and its suburbs and Madurai City and its Suburbs in the first instance. The appropriate Government may extend the provisions of the Act to any other establishment or class of establishments, Industrial cum Agricultural or otherwise. This can be done in consultation with ESI corporation by the appropriate government and where appropriate government is a State Govt. with the approval of the Central government after giving 6 months notice of its intention of so doing by notification in the Official Gazettes (Section 1(5)).

The Constitutional Validity of Sec. 1(3) was challenged in number of cases. The Supreme Court in Basant Kumar sarkar and others Vs. Eagle Rolling Mills Limited and others (1964,

2LLI 105) held that the Section is an illustrative of conditional legislation and not one of delegated legislation and the Legislature leaves it to the government concerned to decide when, how in what manner the scheme of socio-economic welfare evolved by the Legislature in the Act should be introduced and that could not amount to excessive legislation. The Provisions of the Section 1(3) neither violate Article 84 of the Constitution nor do they constitute excessive legislation. (K.C. Verma Vs. Employees State Insurance Corporation) AIR 1962 Assam 120)

Section 3(1) authorises the Central Government to establish a Corporation for the Administration of the Scheme of the employees State Insurance by notification. When the notification should be issued and in respect of what factories it should be issued, have been left to the discretion of the Central Government and that is precisely what is usually done by conditional legislation. It is obvious that a scheme of this kind though very beneficial would not be introduced in the whole of the country all at once. Such beneficial measures which need careful experimentation for some times to be adopted by stages and in different phases and so inevitable the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Govt. Hence, the Courts held that there is no excessive delegation.

Important Definitions

1) Benefit Period -Section 2(2)

Benefit period means such period being not exceeding 6 consecutive months corresponding to the contribution period as may be specified in the regulations provided that in the case of first benefit period of longer period may be specified by or under the regulations.

2) Confinement means labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of a child whether alive or dead. (Sec 2(3).

3) Contribution Period Section 2(5) - It refers to such period being not exceeding 6 consecutive months as may be specified in the regulation provided that in the case of first contribution period a longer period may be specified by under the regulations.

4) Dependant (Section 2(6A) means any of the following relatives of a deceased insured person.

   (i) A widow, a minor legitimate or adopted son and unmarried legitimate or adopted daughter or a widowed mother.

   (ii) If wholly dependant on the earnings of the insured persons at the time of his death a legitimate or adopted son or daughter who has attained the age of 18 years and who is infirm.

   (iii) If wholly or in part dependant on the earnings of the insured 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 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 is alive.

5) **Employment Injury :** (Section 2(8) 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 occupational disease is contracted within or outside the territorial limits of India.

The phrase 'in the course of employment' does not exclude a happening which takes places outside both in time and place. The definition of employment injury is in this respect in parimateria with the corresponding provision in the Workmen's Compensation Act 1923. (Indian Rare Earths Ltd. Vs. Subida Beevi (1981-2LLJ-293). Injury need not be confined to visible injury in the shape of some wound or as otherwise it would be inconsistent with the purpose of the Act. Hence, it is well settled that employment injury need not necessarily be confined to any injury sustained by person within the premises of the concern where a person works. Whether in a particular case the theory of notional extension of employment would take in the time and place of accident so as to bring it with an employment injury will have to depend on the assessment of several factors. There should be a nexus between the circumstance of the Accident and the employment. No case could be the authority for another since there would necessarily be some difference between the two cases (E.S.I.C. Vs. Francis Decosta) 1973 2LLJ 494. It is sufficient of its is proved that the injury of the employee was caused by the Accident arising on to and in the course of employment, no matter when and where it occurred. There is not even a geographical limitation. In E.I.S.C. Indore Vs. Babulal 1982 LIC 468 - M.P. High Court observed that where a workmen attending duty in spite of threats by persons giving call for strike and assaulted by them while returning after duty was overhead that injury was one arising out of his employment. A worker was injured while knocking the belt off the moving pulley though the injury caused was due to his negligence, yet such an injury amount to an employment injury. (Jayanthi Lal Dhanji & Co. E.S.I.C. AIR 1963 A 210)

6. Employee means any person employed for wages 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 or incidental or preliminary to or connected with the work of factory or establishment where such a work is done be employee in the factory or establishment or elsewhere; or

(ii) who is employed by or thro' an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer of his agent or 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 let or lent 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 at any work connected with the administration of any factory or establishment or any part, department or branch thereof or with the purchase of raw materials for or he distribution or sale of the products, of a factory or establishment, but does not include any member of the Indian Navy Military or Air Force or any person so employed whose wages excluding remuneration for over time work exceed Rs. 1600/- a month.

Provided that an employee whose wages (excluding remuneration for overtime work) exceeds Rs. 1600/- per month 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. Initially until 1968, the workers with monthly wages not exceeding Rs. 400/- were covered in the Act. But it is 500 till 1968 thereafter the limit was raised upto Rs. 1000/- in 1975. From 1984 the limit has been raised to Rs. 1600/-. From 1st April 2004 onwards the wage ceiling for coverage under the Employers' State Insurance Scheme has been enhanced to Rs.7500/- p.m.

In the case of Royal Talkies, Hyderabad Vs. E.S.I.C. Hyderabad (AIR 1978 SC 1476) From Ist April 2004 onwards the wage ceiling for coverage under the Employer' SKK Insurance schemes has been enhanced to Rs. 7500/-p.m. there was a Canteen and Cycle stand run be the Private Contractors in the theatre premises. On the question of whether the theatre owner will be liable as principal employer for he payment of E.S.I contribution, the Supreme Court held that all operations namely keeping the cycle stand and running the canteen are incidental or adjuncts to the primary purposes of the theatre and the workers engaged are covered by the definition of employee Sec. 2(9) contains two substantive parts. Unless a person employed qualifies under both, he is not an employee. First he must be employed in or in connection with work of the establishment. The Expression 'in connection with the work' of the establishment ropes in a wide variety of workmen who may not be employed in the establishment buy may be engaged only in connection the work of establishment. Some nexus must exist between the establishment and the work which is ancillary, incidental or has relevance to or link with the object of the establishment. He must not only be employed in connection with the work of the establishment but also be shown to be employed in one or

the other of the three categories mentioned in Section 2(9). The language use in Sec. 2(9) (ii) is extensive and diffusive imaginatively embracing all possible alternatives of employment by or through an independent employer. The word ' employee' word include not only person employed in a factory but also persons connected with the work of he factory. It is not possible to accept the restricted interpretation of the words 'employees an factories'. The persons employed in the Zonal Offices and Branch Offices of a factory and concerned with the administrative work or the work of canvassing sale would be covered by the provisions of the At E.S.I.C AIR 1978 SC 356). On the question of whether an Apprentice is an (employee and covered under E.S.I. Act, it was held that there is no element of) employment in the case of apprentices as defined under Sec. 2 (aa) of the Apprentice Act. Where the legislature intends to include the Apprentice in the definition it has expressly done so as in the case of Industrial Dispute Act. In E.S.I. Act there is no scope for holding that the Apprentices are employed in the work of the Company in connection with it for wages within the scope of Section 2 (9) (E.S.I.C. Vs. Tata Engineering and Locomotive Company - AIR 1976 SC 66)

Even if the factory canteen workmen are employed by an independent contractor, they will be employees as they are working on the premises of the Factory.

7) **Exexmpted Employee - Sec. 2(10) -** Exempted employees means an employee who is not eligible under this Act to pay the employees contribution.

8) **Principal Employer - Sec 2 (17) -** Means the following

a. In a factory the owner or occupier of the Factory and includes managing Agent or such owner or occupier, the local representative of the deceased owner or occupier and where a person has been named as the Manager of the Factory, under the Factories Act 1948, the person so named.

b. In any establishment under the control of any Department of any Govt. in India the authority appointed by such Govt. in this behalf or where no authority is so appointed the Head of the Department.

c. In any other establishment any person responsible in the supervision and control of the Establishment.

The expression is wide enough to include the director a Principal employer within the meaning of the Section. If the Managing Agent and the Manager have been appointed, then all of them will simultaneously be the principal employer within the meaning of the Section. In B M. Lakshmana Murthy Vs. E.S.I.C. 1974-4 SCC 365 the Supreme Court held that where in any two separate but adjoining factories, raw material is used in one factory and finished goods prepared in the other factory the former is the immediate employer and the latter is the principal Employer.

9. **Wages (Sec. 2(22))** - means all remuneration paid or payable in cash to an employee after the terms of the contract of an emnployment expressed or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock out, strike which its 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 under this Act.

b. Any travelling allowance or the value of any travelling Concession.

c. Any sum paid to the person employed to defray special expenses entitled on him by the nature of his employment.

d. Any gratuity payable on discharge.

It was held in Mahalakshmi Glass Works Pvt. Ltd. Vs. E.S.I.C. 1976 Lab. IC 514 payment of incentive Bonus though not in the original terms of Contact of Employment but it amounts to wages in the second part of Sec.2 (22) which deals with additional remuneration. Payment of incentive bonus paid every month is a wage in so far as it is remuneration the employer has undertaken to pay under the term of contract of employment. The language Section 2(22) is wide enough to include remuneration for overtime work. (Birla Cotton Spinning & Weaving Mills's case 1977 (2) LLJ 420). However in Hindustan Motor's case (1979 LIC 852) it has held that over time wages will not form part of wages since over time work cannot be claimed as a matter of right. The subsistence allowance during the suspension period is not included as wages (E.S.C.I. Vs. Management of Kirloskar Systems Ltd. 1985 - 1 LLJ 173). The lay off compensation paid to an employee under section 25C of industrial Dispute Act was not wages but now this section has been amended to include lay off compensation. Any additional remuneration which is paid not on account of the fulfillment of the terms of contract of employment is not wages. It is well established that there would be any estoppel on a question of law or against a statute. As to whether the particular payment is embraced within the term wages as defined Sec. 2(22) of the Act or not is a matter of Statutory Interpretation. There may be cases where it is not free from ambiguity to interfere the exact nature of payment (ESIC Corpn Vs. Bata Shoe Company 1976 LIC Page 12).

Registration of Factories & establishment (2A)

Every factory or establishment to which, this act applies shall be registered within such time and in such a manner as may be specified in the regulations made in this behalf.

Administrative Set up

The Employees State Insurance Scheme is administered by a body corporate namely the Employees State Insurance Corporation (ESIC) which has members representing

Employees, Employers, Central Govt and State Govt, Medical Profession and the Parliament. The Director General is the Chief Executive Officer of the Corporation and is also the Ex-Officio Member of the Corporation. The other wings of the corporation are the standing committee and the medical Benefit council. At the Regional and Local Levels, Rational Boards and Local Committees have been constituted. Thus there is an Association of interest concerned at all levels. The Corpn is the Trustee of the interest of insured persons. It discharges it obligations and duties through a network of regional Offices and local offices spread over in the entire country.

In terms of Sec. 4 of the Act the Corporation shall consist of the following members namely :

a) Chairman to be nominated by the Central Govt.

b) Vice Chairman to be nominated by the Central Government.

c) Not more than 5 persons to be nominated by the Central Govt.

d) One person each representing each of the State in which this act is in force to be nominated by the State Govt concerned.

e) One person to be nominated by the Central Govt to represent the Union territories.

f) 5 persons representing employers to be nominated by the Central Govt. in consultation with such organisations of employers.

g) 5 persons representing employees to be nominated by the Central Govt in consultation with such organisations of employees.

h) 2 persons representing the Medical profession to be nominated by the Central Govt in consultation with such organisation of medical practitioners.

i) 3 members of parliament of whom 2 shall be members of the house of people and I shall be a member of the Council of the States.

j) The Director General of the Corporation Ex-Officio.

Term of office

Term of Office of members of referred in clause A,B,C,D and E above shall be such as may be decided by Govt nominating them as members. Whereas for the rest of the members excepting the Ex-Officio member, the term of Office shall be for 4 years, commencing from the date on which their nomination or election are notified, provided that a member of the Corporation shall, notwithstanding the expiry of the term of 4 years continue to hold the office until nomination or election of his successor is notified.

Powers and Duties of the Corporation

Section 19 empowers the Corporation, in addition to the scheme of Benefits specified under this Act, to promote measures for the improvement of the health and welfare of the insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured any may incur in respect such measure expenditure from the funds of the Corporation within such limits as may be prescribed.

Section 29 empowers the Corporation.

a) To acquire and hold property both moveable and immoveable sell or otherwise transfer such property.

b) It can invest and reinvest and monies which are not immediately required for expenses and to realise such investments.

c) It can raise loans and discharge other loans with the previous sanction of the Central Govt.

d) It may constitute for the benefit of its staff or any call of them such provident Fund or other benefit Fund as it may think fit.

The Corporation may appoint Regional Boards, Local Committee and Regional and Local Benefit Councils in such areas and in such manner and delegate to them such powers and functions as may be provided by the regulations. Section 9 empowers the Corporation to make regulation for the administration of the affairs of the Corporation for carrying into effect the Provisions of this Act in respect of matters as specified under Sub-Section 2 thereof.

Duties

The Corporation has to administer the scheme of benefits provided in this Act. However the Act does not prescribe any clear-cut demarcation of duties, but the following duties are expressly prescribed.

The Corporation shall each year prepare budget and shall submit a copy of the budget for the approval of the Central Govt. The Corporation shall maintain correct accounts of Income and expenditure (Section 33). The accounts of the Corporation shall be audited (Sec. 34) and the Auditor's Report shall be forwarded to the Central Govt. The Corporation shall submit an Annual Report of its working and activities to the Central Govt. (Section 35). At Annual Report, the Audited Accounts of the Corporation together with Audited Report and the budget as finally adopted shall be placed before the Parliament and published in the gazette (section 36). The Corporation shall have valuation of its assets and liabilities at intervals of 5 years. Section 17 provides for the Corporation to employ such other staff or officers and servants as may be necessary for the efficient transaction of its business provided that the sanction of the Central Govt. shall be obtained for the creation of any posts, maximum salary of which exceeds Rs.2250/-.

Wings of the corporation

The Act provide for the constitution of the Standing Committee under Section 8. A member of the standing Committee shall hold Office during the pleasure of the Central Govt. whereas the other members shall hold office for a period of 2 years from the date of which their elections are notified. Section 10 empowers the Central Govt. to constitute a Medical Benefit Council Section 22 specifies the duties of the Councils follows :

a) To advise the Corporation and the Standing Committee on matters relating the administration of local benefits the certification for the purpose of grant of benefit and other connected matters.

b) To have such powers and duties of investigations as may be prescribed in relation to complain against medical practitioners in connection with medical treatment and Attendance, and is to perform such other duties in connection with medical treatment and attendance as my be specified in the regulations.

Section 21(1) of the Act provides that if in the opinion of the Central Govt, the Corporation or the standing Committee persistently makes default in performing the duties imposed on it by or under the Act or abuses its powers, that Govt may be notification supercede the Corporation and in the case of Standing Committee supercede in consultation with the Corporation the Standing Committee; Provided that before issuing any such notification under this Section, the central Govt shall give a reasonable opportunity to the Corporation or to be Standing Committee to show cause why kit should not be superceded and shall consider the explanation and objections if any. Further, in terms of Sub-section (3) when the Standing Committee has been superceded a new Standing Committee shall be immediately constituted in accordance with the Section 8. However, sub-section (4) provides that in the case of supersession of the Corporation the Central Government may nominate or cause to be nominated or elected new members of the Corporation any may constitute new Standing Committee. A report of the Action taken under this Section shall be placed before Parliament at the earliest opportunity.

c) Employees State Insurance Fund (Sec. 26)

The employees State Insurance Fund is mainly formed out of contributions made by the employees and employers and the share of expenses on medical care by the State Govt. which is 1/4th depending upon whether medical care is available to the families or not. The contribution payable are collected as pre first Schedule of the Act. The rate of is contribution related to average daily wage of an employee. The contributions are recknoned in terms of week which are grouped in several categories. The rate of employees contribution shall be equal to 2 1/4% of wages payable to an employee. The employers contribution shall be 5% of the wages payable to an employee. Section 26 of the Act Provides that all contributions

paid under this Act and all other monies 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 purpose of this Act. The Corporation may accept grants, gifts, donations from the Central or State Govts Local Authority or any individual or body whether incorporated or not for all or any of the purposes of the Act. A Bank account in the name of employees State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government such accounts shall be operated by such officers who are authorised by the Standing Committee with the approval of the Corporation.

Purposes for which the Funds may be expended

Section 28 provides that funds shall be expended only for the following purposes :

i) Payment of benefits and provisions of medical treatment and attendance to insured persons and where the medical benefit is extended 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 Officers and other Services set up for the purposes 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,

v) payment of contributions to any State Government, local authority or any private body or individuals, 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 the auditing the accounts of the Corporation and of he valuation of its assets and liabilities;

vii) defraying the cost (including all expenses) of the Employees Insurance Courts set up under this Act;

viii) payments 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 degree, 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 and 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 Govt.

Principal Employer to pay contribution

Section 40 of the Act provides that the Principal employer shall pay in respect of every employee whether directly employed by him or through the immediate employer, both the employers contribution and employees contribution. However, he can recover from the employee not being an exempted employee the employees' contribution and not his own, by deduction from his wages and not otherwise. The principal employer shall bear the expenses of remitting the contribution to the Corporation. Section 42 provides that no employees' contribution shall be payable by or on behalf of the employee whose average daily wages during a wage period are below Rs. 50/-.

Method of Payment of Contribution

Section 43 provides for the Corporation to make the regulations for payment and collection of contribution payable under this Act.

Registration, Contribution and allied provisions

In entry into employment in a covered factory or establishment every employee is required to fill in a declaration Form. He is then allotted a Registration number called Insurance Number which distinguishes and identifies him for the purpose of the scheme. A person is registered once and once only open his entry into Insurance Employment. On registration he is provided initially with a temporary identification Certificate issued ordinarily for a period of 13 weeks which may be extended if necessary for a further period of 13 weeks. Within this

period of insured person is given a permanent identity card in exchange for the certificate. The identity card serves as the means of identifications at the dispensary and also at local offices while claiming medical and cash benefits respectively. If identity card is lost before it serves its normal life, a duplicate card is issued on payment as prescribed. Besides, the duty of the employer to pay contribution in the first instance under Section 40 and 42. Section 44 provides that every employer shall submit to the Corporation or its Office, such returns such forms contain in such particulars relating to persons employed and shall maintain such registers and records.

Inspectors, their function and duties

Section 45 provides that the Corporation may appoint such persons as inspectors as they think fit for the purpose of the Act.(11) Determination of contributions in certain cases - (Sec.45A)

The Corporation may on the basis of information available to it, by order, determine the amount of contribution payable in respect of employees of a factory or establishment where no written particulars registers or records are submitted, furnished or maintained in accordance with provisions of Section 44, or where an Inspector or other Officials of the Corporation is obstructed by the Principal or immediate employer or any person in exercising his function and discharging his duties. However, there should be physical obstruction and not mote failure to submit information or records. This Section (45-A) applies to the special kind of cases which constitute a class by itself. Even though there is a separate chapter (Chapter VI) dealing with disputes between parties (Section 74 to 83), this is fundamental right guaranteed in Article 14 of the Constitution, (BMK Industries Vs. ESI 55 FJR 90) what sub-section 1 of Sect. 45A contemplates is the total omission to submit a return and not a case the returns submitted does not include persons about whose nature of employment there is a dispute.

Before a final order is made by the Corporation under Sect. 45A(2) it is essential that the person to suffer the claim has to be notified and given another opportunity to explain whether the quantum of determination as made by the Corporation is justified or not. The Order passed under section 45A is a quasi judicial work which will impinge upon the rights of the parties. That being so, the principles of natural justice have to be adhered to. When there is a period of limitation to bar an ordered under sec. 45A can be recovered as Revenue Recovery.

The Act provides for the following types of benefits

1) Sickness Benefit

2) Maternity Benefit

3) Disablement Benefit

4) Dependence Benefit

5) Medical Benefit

6) Funeral Benefit

1) Sickness Benefit

Sickness Benefit will include periodical payment to any insured person in case of his sickness. Certified by a duly appointed Medical Practitioner or any person possessing prescribed qualification. (Section 46(1) (I). The operation of Sickness Benefit is upto a maximum period of 56 days which now extended to 91 days with 2 waiting days in a period of any 2 consecutive benefit period which is roughly one year. For entitlement of Sickness Benefit sickness should be occurred during benefit period and contribution in respect of him were payable for not less than half the number of days of the corresponding contribution period. Daily standard benefits are provided in the table which ranges from Rs.2.50 to Rs.20 per day depending upon the average daily wages of that person. For long term diseases such as TB, Leprosy, mental and malignant diseases etc. which are listed as 22 in number extended benefits are given. Quantum of sickness benefit to the extended sickness benefit is payable initially for a period of 124 days with a provision to be extended upto 309 days at a rate which is 25 % higher than standard benefit rate. Enhanced sickness benefit for family planning is paid for the insured persons undergoing sterilization operation and 14 days from Tubectomy operation. This period is however, being extended in the case of post operative complications by sickness arising out of the sterilization operations and the daily rate of this benefit is double the Standard daily rate of benefit.

2) Maternity Benefit

It includes periodical payment to an insured women in case of confinement or miscarriage or sickness arising out of pregnancy; confinement, premature birth of child or miscarriage. Such women will be certified to be eligible for such payment by an authority specified in this behalf. (Sec. 46(1) (b). The rate of benefit is double the Standard Benefit rate. For sickness arising out of pregnancy, confinement, premature birth or miscarriage, benefit for additional period of one month is also provided in the Act. In all cases the benefit is payable only when the insured women does not work for remuneration. There is no waiting period as in the case of sickness benefit. The contributory conditions for this benefit are the same as applicable to sickness benefit., Such benefit shall be payable to the nominated person in case of death of insured women during her confinement or during the period of 6 weeks immediately following her confinement for which she is entitled to maternity benefit. If the child also dies during the said period then the benefit shall be paid for the days upto and including the day of death of the child.

In case of miscarriage she will be entitled to the benefit for the days on which she does not work for remuneration during the period of a weeks immediately following the date of miscarriage. (Section 50(30)).

3) Disabled Benefit

Disabled Benefit of periodical payment to an insured person suffering from disablement, temporary as well as permanent as a result of accident, or occupational diseases arising out of and in the case of employment. An accident arising in the course of employment, in the absence of proof to the contrary, shall be presumed to be arising out of the employment. An accident shall be deemed to arise our of and if the course of employment not withstanding that he is at the time of Accident acting in contravention of the provision of any law applicable to him or to any orders given by or on behalf of his employer or that he is acting without instructions. An accident happening while an insured person is travelling as a passenger by any vehicle to or from his place of work, with the express or implied permission of his employer be deemed to arise in the course of employment. The Act also contemplates that in a situation where happening of accident may occur while meeting emergencies will be deemed as accident arising out of employment. If an employee contract occupational disease peculiar to that employment the contracting of the disease shall unless the contrary is proved be deemed to be an employment injury. Part A of the 3rd schedule contains a list of occupational diseases. The question of permanent disablement, loss of earning capacity shall be determined by a Medical Board. If the decision of the Medical Board is not satisfactory the parties may appeal to the medical Appeal Tribunal with further right to appeal to the Employees Insurance Court. If there is permanent disablement, the percentage of such disability is assessed by Medical Board and disablement Pension is paid. There are no contributory conditions required for payment of this benefit.

4. Dependance Benefit

The benefit consist of periodical payments to eligible dependance of an insured person who dies as a result of accident or occupational disease arising out and in the course of employment. There are no contributory conditions required for this benefit. The rate of benefit for all dependance together will be maximum rate of disablement benefit to the insured person. The Dependance benefit is distributed among the wide and minor children in he rate of 3/5 and 2/5. If there are more than such recipients the benefit will be proportionately divided between them. An insured person or his dependants is not entitled to receive or recover from the employer of the insured person or from any other person any compensation or damages under the workmen's Compensation Act 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 in this Act.

5) Medical Benefit

The medical benefit includes out-patient treatment, hospitalisation, specialised care including investigation and laboratory Tests, supply of drugs and medicines, miscellaneous services and certain surgical appliance as part of medical treatment. While the insured persons is entitled to avail medical care the members of the family are entitled to restricted medical care as out patient as decided by the concerned State Govts. A person shall be entitled to this benefits during any week for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit which does not dis-entitle him to Medical Benefit under the Regulations. An insured person and his family where the medical benefits are extended to his family, shall have no right to claim any medical benefit except such as is provided by the dispensary / Hospital, Clinic or other Institutions to which he or his family is allotted. The regulations may also provide for claiming reimbursement from the Corporation of any expenses incurred in respect of any Medical treatment.

6) Funeral Benefit

The Act provides for payment to the eldest surviving member of the family of the 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 person. The amount of such payment shall not exceed Rs.100/- and the claim shall be made within 3 months of the death, or within such period as the Corporation may allow.

General Provisions relating to Benefits

1) The injured person who works and receive wages on any day is not entitled for cash benefits on that day.

2) The person who is under medical Care shall obey the instructions of the medical officer and he should not leave the area of treatment without his permission.

3) Cash benefit payable under ESI Act are not liable to attachment or as well in its execution to any court decree or Order (Sec.60)

4) The right to receive any benefit is not transferable or Assignable

5) The insured person shall not be entitled to receive for the same period both sickness benefit and maternity benefits or both sickness benefit or disablement benefit etc. However, where a person is entitled to more than one.

6) Of the benefits he shall have to choose which benefits he shall receive (Sec. 65)

7) No employer shall dismiss, discharge of reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit of maternity benefit nor shall he, expect 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 unit for work. During such period notice of dismissal or discharge or reduction given to an employee shall not be valid or operative. It was held in Premier Tyres Ltd Vs. A. Abraham' 79 Lab IC 684 that no service of an employee covered under this scheme would be terminated during the period he was in receipt of sickness benefit and no order of termination issued during the period shall be valid and operative Sec. 73 came up for interpretation in the case of Buckingham & Carnatic Co. Ltd. Vs. Venkatiah) AIR 1964 SC 1272. The Supreme Court held that this Section applies only when the employer does some positive act of dismissing, discharging or reducing or otherwise punishing an employed person and the main object of the clause is to put a severe moratorium against all unitive actions during the pendency of the employees sickness.

The employer is also prohibited against dismissal of an insured person absenting for a period of 18 months when that employee is under medical treatment for TB, Leprosy, Mental and malignant diseases, etc. as provided in the list of diseases under regulations 98.

Employees Insurance Court - Adjudicatory Machinery

Every claimant has got the right of rising the dispute before the Employee's Insurance Court in respect of his claim under the Act. Employees Insurance Court consist of a Judicial Officer appointed by the State Govt. Dispute between the employers and the Corporation also are instituted before the employees Insurance Court. The jurisdiction of the Civil Court is barred in all such matters (Sec. 74).

Matters to be Decided by ESI 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 the Act, or

c) the rate of contribution payable by a principal in respect of any employee, or

d) the person who is or was the principal employer in respect of any employee, or

e) any direction issued by the Corporation under Sec. 55A on a review of any payment of dependants benefits, or

f) (Omitted)

g) 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 employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable for recoverable under this Act, or any other matter required to be or which may be decided by the Employee's Insurance Court under this Act.

Such question or dispute subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court or accordance with the provisions of this Act.

2. Subject to the provisions of sub-sections (2A), the following claims shall be decided by the Employees' Insurance Court namely;

a. Claim for the recovery of contribution from the principal employer;

b. Claim by a principal employer to recover contributions from amy immediate employer.

c. Omitted.

d. Claim against a principal employer under sec.68.

e. Claim under Section 70 for the recovery of the value of 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.

If in any proceedings before the ESI Court the disablement question arises, and the decision of the medical board or a Medical Appeal Tribunal has not been obtained on the same and the decision of such question is necessary for determination of claim or question before ESI Court, the Court shall direct the Corporation to have the question decided first and thereafter shall proceed with the determination of the claim. The section makes it clear that employees Insurance Court specially constituted under the Act has got power to decide the question which is subject matter of dispute between the parties as to whether house rent allowance paid by the employer to its employees is wages and he is liable to pay employees contribution and employers special contribution on such payment. It was held in Agarwala Hardware Industries Vs. ESI Corporation 1976 Lab. IC 1354 that when proceedings under Section 75 are pending before the Insurance Court application for interim stay can be maintained by the ESI Court. A claim for recovery of contribution shall also be decided by

the Employees Insurance Court. The powers of Corporation are given in the Section 45A whereby the Corporation may on the basis of information available to it determine the amount of contribution payable and to make necessary demands. If the employer refused to comply with the demand so made the matter can come up before the ESI Court under Section 75 of the Act. The court cannot decline to perform its duty because the Corporation has failed to discharge its own function. (ESI Corporation Bopal Vs. Central Press and another 1977 - 1 LLJ 479). It is not open to the Tribunal to consider the Board's Report merely as a piece of evidence or adjudicate the correctness thereof. (ESIC Vs. Hafiz Kahn -7 Lab. I.C 1175). The mere fact that the employer raised the dispute before Insurance Court does not preclude a criminal court from entertaining a complaint from the corporation.

Section 76 provides fro Institution of Proceedings in ESI Court having jurisdiction for the local are in which the insured person was working at the time question or dispute arose. 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 order such matter to be transferred to such other Court. The State Govt. has also power to transfer any matter pending before the ESI Court to such other court. The proceeding before the ESI shall be commenced by application. Every such application shall be made within a period of 3 years from the date on which the cause of action arose. The cause of action in respect of claim for benefits shall arise only by making a claim for benefits shall arise only by making a claim of benefits in accordance with the regulations made in that behalf within a period of 12 months after the claim became due or within such further period as the ESI Court may allow on grounds which appears to be reasonable. In the case of Corporation claim to recover contribution from principal Employer or a claim by principal employer for recovering contribution from an immediate employer shall not deem to arise till the date by which the evidence of contribution having been paid is due to be received by the Corporation under the Regulations. Every such application shall be in such form and contents such particulars and accompanied by such fee as may be prescribed by rules made by the State Government. The ESI Court shall have all powers of Civil Court for the purpose of summoning and enforcing attendance of the witness, compelling the discovery and production of documents and material objects, his administering oaths, recording evidence and such Court shall be deemed to be civil court within the meaning of Sec. 195 of Chapter XIV of the code of Criminal Procedure 1973. Its order shall be enforceable as if it was a decree passed by Civil Court.

An application before the Court on behalf of the insured person or his dependent can be made by authorised legal Practitioner or by an Officer of a registered Trade Unions or with permission of the Court by any other person so authorised. The ESI Court may submit any question of law to the decision of the High Court and it does so shall decide the question pending before it is accordance with such decision. An appeal from an order of ESI Court shall lie to the High Court only on substantial question if law within a period of 60 days, and

provisions sec **and 12 of Indian Limitation Act 1908 shall apply to appeals under the Section(82). Where the Corporation has presented an appeal against an order of ESI Court, that Court, may 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.

Offences and Penalties

1) Section 84 prescribes punishment with imprisonment upto 3 month or with fine not exceeding Rs. 500/- or with both for false representation for the purpose of :

   (i) causing any increase in payment benefit under this Act.

   (ii) causing any payment of benefit to be made where no payment or benefits is authorised under the Act.

   (iii) Avoiding any payment to be made by himself under this Act or

   (iv) extending any other person to avoid any such payment under this Act.

2) Section 85 provides that any person shall be punishable with imprisonment or fine or with both if any person.

   a) fails to pay and contribution which under this Act he is liable to pay nor

   b) deducts or attempts to detect 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 other 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 be commits an offence under clause (a) with imprisonment for a term which may extend to six months but

a. which shall not be less than three months, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages;

b. which shall not be less than one month in any other case and shall also be liable to fine which may extend to two 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 or of fine only in lieu of imprisonment;

ii) where he commits an offence under any of the class (b) to (g) (both inclusive), with imprisonment for a term which may extend to one thousand rupees or with both.

3) Enhanced Punishment after previous conviction (Sec (85A)

Whoever commits the same offence after having been convicted by the Court punishable under this Act, shall for every such subsequent offence be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to rs. 20/- or both provided where such subsequent offence is for failure by the employer to pay any contribution which he is liable to pay, he shall for every such subsequent offence be punishable with imprisonment for a term which may extend to one year but which shall not be less than 3 months and shall also liable to fine which may extend to Rs. 400/- The Corporation may recover from the employer such damages not exceeding an amount of arrears. However, before recovering the damage; the employer shall be given a reasonable opportunity of being heard and the damages may be recovered as an arrear of Land Revenue. Apart from giving punishment the court may also require the employer to pay the amount of contribution in respect of which the offence was committed.

Prosecution (Sec. 86)

No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner or such other Officer of the Corporation as man be authorised. No Court inferior to that of Presidential Magistrate or the Magistrate to the first class shall try any offence under this Act. No Court shall take cognizance of any offence under this act, except on a complaint made in writing in respect thereof within 6 months of the date on which the offence is alleged to have been committed.

Exemption

Notwithstanding the above provisions, the act provides exemption for certain factories or establishment or class of factories or establishments. Section 87 provides that the appropriate Govt may exempt any factory or establishment in any specific area from the purview of he Act by notification and subject to such conditions as may be specified initially

such exemption will be for a period of one year and thereafter may be renewed from time to time. The State Govt is empowered to exempt any person or class of persons employed in any factory or establishment from the operations of the Act. The above exemptions may be granted to the Govt. Factories and establishments.

Miscellaneous

The Central Govt. is empowered to make rules in consistent with the Act for the purpose of given effect to the provisions thereof. But this power can be exercised only after consultation with the Corporation and subject to the conditions of previous publication. The Central Govt. may take rules in regard to the following matters. (Section 95(2)).

a) the manner in which nominations 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. Standing committee and the Medical Benefit Council and the minimum number of meetings of those bodies to be held in the 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 principal Officers and the conditions of their service;

e) the powers and duties of the Medical Benefit Council;

f) the manner in which and the time within which appeals may be field to medical appeal tribunals or Employee's Insurance Courts;

g) the procedure to be adopted in the execution of contracts;

h) the acquisition, holding and disposal of property by the Corporation;

i) the raising and repayment of loans;

j) the investment of the funds of the Corporation and of any provident or other benefit fund and their transfer or realisation;

k) the basis on which the periodical valuation of the assets and liabilities of the Corporation shall be made;

l) 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;

m) the accounts to be maintained by the Corporation and the forms in which accounts shall be kept and the times at which such accounts shall be audited;

n) 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 sums so disallowed or surcharged.

o) the preparation of budget estimates and of supplementary estimates and the manner in which such estimates shall be sanctioned and published.

p) the establishment and maintenance of provident or other benefit fund for officers and servants of the Corporation; and

q) any matter which is required or allowed by this Act to be prescribed by the Central Government.

The State Government is also empowered to make rule under this Act in respect of the following matters (Sec. 96)

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 institutions;

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;

f) 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.

A comparison of the Section 95 and 96 shows that the power to the Central Government to make rules under this act are not overlapping but distinct and specialised in particular fields of responsibilities in the administration and the execution of the provisions of the Act.

The Corporation is empowered to make regulations in respect of the following matters;

a. 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;

b. the time within which and the manner in which a factory or establishment shall be registered;

c. the matters which shall be referred by the Standing Committee to the Corporation for decision;

d. the manner in which any contribution payable under this Act shall be assessed and collected;

e. the levy of interest at a rate not exceeding six per cent, per annum on contributions due but not paid;

f. reckoning of wages for the purpose of fixing the contribution payable under his Act;

g. the certification of sickness and eligibility for any cash benefit;

h. the method of determining whether an insured person is suffering from one or more of the diseases specified in the Third Schedule;

i. the assessing of the money value of any benefit which is not a cash benefit;

j. the time within which and the form and manner in which any claim for a benefit amy be made and the particulars to be specified in such claim;

k. the circumstances in which an employee in receipt of disablement benefit may be dismissed discharged, reduced or otherwise, punished;

l. the manner in which and the place and time at which and benefit shall be paid;

m. the method of calculating the amount of cash benefit payable and the circumstances in which and the extend to which communication of disablement and dependent's benefits, amy be allowed and the method of calculating the commutation value;

n. the notice of pregnancy or of confinement and notice and proof of sickness;

o. specifying the authority competent to give certificate of eligibility for maternity benefit;

p. the manner of nomination by an insured women for payment of maternity benefit in case of her or her child's death.

q. the production of proof in support of claim for maternity benefit or additional maternity benefit;

r. the conditions under which any benefit may be suspended;

s. the conditions to be observe by a person when in receipt of and benefit and the periodical medical examination of such persons;

t. the visiting of sick persons;

u. the appointment of medical practitioners for the purposes of this Act, the duties of such practitioners and the form of medical certificates;

v. the qualifications and experience which a person should possess for giving certificate of sickness;

w. the constitution of medical board appeal tribunals;

x. the penalties for breach of regulations by fine (not exceeding two days, wages for a fist beach and not exceeding three days' wages for any subsequent breach) which may be imposed on employees;

y. 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.

z. 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;

z1. the duties and powers of Inspectors and other Officers and servants of the Corporation;

z2. 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 Principal Officers;

z3. the procedure to be followed in remitting contributions to the Corporation; and

z4. and matter in respect of which regulations are required or permitted to be made by this Act.

At this time when the Corporation's fund so permit the Corporation may enhance the scale of any benefit admissible under this Act and the period for which such benefit may be given and provide or contribute towards the cost of medical care for the families of insured persons. If any difficulty arise in giving fact of the provisions of this Act the Central Govt may by order published by the Officials Gazette make such provisions or give such directions not inconsistent with the provisions of the Act is appears to be necessary or expedient for removing the difficulty.

Suggested Questions

1) Explain the scope and object of the E.S.I. Act.,

2) Enumerate the powers and duties of the E.S.I. Corporation.

3) State the purposes for which the funds may be expended.

4) What are the different types of benefits provided under the E.S.I. Act?

Unit - 13

THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISION ACT, 1952

Object and Scope of the Act

The employees Provident Fund and Miscellaneous Provisions Act 1952 provides for the Institution of Provident Fund, Family Pension Fund and Deposit Linked Insurance Fund for employees in factories and other establishments. This is one of the retirement benefits meant for the economic welfare of the Employees. The Provident Fund Schemes envisaged by the Act, provide for monetary funds for the utilisation of Employees or their Dependants for their rehabilitation after retirement from the active service. This a social security measure. Pensions are paid out of regard for past meritorious service. The basis of gratuity and Provident Fund are different. Each one is a salutary benefaction statutorily guaranteed independently of the other. The object of the Act is apparent no only from preamble but also from its various provisions.

Application of the act

The Act applies to every establishment which is a factor engaged in any industry specified in schedule 1 and in which 20 or more persons are employed (Sec.1(3). The Act also applies to such other establishment which the Central Government may, by notification in the Official Gazette, specify. The Act can be made applicable by the Central Government of any establishment even if it employs less than 20 persons. But the Government has to give 2 months notice of its intention to apply. Irrespective of anything the Act may be applied to an establishment if the employer and the majority of employers agree for the application of the Act in their establishment.

The application of the Act to certain establishments is subject to the Provisions stipulated in section 16 which provides exemptions regarding the application of Acts like Establishment Registered under the Co-operative Societies Act. The Employees Provident Fund Act also provides for the application of the act to non factory establishments. For the application of this Act of any Factory in a schedule industry all the following conditions are to be satisfied.

Firstly the manufacturing process must be carried on in any part of the premises.

Secondly a minimum of 20 persons must be employed in the establishment.

Number of enactments dealing with separately for establishments may provide for the applications of this Act to such establishments. The use of words' any other establishments' are not limited to commercial establishments. The Madras High Court held that the cosmopolitan club of Madras is an establishment within the meaning of Section 1(3) (b). Once an establishment falls within the purview of this Act it shall continue to be governed by this Act notwithstanding that the number of persons therein at any time falls below 20 Sec.1(5).

The constitutional validity of this Act was challenged on the grounds of discrimination and excessive delegation. It was held that law lays down a rule which is applicable to all the factories or establishment similarly placed. It makes a reasonable classification without making any discrimination between factories placed in the same class or group (Delhi Cloth Mills Vs. RPF Commissioner AIR 1961 All 309 Besant Kumar Vs. Eagle Rolling Mills AIR 1964 SC 1260) The underlying idea behind the Provisions of the Act is to bring all kinds of employees within its fold as and when the Central Govt might think fit after reviewing the circumstance of each class of establishments. This is a beneficial legislation enacted as a measure of social justice and it should be construed liberally so as to confer benefit on the employees to the maximum extent. A solicitor's Firm is an establishment within the meaning of this Section. Section 1(3) is not confined to direct labour and the contract labour also enters the determination as to the applicability of this subject Section.(Nazeeha Traders (Pvt) Ltd. Vs. RPFC 1966 1 LLJ 334) The term establishment his not been defined in the Act and consequently it shall have to be given its ordinary meaning with reference to the definition of the term factory. (Delhi Cloth and General Mills Ltd. Vs. RPFC UP 2 LLJ 444).

In counting the number 20 of the employees employed in a factory, the Primary Activity of the factory has to be ascertained. The Factory may be incidentally engaged in some thins else also but that would not diminish the primary character of the establishment. It is the dominant activity of the Establishment that determines whether it comes under the purview of the Act. The liability to contribute to the Provident Fund is created from the moment the scheme is applicable to a particular establishment. The act does give option to the employee to become or not to become a member of the fund. Even a casual or temporary workman are also covered under the purview of this Act.

The act also provides that it shall not apply to certain establishment as described under Section 16(1) of the Act. Such establishments include (a) establishment registered under the Co-operative Societies Act or under any other law for the time being enforce in any activity relating to co-operative societies, employing less than 50 persons working without the aid of power (b) any other establishments employing 50 or more persons or 20 or more but less than 50 persons until the expiry 3 years in the case of former and 5 years in the case of latter from the date on which the establishment is or has been set up. It is pertinent that mere change of location does not make an establishment a newly set up one.

The period of infancy should be calculated from the first day of manufacturing process commenced in the factory and not from the moment of time when the figure of 20 or more workmen is first reached. (The State of Punjab Vs. Satpal AIE 1970 SC 655). A mere change in the partnership deed does not mean that a new business has come into existence for the purpose of Sec 16(1)

Definition

Section 2 of the Act defines the terms to understand the meaning of the different sections and provisions thereof. It is necessary to know the meaning of important expressions.

a. Appropriate Govt means (Sec a) (i) in relation to an establishment belonging to or under the control of Central Govt or in relation to an establishment connected with the Railway Company. Major Port a Mine or an Oil Field or a Control industry or in relation to an establishment having Departments or branches in more than one State, the Central Government.

ii) in relation to any other establishment the State Govt.

b. Basic Wages means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of contract of employment and which are paid or payable in cash to him but does not include (i) the cash value of any food concession (ii) dearness allowance that is to say all cash payments by thereafter name called paid to an employee on 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 all work done in such employment. (ii) any present made by the employer.

The Delhi High Court in Burma Shell Oil Storage and Distributing Company Ltd Vs. R.P.F.C. Delhi 1980 **** IC observed that emoluments constitute basic wage must be earned by an employee while on duty. It is a payment made to any one who was not on duty and not paid to same who were on duty it can not be regarded as basic wages. Jay Engineering Works Vs. Union of India 1963. 2 LLJ 72, it was held that payment made for Provident Fund between quota and norm were part of basic wage under the Section and that payments beyond the norm were production bonus and excluded from the definition. The subject allowance paid as a result of agreement and which is not treated as part of basic Wages are dearness allowance, it could not be included in computation of contribution by the employer 1982 1 LLJ 28.

c. contribution means a contribution payable in respect of a number under a scheme or contribution payable in respect of an employee to whom the insurance scheme applies.

d. control industry mens any industry the control of which by the Union Govt. has been declare by Central Act to be expedient in the Public interest.

e. Employer means.

i. the owner or occupier of factory

ii. the agent of such owner or occupier

iii. the legal representative of a deceased owner or occupier of the factory.

iv. any person named as Manager of the Factory under Sec. 7(1)(f) of the Factories Act.

In the case of establishments other than the factory employer means;

i. the person who has the ultimate control lover the affairs of the Establishment.

ii. the authority which was ultimate control over the affairs of the Establishment.

iii. where the affairs of the establishment are entrusted to Manager, Managing Director or Managing Agent, such Manager, Managing Director or Managing Agent.

f. The 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 gets his wages directly or indirectly from the employer and includes any person employed by or through the contractor or in connection with the work of an establishment.

The definition is very wide in its scope and covers persons employed in 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 the contractor in or in connection with the work of establishment he would all within description of the employee. The definition includes a part time employee who is engaged for any work in establishment which is incidental or connected with the work of establishment and where a Co-op. Bank engages a sweeper working twice or thrice a week, a night watchman keeping watch on the establishment and gardener working for 10 days a month are held as employees.

Railway Employees Co-op. Bank Society Ltd. Vs. Union of India 1980 Lab IC 1212.

ff. exempted employee means an employee to whom the scheme or insurance scheme as the case may be would, but for the exemption granted under Sec. 17 have applied.

fff. exempted establishment means in respect of which a exemption has been granted under Section 17 from the operation of all or any of the provisions of any scheme or the insurance Schemes as the case may be whether such an exemption has been granted to an establishment as such or to any person or class of persons employed therein.

g. the industry specified in schedule 1 and includes any other industry added to tne schedule by notification.

h. Insurance Fund means the deposit linked Insurance Fund establishment under sub-section 2 of Sec. 6C.

i. Insurance Scheme means the employee Deposit Linked Insurance Scheme framed under Sub-Section 1 of Section 6C.

j. Manufacture or manufacturing process means any process for making altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking-up, demolishing or otherwise treating or adopting any article or substance with a view to it use, sale, transport delivery or disposal.

k. member means a member of the fund

i) Scheme means the employees Provident Fund Scheme under Sec. 5.

Scheme of the Act

a) The employee Provident Fund Scheme

The Central Govt is empowered to frame the scheme for the establishment of provisions for employees or for any ways of employees. The fund so established shall vest in, and be administered by the Central Board Constituted under Section 5 A. The scheme framed may provide for all or any of the matters specified in schedule 2. The scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in the said scheme.

The validity of the Section was challenged on the ground it infringes article 14 and 19 (i)(f) of the Constitution in the case of Hindustan Electric Company Ltd. Vs. R.P.FC. Punjab AIR 1959 Punjab 271. It was held that sec., 5 does not infringe any of the articles of the Constitution. It was further held that sec. 5 cannot be struck down on the ground that it is an unreasonable restrictions on the fundamental right to carry on the business of a company.

b) Administration of the Fund

The Board of Trustees or Central Board (Sec. 5A). The Central Govt by notification constitute a Board of Trustees for the territories to which this Act extends, consisting of the following persons: -

1) Chairman to be appointed by the Central Govt.

2) Not more than 5 persons appointed by the Central Govt from amongst its Officials.

3) not more than 15 persons representing Govt. of such states as the Central Govt. may specify in this behalf appointed by Central Govt.

4) 6 persons representing employers of the establishment to which the scheme applies appointed by the Central Govt after consultation with such organisation of employers as may be recognised by the Central Govt. in this behalf.

5) 6 persons representing employees in the establishment to which this scheme applies after consultation with such organisation of employees.

The scheme provides for the terms and conditions subject to which a number of the Central Board may be appointed and the time, place and procedure of the meeting of the Central Board. It also provides the manner in which the Board shall administer the funds vested in its subject.

State Board (Sec. 5B)

The Central Board is empowered to Constitute State Board in consultation with the State Govt by notification. The State Board shall be constituted in such manner as may be provided for in the scheme. The Central Govt may assign such powers and duties to the Board.

The above said Central and State Board shall be a body Corporate and shall have perpetual succession and a common seal.

The Central Govt shall appoint a Central Provident Fund Commissioner who will be the Chief Executive Officer of the Central Board and he will function under the control and supervision of the Board. The Dy. Provident Fund Commissioner, the Regional Provident Fund Commissioners and other Officers may also be appointed by Central Govt. They have to assist the Central Provident Fund Commissioner in his work. The Board appoint other officers and employees for efficient administration. Posting under the Central Board carrying a maximum monthly salary of not less than Rs.500/- shall be made only in consultation with the Union Public Service Commission. The State Board may with the approval of the state Govt. appoint such other staff as deem consider necessary.

a) Contributions and other matters

Which may be provided for in the scheme sec. 6 provides that the contribution which shall be paid by the employer to the fund shall be 61/4% of the basic wages, dearness allowance and retaining allowance if any payable to each of the employee and the employee contribution shall be equivalent to the contribution payable by the employer in respecting of him and may, if any employees so desires and if the scheme makes provision therefor been amount not exceeding 8 ½% of his basic wages, dearness allowance, retaining allowance if

any. Dearness allowance shall include cash value of any food concessions allowed to an employee, retaining allowance is the sum to be paid 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 Schemes as made payment of contribution monetarily and the act provides more exceptions in which a specified employer can avoid this monetary liability, State Vs. S. Chandani AIR 1959 Pat. 9.

b) Employees Family Pension Scheme

Section 6(A) of the Act provides for framing a scheme known as employee Family Pension Scheme for the purpose of providing family Pension and life Assurance Benefits to the Employees of the establishment or class of establishments to which this Act applies. The Central Govt. is empowered to frame such scheme by notification in the Official Gazette.

Family Pension Fund Creation and Administration

The Family Pension Fund shall be establishment into which shall be paid from time to time tin respect of every such employee

a) such portion not exceeding 1/4th of the amount payable under Section 6 as contribution by the employer as well as the employee as may be specified in the family pension scheme.

b) such sums as are payable by the employer of an exempted establishment under sub-section (6) of Section 17 and C such sums being not less than an amount payable in pursuance of clause (a) out of the employer's contribution under Sec. 6, as the Central Govt may, after the appropriation made by the Parliament by law in this behalf specify.

The fund shall be vest in and be administered by the Central Board. The family pension scheme may provide for all or any of the matters specified in Schedule III. The scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such duty as may be specified in his behalf in that scheme.

Section 6(B) provides that the Central Govt. shall after the appropriation made by the Parliament by law in this behalf pay such further sums as may be determines by it into the Family pension fund to meet all the expenses in connection with the administration of the family pension scheme. Other than the expenses towards the cost of any benefits provided by or under the scheme.

The Central Govt. may add, may not or very either prospectively or retrospectively the scheme and all such notification shall be allowed before Parliament after they are issued (Section 7)

c) Employees Deposit Linked Insurance Scheme

Section 6 C of the Act empowers the Central Govt to frame a scheme to be called Employees' Deposit Linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishment or to which this act applies.

After framing the scheme a deposit linked insurance Fund shall be established, into which shall be paid by the Employer from time to time in respect of every such employee in relation to whom he is the employer. Such amount not being more than 1% of the aggregate of the Basic Wages. Dearness and Retaining allowance (if any). For the time being, payable in relation to such employee as central Govt may by notification in Official Gazette specified.

By virtue of this power the Central Govt has specified 0.5% of the aggregate of the basic wages Dearness Allowance on the Retaining allowance for the time being payable to his employees as the rate of contribution which shall be payable every month by the employer. The Central Govt shall after due appropriation made by Parliament by law contribute to the Insurance fund in relation to each employee of any establishment or class of establishments to which this act applies, an amount representing one half of the contribution which the employer is required by Sub-Sec. (2) to make.

The employer shall pay to the Insurance Fund such further sums of money not exceeding 1/4th contribution which he is required to make under Sub-Section 2 as the Central Govt may from time to time determines to meet all the expenses in connection with the administration of the insurance scheme other than the expenses towards the cost of any benefits provided by or under the Scheme. The Central Bank shall after due appropriation made by Parliament by law pay into Insurance Fund such further sums of money representing one half, the sums payable by the employer in Clause A to meet all the expenses in connection with the administration of the Insurance Scheme other than expenses towards the cost of any benefit provided by or under the Scheme. The Central Govt by notification has specified the contribution of 0.1% of the Basic wages including DA etc of the employee payable by the employer every month for meeting Administrative expenses of the scheme.

The Insurance Fund shall vest in the Central Board and be administered by it in such a manner as may be specified in the scheme. The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

Determination of money due from employers

Section 7A vest the power of determining the amount due from any employer under the provisions of this act with the Central Provident Fund Commissioner and Deputy Provident Fund Commissioner or Regional Provident Fund Commissioner. For this purpose, he may

conduct such enquiry as may deem necessary. The Officer conducting the enquiry shall have the power of a court under the Civil Procedure Code for trying the suit in respect of the following matters;

a) Enforcing the attendance of any person or examining him of oath.

b) Requiring the discovery and production of documents.

c) Receiving evidence on Affidavit.

d) Issuing commissions for the examination of witnesses

and such enquiry shall be deem to be judicial proceedings within the meaning of Sec. 193 and 228 and for the purpose of Sec. 196 of the Indian Panel Code.

The employer shall be given a reasonable opportunity of representing his case before an order determining the amount due from him is based under this Section. However, once the order has been made under this Section the same shall be final and shall not be questioned in any court of law. Section 7A(4). This Section was challenged as unconstitutional under Article 19(1). It was held in wire netting Stores Vs. Regional Provident Fund Commissioners and others 38 FJR 277. Though the Section does not impose and article 14 of the Constitution is not contracted, the powers under this Section appear to be very wide and there is no provision for the forum whether the demand under Section 7A can be questioned. It is, therefore, of paramount importance that where wide powers are vested in the statutory authority and further provisions is not made to challenge such order to exercise of that power should be made in a careful manner so that the result may not be arbitrary. (Bajranga Lal Padia Vs. State of Orissa and others Act 1975 LIC 830). If there is any inconfirmity in the order the employer should be entitled to relief in the High Court. (Jwala Prasad Sikharia Vs. R.P.F.Cf. 1973 -2-LLJ 594), an Inspector can not determine the amount due from any employer under any provisions under this Act. The appropriate Officers specified for the power of jurisdiction to not only determine the amount due but also to decide all jurisdictional and relevant facts necessary for the final decision. All the amount due and after giving employer a reasonable opportunity of representing this case 1975 LIC and 954. A demand for contribution toward P.F. for the pre-discover period is legal. Any determination under this Section is liable on the part of the Employer for which drastic action can be taken like Certificate Proceeding, etc. it is incumbent upon the authority while passing an assessment Order to give a detailed calculations and the basis on which an amount payable by the employer has been arrived at Indian Mica and Micanite Industries Ltd Vs. R.P.F.Cf. 1974 LIC 415. The order passed should be a subjecting order and should indicated the basis of calculations of which the quantum of P.F. Payable is determined.

Mode of Recovery of Money Due from Employers

Sec.8 prescribes the mode of recovery of money due from Employers by the Central P.F. Commissioner such office as may be authorised by him by notification in the Official Gazettes in this behalf as an arrears of land Revenue the amount due form the employer recoverable under the Section shall relate to following categories.

a) Amount due from the employer in relation to an establishment to which this Scheme or the Insurance Scheme / applies in respect of any contribution payable to the fund as the case may be. The insurance fund for damages Recoverable under sec 14b,. accumulations required to be transferred under sub-sec 2 of Sec.15 or under Sub-sec. 5 of Sec.17 or any charge payable by him under any other provisions of this Act or Scheme.

b) Any amount due from the employer in relation to an establishment in respect of any damages recoverable under Section 14b or any charges payable by him the appropriate Govt under any provisions of the Act or under any of the conditions specified under Sec. 17 or in respect of the contribution payable by him towards family Pension Scheme or the Insurance Scheme under Sec. 17.

Recovery of money by employers and contractors

Section 8 A lays down that the amount of contribution that is to say the employer's contribution as well as the employees' contribution and any charges on the basis of such contribution for meeting all cost administering the fund paid or payable by an employer in respect of an employee employed by or through the contractor either by deduction from any amount payable to the contractor in any contract or as a debt payable by the Contractor.

A contractor may recover from such employer the employees, contribution under any scheme by deduction from the basic wages, dearness allowance etc payable to such employee. However, no contractor shall be entitled to deduct the employers contribution or the charges from the wages of employees. The employer can not argue on the ground that he is unable to realise the money from the contractor or he can not deduct it from wages of the employees as their wages are not directly paid by him.

Priority of payment

Section 11 of the Act provides that the contribution towards Provident Fund shall link prior to other payments in the fund of employer being adjudicated insolvent. The amount sanding to the credit of any member of the fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any degree or order of any court.

Section 12 prescribes an employer 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 employee is entitled under the terms of employment simply for the reason of his liability for the payment of any contribution to the fund.

Transfer of accounts

Sec 1A of the Act provides that where an employee in any establishment to which this Act applies leaves his employment and obtain reemployment in another establishment to which this act does not apply, the amount of accumulation to the credit of such employee in the fund or as the case may be in Provident Fund of the establishment left by him shall be transferred within such time as may be specified by Central Govt. in this behalf to the credit of his account in the Provident Fund in the establishment in which he is employed if he so desires and the rules in relation to the Provident Fund permit such transfer.

Sub Sec 2 further provides that where an employee employed in an establishment to which this act does not apply leaves his employment and obtain reemployment 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 if the employee so desires and the rules in relation to such Provident Fund permit be transferred to the credit of his account in the fund or as the case may be in Provident Fund of the establishment in which he is re-employed.

Protection Against Attachment

Statutory protection is provided to the amount of the contribution to Provident Fund under section 10 from attachment from any court degree. Sub Sec 1 of Sec 10 provides that the amount standing to the credit of any exempted employee in a Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt of liability incurred by the member or the exempted employee and neither the Official assignee appointed under the presidency Towns 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.

The sub Section 2 provides that any amount standing to the credit of the 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 authorised by the said scheme or rules raised in the nominee and shall be free from any debt or other liability incurred by the deceased employee or the nominee before the death of the member of the exempted employee. The above provision shall apply in relation to the family pension or any other amount payable in the Family pension Scheme as they apply in relation to the any amount payable out of the fund.

Appointment of Inspectors and their duties.

The appropriate Govt. may appoint such persons as it think if to be inspectors for the purpose of this Act by notification under the Official Gazette. (Sec.13) Such Inspectors shall be responsible for the provident Fund Scheme, Family Pension Scheme or the Insurance Scheme and their jurisdiction will be defined by such Govt.

The Inspector is an instrument of enquiry on behalf of the Govt into the correctness of any information furnished in connection with this Act, or for the purpose of ascertaining whether any of the Provision of the Act have been complied with in respect of an establishment to which this scheme is applicable for the purpose of ascertaining whether the provision of this act are applicable to any establishment to which the scheme has not been applied, for the purpose of determining whether the conditions subject to the exemption was granted under Sec.17 are being complied with by the employer in relation to exempted establishment.

Duties of Inspectors

For the purpose of fulfilling the above objective, the inspector has assigned to carry out the following statutory duties.

a. require an employer (or any contractor from whom any amount is recoverable under Section 8A) to furnish such information as he may consider necessary.

b. at any reasonable time (and with such assistance, if any, as he may think fit, enter and search) any (establishment) or any premises connected therewith and require any one found in charge thereof to produce before him for examination any a/cs books, registers and other documents relating to the employment of persons or the payment of wages in the (establishment).

c. examine, with respect to any matter relevant to any of the purposes aforesaid, the employer (or any contractor from whom any amount is recoverable under Section 8A), his agent or servant or any other person found incharge of the (establishmerit or any premises connected therewith or whom he Inspector reasonable cause to believe to be or to have been, and employee in the establishment).

d. make copies of, or take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence)

e. exercise such other powers as the scheme may provide.

The above powers conferred on Inspector in connection with the fund can be exercised by him in connection with the Family Pension Scheme also.

The Inspector shall be deemed to be a public servant within the meaning of Sec. 21 of the IPC and is empowered to make any search or seizure.

Powers vested in the Government

(i) Power to Apply Act to certain Establishments (Section 3)

Where immediately before this Act becomes applicable to an establishment there is in existence a provident fund which is common to the employees, employed in that establishment and employees in any other establishment, the central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall also apply to such other establishment.

(ii) Power to Add to Schedule (Section 4)

1. The Central Government may, by notification in the Official Gazette, add to Schedule I and other industry in respect of the employees whereof if it is of opinion that a Provident Fund Scheme should be framed under this Act and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purpose of this Act.

2. **All notification under Sub-Section (1)** shall be laid before Parliament as soon as may be, after they are issued.

(iii) Power to Recover Damages from the Employer (Section 14B) in the following cases when the employer;

a. makes default in the payment of any contribution to the Fund, the Family Pension Fund or the Insurance Fund; or

b. fails to transfer the accumulations required to be transferred by him section 15(2) or Section 17(5) Standing to the credit of employees; or

c. commits default in the payment of any charges payable under any other provisions of this Act, or of any Scheme or insurance.

Scheme or under any of the Conditions specified under Section 17 the Central Provident Fund Commissioner or such other Officer as may be authorised by the Central Government by a notification in the Official Gazette, may recover from the employers, such damages not exceeding the amount of arrear as it may think fit.

Provision to Section 14B provides that before levying or recovering such damages, the mployer shall be given a reasonable opportunity of being heard. Since the powers exercisable nder his Section is of punitive nature, the principles of natural justice must be followed by he Government in exercising its powers; Shyam Glass works Vs. State of U.P., A.I.R. 1979 All 19.

In Allahabad Canning Co. Vs. Regional Provident Fund Commissioner : 1-76 Lab IC 479(All) it was held.

a. where the employer commits default in payment of contribution and no order is passed for its recovery for a long time (in this case about five years) the presumption is that delay it condoned and no damages can be levied under Section 14B of the Act.

b. an order under Section 14B for payment of damages for default by the employer in paying contribution in time is quasi-judicial in nature. The party must be given an opportunity of being heard and the order must give reasons. Non-compliance with these requirements will tender the order illegal)A.I.R. 1976 S.C. 862).

In another case Muraska paint and Varnish Works Ltd Vs. Union of India and other 1976 Lab. I.C. 1453 it was held that failure to make payment within stipulated time results in default in payments of contribution. The Central Provident Fund Commissioner or any other Officer authorised by the Central Govt. can recover from the employer such damages not exceeding the amount of arrears as he may think, fit. There is no dual authority, one for imposition and the other for recovering. If the Act gives right to recover a certain amount as damages to an authority for breach of the provisions of the Act by asking party to comply with the provisions, there is no estoppel against statute. It gives direction to authority concerned and that discretion cannot be cut down in any manner by way of representation made by provident Fund Inspector. It was all held that damages must have some co-relation wish the loss suffered as a result of delayed payment and the authority imposing the penalty must apply is mind to this aspect of the matter and if the authority has exercised its director properly in accordance with law, it cannot be interfered with a writ petition.

(iv) Power to Exempt (Section 17)

Section 17 authorises the appropriate Government to grant exemptions to certain establishments or persons from the operations of all or any of the provisions of the Schemes. Such exemption shall be granted by notification in the Official Gazette subject to such condition as my be specified therein.

a) when in the opinion of the appropriate Government the rules framed by such establishments of its Provident Fund with respect to the rates of contribution are not less favourable than those specified in the Section 6 and the employees are also ir

enjoyment of other provident fund benefits which on the whole are not less favourable 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 favourable 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, from 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 favourable to such employees than the benefits 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 take provisions for exemption of any person 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 persons or class of persons is entitled to benefits in the nature of Provident Fund, gratuity or old age pension and such benefits separately or jointly, are on the whole not less favourable than the benefits provided under this Act or the Scheme Provident 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 (2-A) provides that, the Central Government may, if requested so to do by the employer, notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt any establishment from the operation of all or any of the provisions of the Insurance 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 (2-B) provides that, without prejudice to the provisions of Sub-Section (2-A), the Insurance Scheme may provide for the exemption of any person or class of persons, employed in any establishment and covered by that scheme from the operation of all or any of the provisions thereof, if the benefits in the nature of life insurance admissible to such person or class of persons are more favourable than the benefits provided under the Insurance Scheme.

Sub-section (3) provides that where in respect of any person of class or person 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 of 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 investments, 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 re-employment 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 person's 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 (3-A) provides that, where, in respect of any person or class of persons employed in any establishment, an exemption is granted under Sub-section (2-A) or Sub-section (2-B) from 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 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 investments, 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, wherein any such person leaves his employment and obtain re-employment 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 assurance fund of the establishment left by him to the credit of that person's account in the insurance fund of the establishment in which he is re-employed or, as the case may be in he Deposit-linked insurance Fund.

Cancellation of he exemption provided: Sub-section (40 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 (2) 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 Sub-section or with any of the provision of the Sub-section (3A) and

d) in the case of an exemption granted under Sub-section (2-B) with any of the provisions of Sub-section (3-A)

Sub-section (5) further provides that on the cancellation of the examinations under Sub-sections (1),(1-A),2-A) or (2), (2-B) the amount of accumulations to the credit of every employee to whom such exemption applied, in the provident Fund, Family Pension Fund or the Insurance Fund of the establishment in which he is employed shall be transferred within such time and in such manner as may be specified in the Scheme or the Family Pension Scheme or the Insurance Scheme to the credit of his account in the Fund or the Family Pension Fund, or the Insurance Fund as the case may be.

Sub-section (6) provides that subject to the provisions of Sub-section (1-A) the employer of an exempted establishment or of an exempted employee of an establishment to which the provisions of the Family Pension Scheme apply shall notwithstanding any exemption granted under Sub-section (1) or Sub-section (2) pay to the Family Pension Fund such portion of the employer contribution as well as the employees contributions to its Provident Fund within such time and in such manner as may be specified in the Family Pension Scheme.

It was held in Consolidated Corporation Production P.Ltd. Vs. Hemchandra Rao and another 1977 Lab. I.C. 251 that an exemption from statutory scheme under Section 17 of the

Act 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.

(v) Delegation of powers (Section 19)

Section 19 provides that appropriate Government may direct that any power of authority or jurisdiction exercisable by it under this Act the Scheme or the Family Pension Scheme or he Insurance Scheme shall in relation to such matters and subject to such conditions, if any as may be specified in the direction be exercisable also by such offer or authority sub-ordinate to central Govt. or State Govt as the case may be, as may be specified by such Governments in the notification.

(vi) Power to Remove Difficulties (Section 19A)

Section 3. A 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, is 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 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 year 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 or give such direction not inconsistent with the provisions of this Act as appeal 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. Ragahave Iyengar and Co.Vs. R.P.F.C. A.I.R 1963 Mad. 238. If once a doubt has been raised in respect of any matter no further action can be taken by the authorities to enforce those provisions of the Act Dhanalakshmi Weaving Works Vs. R.P.F.C. A.I.R. 1963 Jer. 219.

Penalties and Offences

Sections 14, 14-A, 14-AA, 14AB, 14--AC and 14-C deal with penalties and offences by the employer and power of the Court to make orders. These sections are enumerated below:

(i) Penalties

Section 14 deals with penalties for offences. Sub-Section (1) provides that whosoever for the purpose of avoiding any payments to be made by himself under this Act, the Scheme or the family Scheme or the Insurance Scheme or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or representation shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Sub-section (1-A) provides that an employer who contravenes or makes default in complying with, the previsions of Section 6 or clause (a) of Sub-Section (3) of Section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the scheme in so far as it relates to the payment of administrative charges shall be publishable with imprisonment for a term which may extend to six months but- (a) which shall not be less than 3 months in case of defaults in payment of the employees' contribution which has been deducted by the employer from the employees wages (b) which shall no be less than one month in any other case; shall also be liable to fine which may extend to Rs. 2000/-

Provided that the Court may, for adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment.

Sub-section (1-B) provides that, an employer who contravenes or makes default in complying with the provisions of Section 6 C or clause (a) of Sub-Section (3-A) of section 17 in so far as it relates to the payment of inspection charges shall be punishable with imprisonment for a term which may extend to six months but which shall no be less than one month and shall also be liable to fine which may extend to two thousand rupees.

Sub-Section (2) Provides that subject to the provisions of this act, the Scheme or the Family Pension Scheme may provide that any person who contravenes or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000- or with both.

It is also provided in Sub-Section (2-A) that if any employer contravenes or makes default in complying with any provisions of the Act or of any condition subject to which exemption was granted under Section 17 shall, if no other penalty is elsewhere provided by

or under his Act for such contravention or non compliance, be punishable with imprisonment which may extend to 3 months or with fine which may extend to Rs. 1000/- with both.

(ii) Offences by Companies

According to the provisions contained in Section 14-A, where the person committing an 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 do 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 end 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.

Sub-Section (2) Provides that notwithstanding anything contained in Sub-Section (1) where an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme has been committed by a company and it is proved that any offence has been committed with the consent or connivance of or is attributable to, any neglect on the part of any director or manager or secretary or other Officer of the Company, such director, Manager or secretary or other Officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The Company includes body corporate, a firm and other association of individuals and 'director' in relation to a firm means a partner in the firm for the purposes of this section.

(iii) Enhanced punishment in certain cases after previous conviction

Section 14-AA provides that whoever having been convicted by a Court of an offence punishable under this Act, the scheme or the Family Pension Scheme, or the Insurance Scheme commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to one year but which shall not be less than three months and shall also be liable to fine which may extend to Rs. 4000/-

(iv) Certain Offences to be Cognizable

Section 14-AB provides that notwithstanding anything contained in the code of Criminal Procedures, 1973, an offence relating to default in payment of contribution by the employer punishable under the Act shall be cognizable.

(v) Cognizance and Trial of Offences

Section 14-AC Provides, that no Court shall take cognizance of any offence punishable under this act, the Scheme or the Family Pension Scheme or the Insurance Scheme except on a report in writing of the fact constituting such offence made with the previous sanction

of the Central Provident Fund commissioner or such other Officer as may be authorised by the Central Government by notification in the Official Gazette, in this behalf, by an Inspector appointed under Section 13. Further, no court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence under this Act or the Scheme or the Family Pension Scheme or the Insurance Scheme.

(vi) Powers of the Court to make orders

Sub-Section (1) of Section 14-C provides that where on employer is convicted of offence of making defaulting in the payment of any contribution to the Fund or Family Pension Fund or the Insurance Fund or in the transfer of accumulation required to be transferred by him under Sub-Section (2) of Section 15 or Sub-Section (5) of Section 17, 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 or transfer the accumulation, as the case, may be, in respect of which the offence was committed.

Sub-Section (2) provides that where an order under the above provisions is made, 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 decided 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 14 shall also be liable to pay fine which may extend to Rs. 100/- for every day after such expiry on which he order has not been complied with.

Suggested Questions

1) Explain the manner in which the Employees Provident Fund Scheme is administered.

2) State the rules relating to Employees Deposit Linked Insurance Scheme.

Unit -14

THE MATERNITY BENEFIT ACT, 1961

Introduction

The Maternity Benefit Act, 1961 was passed by the Central Government, as a measure of social justice to women workers employed in the industry. It was enacted to regulate the employment of woman in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. The central Government has extended the Act to mines and circus by framing the Maternity Benefit (Mines and Circus) Rules 1963.

Scope

The Act applies, in the first instance, to every establishment being a factory, mine or plantation including any such establishment belongs to Government and to every establishment where in persons are employed for the exhibition of equestrian, acrobatic and other performances (Sec.2 (1)). The Act empowers the State Government to 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 of the Central Government after giving not less than two months, notice by notification in the official gazette of its intention to do so.

Definitions (Section 3)

(a) **Appropriate Government :** It means, in relation to an establishment being a mine or an establishment where in persons are employed for the exhibition of equestrain, acrobatic and other performances the appropriate Government is central Government and in relation any other establishment the state Government.

(b) **Child :** Child includes a still born child.

(c) **Delivery :** It means the birth of a child

(d) **Employer :** Employer means (i) in relation to an establishment which is under the control of the Government, a personal authority appointed by the Government, for the supervision and control of employees 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 the supervision and control of employees or where no person is 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 and where the said affairs are entrusted to any other person, whether called a manager, managing director, managing agent, or by any other name, such person.

(e) **Establishment :** Establishment means a factory, a mine, a plantation, or an establishment to which the provisions of this Act have been declared under sec.2(1) to be applicable.

(f) **Factory :** Factory means a factory as defined in Sec.2 (m) of the Factories Act, 1948.

(g) **Inspector :** Inspector means an inspector appointed under Sec. 14 of this Act.

(h) **Maternity benefits:** Maternity benefit means the payment referred to in sec. 5 (1) of the Act.

(i) **Miscarriage:** Miscarriage 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 miscarriage, the causing of which is punishable under the Indian Penal Code.

(n) **Wages :** It means all remuneration paid or payable in case to a woman, if the terms of the contract of employment, express or complied were fulfilled. It includes,

(i) Such cash allowances (including dearness and house rent allowance) as a workman is for the time being entitled to;

(ii) incentive bonus;

(iii) the money value of the concessional supply of food grains and other articles.

But wages do not include (i) any bonus other than incentive bonus, (ii) overtime earning and any deduction or payment made on account of fine, (iii) any provident fund contribution or contribution to any pension fund and (iv) any gratuity payable on the termination of service.

(o) **Woman:** Woman means a woman employed whether, directly or through any agency, for wages in any establishment.

Prohibition of Employment : Under Sec. 4 of the Act, an employer is prchibited from knowingly employing any woman in any establishment during six weeks immediately following the day of her delivery or her miscarriage. The section provides that no woman shall work for a period of six weeks in any establishment immediately following the day of her delivery of her miscarriage. Further, on a request made by the pregnant woman, the employer should not give during the period of one month immediately preceding the six weeks period before the date of delivery, any work which is of arduous nature or any work which involves long

hours of standing. Such woman shall not be employed in any work which is likely to interfere with her pregnancy or the normal development of the child or in any way likely to cause miscarriage or affect her health adversely.

Payment of Maternity Benefit : (Sec-5)

The employer shall be liable to pay maternity benefit to every woman employed by him at the rate of the average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and, for the six weeks immediately following that day.

The average daily wages means that average of the woman's wages payable to her for three calendar months preceding the date from which she absent herself on account of maternity or one rupee day, whichever is higher.

Conditions to be fulfilled before claiming maternity benefit under the Act

1. She must have actually worked in an establishment or a factory for a period of not less than one hundred and sixty days in the twelve months immediately proceeding the date of expected delivery shall be takin into account.

2. The maximum period for which she shall be entitled to maternity benefit shall be twelve weeks, that is, six weeks up to and including the day of her delivery and six weeks immediately following that day.

If the woman dies during this period, the maternity benefit shall be paid upto the date of her death. Where a woman delivered the child and dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving the child, she is entitled to maternity benefit for the entire period of six weeks following her delivery.

If the child also dies the she is eligible to claim the benefit for the days upto and including the date of the death of the child. A woman worker who expects a child is entitled to maternity benefits of a maximum period of twelve weeks which is split up into two periods, namely prenatal and postnatal.

Every woman who is entitled to claim maternity benefit under this Act shall continue to be so, notwithstanding the application of the Employees State Insurance Act, 1948 to the factory or establishment in which she is employed. The benefit continues until she becomes qualified to claim maternity benefit under Sec. 50 of the E.S.I. Act. (Sec. 5-A).

Every woman who is employed in a factory or other establishment to which the E.S.I. Act applies and whose wage does not exceed Rs. 1000 (excluding remuneration for overtime work) is entitled to the payment of maternity benefit under this Act. It is also necessary to fulfill the conditions specified in Sec 5(2) in order to claim benefit under this Act.

Notice of claim for maternity benefit and payment there of (Sec. 6)

Any woman employed in an establishment and entitled to maternity benefit under this Act may give notice in writing to her employer. In that notice she must state about her maternity benefit and any other amount to which she is entitled, may be paid to her or to such person as she may nominate in the notice. She must also declare that she will not work in any establishment during the period for which she receives maternity benefit.

In the case of a woman who is pregnant the notice shall state the date from which she will be absent form work. This date will not be earlier than six weeks from 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.

Amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of proof that she is pregnant. The amount due for subsequent period shall be paid by the employer to the woman within forty eight hours of production of proof that the woman has delivered a child. If she dies before receiving the amount the employer shall pay such amount to the person nominated by the woman and in case there is no nominee, to her legal representative(Sect.7).

Every woman entitled to maternity benefit under this Act shall also be entitled to receive a medical bonus of Rs. 2 from her employer if no pre-natal confinement and post natal care is provided by the employer free of charge (Sec. 8)

Dismissal during absence or pregnancy (Sec.12)

When a woman absent herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or an account of such absence. Further it is unlawful for the employer even to give notice of discharge or dismissal during such absence or to vary any of the conditions of service to her disadvantage. Any discharge or dismissal of a woman not in accordance with these provisions, shall not deprive her of the maternity benefit or medical bonus.

However where the dismissal is for any gross misconduct, the employer may deprive her of the maternity benefit or medical bonus by communicating an order in writing.

According to Sec. 13 no deduction shall be made from the normal and usual daily wages of a woman entitled to maternity benefit for the reason that the nature of work assigned to her is not of arduous nature or breaks for nursing the child are allowed to her under the provisions of Sec. 11.

Forfeiture of maternity benefit (Sec.18) if a woman works in any establishment, after she ha been permitted by her employer to absent herself under the provisions of sec. 6, for any period during such authorised absence, she shall forfeit her claim to the maternity benefit for such period.

Leave and Nursing breaks

In case of miscarriage on production of such proof, a women is entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage (Sec. 9).

A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage on production of the prescribed proof is entitled to leave with wages at the rate of maternity benefit for a maximum period of one month (Sec. 10) This facility is available to her in addition to the period of absence allowed to her under Sec. 6 or under Sec. 9 of the Act.

Nursing Breaks: Where a woman after having delivered a child returns to duty after such delivery, she shall in addition to the interval for rest be allowed in the course of her daily work two breaks for nursing the child until the child attains the age of fifteen months.

Inspectors: (Sect 14) The appropriate Government may be notification in the official Gazette appoint such officers as it thinks fit to be Inspectors for the purposes of this Act and may define the local limits of jurisdiction within which they shall exercise their functions under this Act.

Powers and duties of Inspectors (Section 15 and 17)

An Inspector may exercise all or any of the following power subject to such restrictions or conditions as may be prescribed :

1) He may enter at all reasonable times with assistants, if any premises or place where women are employed or work is given to them in an establishment, for the purposes examining any registers, records and notices required to be kept or exhibited by or under this Act and require production of the same for inspection.

2) He may examine any person whom he finds in any premises or place and believes that she is employed in the establishment.

3) He may require the employer to give information regarding the names and addresses of women employed payments made to them and applications or notices received from them under this Act.

4) He may take copies of any registers and records or notices of any portions thereof.

Further, under Sec. 17 an inspector can direct certain payments to be made to a woman under this Act. Any woman claiming maternity benefit or any other amount to which she is entitled and any person claiming payment under Sec. 7 has been improperly with held may make a complain to the Inspector. The Inspector may of his own motion or on receipt of a complain make an inquiry of cause an inquiry to be made. If he is satisfied that payment has been wrongfully with held, he may direct the payment to be made in accordance with his orders. Every Inspector appointed under this Act shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian penal code 1860.

Penalties : If any employer contravenes the provisions of this Act or the rules made thereunder he shall be punishable with imprisonment which may extent to three months or with fine which may extend to Rs. 500 or both. Where the contravention is regarding maternity benefit or payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition recover such maternity benefit or amount as if it was a fine and pay the same to the person entitled thereto (Sec.21).

Whoever fails to produce on demand by the Inspector any register or document kept in custody or conceals or prevents may person from appearing before an Inspector for being examined by the Inspector, shall be punishable with imprisonment which may extend to three months or with fine which may extend to Rs. 500 or with both.

Suggested Questions

1) What are the conditions for the payment of maternity benefit under the Maternity Benefit Act, 1961? When is the maternity benefit forfeited?

2) What are the powers and duties of Inspector appointed for the purposes of the Maternity Benefit Act, 1961?

Unit -15

THE PAYMENT OF GRATUITY ACT, 1972

Gratuity, like provident fund or pension is kind of retirement benefit. The term gratuity is understood as a gift or present for the service rendered. In earlier days it was treated as a payment gratuitously made by the employer to the employee at his pleasure. But as a result of several decisions, gratuity was regarded not as a gift or present made by the employer, but a rightly earned service benefit. It is a payment which is intended to help the workmen after their retirement whether the retirement is due to superannuation or of some physical disability. The general principle underlying gratuity schemes is that by faithful service over a long period the employee is entitled to claim a certain amount as retirement benefit. (Indian Hume Pipe Co. Ltd. Vs. Its workmen A.I.R. 1960 S.C 251) Therefore the term gratuity means some sort of retired benefit which will be given to an employee in consideration of long and continous service, to help him after retirement.

The Payment of Gratuity Act, 1972 was passed by the parliament in August 1972. It came into force on 6th September, 1972. It is one of the social security measure adopted by the Central Govt. to protect the interest of the workers and his family in the even of his retirement. Though gratuity is a retirement benefit, it is independent of any other compensation, or benefit available to an employee under the contact of service. In E.I.D. Parry Ltd., Vs. Industrial Gribunal, Madras (1977, I LLJ 276) it has been held that gratuity is payable to an employee in addition to the pension benefit;

Substitute for Provident fund and pension benefit. Applicability of the Act: The act applies to (a) every factory, substitute for provident fund and pension benefits.

Mine, oil-field, 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 shops and establishments in a State in which ten or more persons are employed or were employed on any day of proceeding twelve months;

(c) such other establishment or class of establishments; in which ten or more employees are employed, or were employed, on any day of the proceeding twelve months, as the Central Govt. may by nidification, specify in this behalf. (Sec. 1(3)).

The Act covers all person employed in the above establishments whose wages do not exceed Rs. 1000 per month.

Definitions

Appropriate Government : (Sec. 2(a)) - In relation to any of the following etablishment appropriate Government means the Central Government.

(a) an establishment belonging to or under the control of the Central Government.

(b) an establishment having branches in more than one state.

(c) an establishment of a factory belonging to, or under the control of the Central Government.

(d) an etablishment of a major port, mine, oil field or railway company.

On any other case, 'appropriate Government' means the State Govt.

Completed year of service (Sec.2(b) - It means continous service for one year.

Continuous service (Sec. 2(c)- It means uninterrupted service. But it includes service which is interrupted by sickness, accident, leave, layoff the strike or a lockout or cessation of work not due to any fault of the employee concerned, whether such uninterrupted service was rendered before or after the commencement of this Act. (Sec.2(c)).

In the case of an employee whose service has been interrupted during the course of one year, he shall be deemed to be in continuous service if he has been actually employed by an employer during the twelve months immediately preceding the year for not less than.

(i) 190 days, if employed below the ground in a mine or

(ii) 240 days in any other case, except, when is employed in an seasonable etablishment (Explanation to Sec 2(c)).

An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than seventy five percent of the number of days on which the establishment was in operation during the year (Explanation II to Sec. 2(c) Controlling authority; (Sec.2(d)) controlling authority means an authority appointed by the appropriate Government under Sec.3 the appropriate Government may by notification in the Official Gazette, appoint any office to be a controlling authority who shall be responsible for the administration of this Act. Different controlling authorities may be appointed for different areas.

Employee (Sec. 2(e) : Employee means any person (other than an apprentice) employed on wages not exceeding Rs. 1000 per mensum in any establishment, factory mine, oil field, plantations, port, railway company or shop. He may employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work. The terms of his employment, may be express or implied.

Employee does not, however, include any such person who is employed in a managerial or administrative capacity or who holds a civil post under the central Government or a State Government or who is subject to the Air Force act, 1950 or the Navy Act, 1957(Sec.2(e).

Family : (Sec. 2(h)): In the case of a male employee, family shall be deemed to consist of himself, his children whether married or unmarried, his dependent parents and the widow and children of his predeceased son, if any.

In the case of a female employee, family shall be deemed to consist of herself, her husband her children whether married or unmarried, her dependant parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. She may, by a notice in writing to the controlling authority exclude her husband and his dependent parents from being included in her family. (provision to sec. 2(h).

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. 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 (Explanation so Sec.2(h).

Retirement : Sec.29(q) : It means termination of the service of an employee otherwise than on superannuation.

Superannuation : Sec. 2(r) : superannuation in relation to an employee means :

(i) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employed shall vacate the employment; and

(ii) in any other case, the attainment by the employee of the age of fifty - eight years.

Wages : Sec.2(s) - 'Wages' means all emoluments which are earned by an employed while an 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. It includes dearness allowance but it does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Payment of Gratuity : (Sec.4)

Payment of Gratuity to an employee under the Act is mandatory Sec. 4 enumerates the circumstances in which gratuity become payable and the cases when gratuity may be forfeited.

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 registration, or

c) on his death or disablement, due to accident or disease.

Where the termination of employment is due to death or disablement, the completion of continous service of five years is not necessary (Proviso 1 to Sec. 4). In case of his death, gratuity payable to him shall be paid to his nominee or if no nomination has been made, no made to his heirs (proviso 2 to Sec.4(1).

Rate of gratuity : An employee is entitled to get gratuity as the rate of fifteen days wages for every completed year of service sec. 4(2) lays down that the employer shall pay gratuity to an employee at the rate of fifteen days wages for every completed year of service or part there of in excess of six months, based n the rate of wages last drawn by the employee. Generally the last drawn basic pay and Dearness allowance are taken together for the calculation of gratuity.

In the case of piece-rated employee, daily wages shall be computed on the averages of the total wages receive by him for a period of three months immediately before the termination of his employment. Where an employee is employed in seasonal establishment, the employer shall pay the gratuity at the rate of seven days wages for each season.

However, if an employee had worked less than 240 days, due to absence without leave, such employee is not entitled to payment of gratuity.

The maximum amount of gratuity payable to an employee shall not exceed twenty months wages.

Forfeiture of gratuity : (Sec. 4(6) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage to the property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee shall be wholly forfeited if the services of such employee have been terminated for - (a) his riotous or disorderly by conduct or any other act of violence of his part or (a) any act which constitutes an offence involving mortal turpitude, provided that such offence is committed by him in the course of his employment.

Thus the law provides for the forfeiture of the gratuity in case of misconduct of the employee. Depending upon the nature of the misconduct sometime complete forfeiture results and yet at other times only partial forfeiture results.

Nomination

The rules relating to nomination are contained in Sec.6 of the Act. They are as follows:

1. Each employee who has completed one year of service shall make a nomination within thirty days of completion of one year of service.

2. An employee may in his nomination, distribute the amount of gratuity payable to him under this act amongst more than one nominee.

3. Where an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more member of his family, In order to protect the interest of his family, it has been specifically provided that any nomination made by such employee in favour of a person who is not a member of his family shall be void.

4. At any time a nomination may be modified by an employee after giving a written notice to his employer of his intention to do so.

5. If a nominee predeceases the employee, the interest of the nominee shall revert to the employee. The employee shall then make a fresh nomination in respect of such interest.

Application to controlling authority: If any employer refuses to accept a nomination or to entertain an application for payment of gratuity or,

2) rejects eligibility to payment of gratuity or

3) specifies an amount of gratuity less than what is payable or,

4) having received on application for payment of gratuity, fails to issue any notice within fifteen days, the employee or his nominee or legal heir within ninety days of the occurrence of the cause, amy apply to the controlling authority for issuing direction under Sec. 7(4).

Powers of Controlling authority: The controlling authority for the purpose of conducting an inquiry under the Act, regarding payment of gratuity or admissibility of any claim or as to the person entitled to receive the gratuity, shall have the same powers as are vested in a court under the code of Civil procedure, 1908. It shall have powers in respect of the following matters, namely,

a) enforcing the attendance of any person or examining him on oath;

b) requiring the discovery and production of documents.

c) receiving evidence on affidavits.

d) issuing commission for the examination of witnesses. (Sec.7(5) Appeal (Sec.7(7). An y person aggrieved by an order of the Controlling authority may prefer an appeal to the appropriate government or such other authority as may be specified by the appropriate Government in this behalf. Such appeal must be made within Sixty days from the date of the receipt of the order.

The appellate authority after giving the parties to the appeal a reasonable opportunity of being heard may confirm, modify of reverse the decision of the controlling authority (Sec.7(8)).

Application for gratuity (Sec.7) : An employee who is eligible for payment of gratuity under the Act, or any person authorised an writing to act on his behalf, shall send an application for payment of gratuity to the employer ordinarily within thirty days from the date the gratuity became payable. However when he date of superannuation or retirement of an employee is known the employee may apply to the employer before their days of the date of superannuation or retirement.

As soon as gratuity becomes payable the employer shall determine the amount of gratuity and given notice in writing to the person to whom the gratuity is payable. A notice must be given to the controlling authority specifying the amount of gratuity so determined, whether and application for payment of gratuity has been made or not these, things have to be done by the employer. The employer, must arrange to pay the amount of gratuity within such time as may be prescribed, to the persons to whom the gratuity is payable.

Dispute as to gratuity : If there is any dispute as to the (a) amount of gratuity payable to an employee or (b) admissibility of any claim or (c) person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

Where there is a dispute with regard to any of these matters the employee may make an application to the controlling authority for taking necessary action. After due inquiry the controlling authority shall determine the amount of gratuity payable to the employee. If as a result of such inquiry any additional amount is found to be payable by the employer, he shall direct he employer to pay the additional amount. The controlling authority shall pay the amount deposited including excess amount to the person entitled there to.

Recovery of gratuity : (Sec. 8) If the amount of gratuity is not paid by the employer, within the prescribed time, to the person entitled thereto, the latter shall make an application to the Controlling authority. On receipt of the application from the aggrieved person the controlling authority shall issue a certificate for that amount to the Collector. The Collector

shall recover the amount as arrears of revenue together with compound interest at the rate of nine percent per annum from the date of expiry of the prescribed time and pay the same to the person entitled thereto.

Penalties : (Sec.9) -An employer who contravenes or makes default in complying with any of the provisions of the Act or any rule, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to Rs. 1000 or with both. Where the offence relates to non-payment of gratuity, the employer shall be punishable with imprisonment for term which shall not be less than three months.

Suggested Question

Explain the rules relating to determination and recovery of the amount of gratuity under the Payment of Gratuity Act, 1972.

Unit -16

THE TAMILNADU SHOPS & ESTABLISHMENT ACT, 1947

Introduction

The Tamil Nadu Shops and Establishments Act came into force from 10th February 1948. This act regulates the conditions of work of persons employed in shops, Commercial Establishments, Restaurants, Theatres and other establishments. Prior to the enactment of this Act, there was no enactment regulating the conditions of work of the employees in shops. Commercial Establishments, undertakings, Restaurants, etc. In order to bring a comprehensive measure in this State on the lines of similar enactments in force in other States, the Act was enacted in Tamil Nadu.

The provisions of the Act came into force in the first instance in the City of Madras and in all municipalities on the dates fixed by the Government. The Government is also empowered to extend the Provisions of this Act to other areas when necessary.

Scope and Coverage

The act extends to the whole of the State of Tamilnadu and it shall come into force on the prescribed date to the areas notified therein. The Act applies to persons employed in shops, commercial Firms, Restaurants, Theatres and other establishments as notified by the Govt. of Tamilnadu but will not apply to certain establishments like the establishment under Central or State Govt. Local Authorities and persons employed in confidential or Managerial capacity. The Act prescribes suitable limits relating to daily and weekly hours of work, intervals for rest and spread over for periods of work granting of compulsory holiday in a week. The Act enables the Govt. to fix the opening and closing hours for shops, Commercial Firms, restaurants, etc.

Establishment means a shop, commercial establishment, Restaurant, Eating House, Residential Hotel, Theatres or any place of Public Amusement or entertainment and includes such establishment as the Govt. may notify for the purpose of the Act. Shop means any premises where any trade or business is carried on or where service are rendered to customers and includes offices, store rooms, godowns and warehouses whether in the same premises or otherwise used in connection with such business but does not include a restaurant, eating house or Commercial establishment. The word trade or business in the definition have to be interpreted in a wide sense and includes any business as distinct from an avocation or profession carried on for profit. A transport workshop connected to the main business of transport of vehicle for passenger traffic is a shop.

Commercial Establishments means an establishment which is not A SHOP BUT WHICH CARRIES on the business of advertising, Commission, forwarding or commercial agency, a

clerical department of a factory or industrial undertaking, Insurance Company, Joint Stock Company, Bank, Brokers, Office or exchange and such other establishments as may be notified.

Theatre includes any place intended principally or wholly for re-presentation of moving pictures or for dramatic performances.

The shops and Establishment Act covers the persons employed in the shops and etablishment. The words 'Workman' and employee are not used in the Act and the definition governs wider spectrum of persons employed. The word person employed means:

(a) in the case of shop, a person wholly or principally employed in connection with the business of the shop.

(b) in the case of factory or an industrial undertaking a member of clerical staff.

(c) in the case of commercial establishment other than a clerical department of a factory or an Industrial undertaking a person wholly or principally employed in connection with the business and includes a peon.

(d) in the case of restaurant; or eating house persons employed in the preparation of serving food or drink or in attendance on customer or in cleaning utensils used in the premises or a clerk or cashier.

(e) in the case of a theatre a person employed as an operator, clerk, door keeper, user or as may be specified by Government.

(f) in cases not covered above, person principally or wholly employed in connection with the business of the establishment and includes a peon.

But does not include the husband, wife, son, daughter, father, mother, brother, or sister of an employer who lives with and is independent on such employer.

The relationship of person employed and his employer is a determining factor to establish his right over the employment. A person engaged under a contract as a medical officer for attending to the employees of a company in its various establishments daily at a prescribed time for which he was paid a fee in the shape of retainer, is not a person employed. (Dr. T.N.Lakshmipathy Vs. Standard Vacum Oil Co., Ltd., (1961 II LLJ 767) In a recent patna High court case, it was held that an Advocate retained as an advisor on payment of monthly retainer fee cannot be held as an employee of the establishment. The shops and establishment Act is not applicable to persons employed in a position of Management. The question when can a person be said to have been employed in a managerial position is a difficult test. Several considerations will have to be relevant in dealing such question. Whether the person

operates the Bank account or makes payment to third, parties and enter into agreement on behalf of the employer, is the entitled to represent the employer to the world at large and does he have control and charge of the Office, has he got power to appoint member of the Staff or punish them. The salary drawn by such employee can not be a significant factor though it can be treated as theoretically a relevant (T.P. Chandra Vs.Commissioner of Workmen compensation - 958 1 LLJ 55). The constitutional validity of Section 4(1) (a) was dealt in the case of Philiphose Vs. Additional commissioner for Workmen Compensation, Madras 1959-2 LLJ page 78).

Scheme of the Act

1) Regulations regarding shops.

2) Regulations regarding establishment other than shops.

3) Employment of children and young persons.

4) Health and Safety

5) Holidays with wages

6) Payment of wages

7) Appointment of Inspectors

8) penalties and offences

Regulations regarding shops (Sec.7)

No shop shall be opened earlier or closed later on any day than such hours as may be fixed by the State Government. No shop shall sell any goods after the hours fixed outside the shops dealing in the same class of goods. No person employed at any shop shall be allowed to work therein for more than 8 hours on any day and 48 hours in a week.

Persons employed in the shop shall be given interval for rest of at least 1 hour after a continuous work for 4 hours. Every shop shall remain closed on one day of the week. The State Govt. may also by notification require the shop to close on one 1/2 day prior to the day of full closing day. The persons employed shall be paid wages for such day of holiday.

Regulations regarding establishments other than shops: (Sec.13)

No establishment on any day be opened earlier later than such hours as may be fixed by the State Government.

The Government may fix different hours of different establishment for different areas for different times of the year. No persons employed in an establishment required or allowed to

work for more than 8 hours on any day and 48 hours in a week. Subject to payment of overtime wages, a person may be allowed to work an overtime not exceeding 10 hours on any day Persons employed shall be given at least 1 hour interval after continuous work of 4 hours. The period of work of the persons employed shall be so arranged that along with interval for rest shall not spread over for more than 12 hours in a day. Every persons employed in an establishment shall be allowed in each week a holiday of one whole day. The State Government by notification may allow an additional holiday of one 1/2 day and the persons employed shall be paid wage for such day. (Sec. 4 and 15).

The nationalised banks like Canara Bank, Bank of India which are the establishment under Central Government, are not exempted from the provisions of the Shops and Establishment Act (Canara Bank and Others Vs. Appellate Authorities and others (1981-2LLJ Page 89) The Provisions of opening and closing hours, daily and weekly hours, spread over, closing of shops and grant of holidays shall not be applicable to hospitals other institutions where the treatment or care of the sick is being undertaken, chemist or druggist shops, clubs and residential hotels and stalls and refreshment rooms at Railway Stations.

Employment of Children and young persons : (Sec.17)

A child who has not completed 14 years shall not be allowed to work in any establishment. No person who is not a child and has not completed17 years (called as young person) shall be required or allowed to work for 7 hours in any day and 42 hours in any week and he shall not be allowed to work on overtime.

Health & Safety : (Section 20 to 24)

The premises of every establishment shall be kept clean and shall be cleaned including lime washing, colour washing, etc., at intervals. The establishment and the compound surrounding it shall be strictly maintained in a sanitary and clean condition and the employer shall enforce proper use of latrines and prevent pollution. The premises of the establishment shall be ventilated in such a way to admit continuous supply of fresh air. The premises of an establishment shall be sufficiently lighted during all the working days and necessary precautions shall be provided.

Holidays with Wages : (Sec. 25 to 28)

Every persons employed in an establishment shall be entitled after 12 month of continuous service to holidays with wages for period of 12 days in the subsequent period of 12 months. Holidays may be accumulated upto a maximum period of 24 days. Every person employed shall also be entitled during the first 24 months to for leave with wages for a period not exceeding 12 days on the grounds of sickness and casual leave with wages for a period not exceeding 12 days. If a person entitled to any holiday with wages is discharged before he availed the holidays in his credit or having applied for and been refused, he quits his

employment before he has availed holidays the employer shall pay him in respect of the holidays not so availed. Every person employed shall be paid the holidays. Every persons employed shall be paid for the holiday or the period of leave at an equalant rate to the daily average of wages. The State Government may increase the total number of Annual Holidays, as may be notified.

Wages : (Sec. 29)

The Tamilnadu shops and establishment Act is a self contained code, which deals elaborately for the payment of wages and for overtime payment and deductions which may be made from the wages. The wage period shall be fixed and that shall not exceed one month. Whenever persons employed in any establishment is required to work overtime he is entitled to twice the ordinary rate of wages in respect of such overtime work. The word overtime is not defined in the Act. Though the daily and weekly hours of work is fixed as 8 hours in a day, the persons employed are entitled to compensation by way of overtime wages for the work done beyond the normal work of the etablishment. It is not, therefore, as if the provisions of the Act govern overtime payment payable by the employer, where maximum hours of work are governed by the conditions of service prevailing in that etablishment. The Act does not limit the power of an establishment to fix normal working hours for its employees. It only prescribes permissible limit of working hours for any person employed in that establishment as 8 hours a day and 48 hours in any week. If an employer fixed lesser number of hours as normal working hours for his establishment any work done beyond the normal working hours, even if it does not exceed the prescribed limit of working hours under the Act, would attract overtime payment. These propositions were clarified in the judgement of Madras High Court in the cases of State Bank of India and Philips India Cases (1974 1 LLJ 393).

The wages shall be paid before the expiry of the 5th day of wage period and the wages will be paid in currency, coin or currency notes.

Deductions (Sec.34)

Only the following authorised deduction are allowed :

a. Fines

b. Deductions for absences from duty.

c. Deductions for damages to or loss of goods expressly entrusted where such damage or loss in directly attributable to his neglect or default.

d. Deduction for house accommodations supplied by employer.

e. Deductions for amenities and services supplied by the employer.

f. Deductions that required to be made by the Order of Court.

g. Deductions for subscriptions to the approval P.F.

h. Deductions for payments to Co-operative Societies approved by the Government or by a Scheme of Insurance maintained by the India Post Office or Insurance Company.

i. Deductions made with the written authorisation of the employed person. In furtherance of any saving scheme. While imposing fines, the Act prescribes modalities before levying the same.

Fine

1. For the acts and omission which form part of a contract of service and have been specified by notices, fines can be imposed. Before imposing such fines sufficient opportunity should be given to show cause against such imposition to the employee. The total amount of fine which may be imposed in one wage period on any person employed shall not exceed an amount equivalent to % of wages payable to him. No fine shall be imposed on any person who has not completed his 15th year and no fine shall be recovered from the person employed after the expiry of 60 days from the date on which it was imposed. Every fine shall be deemed to have been imposed on the day of the act of omission in respect of which it was imposed and all fines so realised shall be recorded in a Register and the fines so collected shall be applied only to beneficial purposes to the persons employed in the establishments as approved by the prescribed authority. All establishments shall submit a list of acts and omissions for which fine may be imposed the Authorities., The Commissioner of Labour and the Deputy Commissioner of Labour are the authorities to approve the said list. Any person desiring to impose a fine on a person employed can make a deductions from his wages for damages or loss and shall explain personally to the said person the act or omission or damage or loss in respect of which the fine or deduction is proposed to be imposed and the amount of fine or deduction which it is proposed to impose shall call for his explanation. The charge in respect of which it is proposed to impose fine or deduction calling explanation of the person concerned shall be in writing and the signature of such person being obtained. Employer should maintain a register of fines in Form 'B'.

Deductions for absence from Duty

On account of absence of an employed person from the place or places for the whole or any part of the period as the case may be wages may be deducted. The account of such deductions shall be in proportion in the period for which he was absent. If the service condition or rule approved by the Govt. permits deduction of 8 days, wages when 10 or more persons employed acting in concert absent themselves without giving notice as required under the terms of their contract of employment 8 days wage may be deducted. When such persons refused to work or stage stay in strike such period of refusal may also be treated as absence

and 8 days wage cut may be imposed. The amount collected towards the deduction made for absence from duty shall be credit to the labour Welfare found established under the Tamilnadu Labour Welfare Act.1972.

Deduction for damages or loss

Deductions under this clause shall be equivalent to the damages or loss caused to the employer by the act or default of the person employed and such deductions shall not be imposed until the persons employed given opportunity of showing cause or otherwise than in accordance to the procedure as prescribed.

Deductions for services rendered

Amount towards housing accommodation, amenities or services provided by the employer shall be equivalent to the value of such amenities and services supplier and the deductions shall be subject to such conditions as the Government may impose.

Deductions for recovery of advance.

The recovery of advance of money shall be made from the first payment of the wages. But no recovery shall be made of such advances given for travelling expenses and recovery of advance of wages not already earned shall be subject to rules made by the Govt. Deductions for payment to the Co-operative Societies shall be subject to the conditions as imposed by the Govt. An advance of wages shall not exceed an amount equivalent to 2 months and the deductions shall not spread over for more than 12 months and repayment of advance shall not 1/3rd of wages in one instalment.

Dispersing with the services

The act prescribes specific procedure while dispensing with the service of any employed persons. The person employed continuously for a period of not less than 6 months shall not be dispensed from the service except for a reasonable cause without giving such person at least one month notice or wages in lieu of such notice. Such notice not necessary where the service of such person are dispensed on a charge of misconduct supported by satisfactory evidence recorded at an enquiry help for the purpose (Section 41) This is a salutary provision in the act which safeguards the persons employed from the arbitrary termination of employment by the employer. Even though the same remedy is available under the Industrial Dispute Act 1947. The person employed shall have the right to choose any one of the forum to get his remedy. Under this act the person employed shall have a right to Appeal to the Authority Deputy Commissioner of Labour within 30 days from the date of services of the order of termination. If the Appellate Authority satisfied that there is sufficient cause for the delay in filling the Appeal he may admit the appeal and the procedure to be followed by an employer without conducting an enquiry as contemplated under Section 41 (i) of the Act, the Appellate

authority than no jurisdiction whatever, to itself conduct ar enquiry, in the place of the enquiry to be conducted by the employer and as a result of such enquiry to come to the conclusion whether the employee was guilty of misconduct alleged against him or not. In such a circumstances, the only course open to the appellate authority is to allow he appeal of the employee and set aside the order of dismissal. The result of this will be the employer will be at liberty to take action against the employee after complying with the statutory requirement (Zenith Lamps and Electricals Vs. Addl. Commissioner workmens compensation 1970 (2) LLJ 108 followed in 1973 (2) LLJ 445. The Manager of a Brnach of a Bank can not both been employer and a employee. The employer of the Branch is a person who is in general management or control of Bank. The Branch Manager of a Bank who is dismissed or discharged from service is entitled to invoke the provisions of Section 41.

If the termination is to be on the ground of reasonable cause it is incumbent on the part of the employer to disclose the reasonable cause in the order of termination and in the absence of a disclosure it is not possible for any authority and in particular the Applellate Authority under section 41(2) of the Act to determine as to whether the grounds put forth by the employer can be stated to constitute reasonable cause and as to whether the order of termination has been based bonafide (State Bank of Travancore Vs. Dy. Commissioner of Labour Coimbatore -1981 - 1LLJ 393). An appeal under section 41(2) shall be preferred with in 30 days from the date of service of the order terminating the service with the employer. An Appeal may be admitted after the said period of 30 days if the Appellant satisfies the Appellate Authority that the had sufficient cause for not preferring the Appeal within that period. If the employer or his representative fails to appear on this specified date. Appellate authority may proceed to hear determined the Appeal expert and if the A ; Appellant fails to appear the Appeal may be dismissed. However, such exparte orders may be set aside and appeal be heard on good cause being shown within 1 month of the date of the said order.

The language employed in Section 41 (i) of the Act makes it clear that only a premature termination of the services of an employee can be brought within the scope of this section i.e. the termination of services prior to the period fixed in the contract of service, if there is one; or a termination of service prior to the period fixed for retirement on reaching the age of superannuation prescribed, Lakshmi Vilas Bank Vs. L.S. Pattabi Chettiyar & Another 1970 (2) LLJ 211. The rule of law under the Industrial Desolate Act laid down by Supreme Court in an application under Section 33 of I.D. Act is not applicable to the case of a Appeal before the authority under this Act. 975(1) LLJ 450, and the jurisdiction of the Appellate Authority is not in parimateria with the jurisdiction of the Industrial Tribunal under I.D. Act (1972 (2) LLJ 395) If the notice period falls short of one month the Appellant may complain that he was not given a notice in accordance with the Law. While considering this Section, the Supreme Court declared that this Act is not in repugnant to that of I.D. Act (Section 2A) and held that there is no repugnancy arising within he meaning of Art 254 (1) .of the Constitution (1977(2) LLJ 312. If the employed person files an appeal under the TNSE Act and succeeds he will

get a declaration that the Employer dispensed the Services without a reasonable cause. Once such declaration is given that decision would be final and binding on both the parties. If the employed person avails the remedy under this Act and also under the I.D. Act and of the case is referred to the Labour court under Section 10 of the I.D. Act no further proceedings can be continued under section 41 of the TNSE Act. Enquiry under the Section means an enquiry at which evidence is recorded and not in a position at which the expert statements obtained behind the back of the persons charged with misconduct. The Appellate Authority can admit additional evidence to support charges of the mis-conduct. Where there is no enquiry, the Commissioner can not permit fresh trial before him. If the contract of service prescribes a period of service, the termination of the service of the employee in pursuance to the expiry of such period of employment that action will not fall with the scope of 41(a) In a case of Appeal under Section 4(2, the allegation of victimisation has no relevancy. The question whether a reasonable cause or otherwise is a question of fact.

General

The Tamilnadu Shops and establishment Rules 1948 prescribes provisions for cleanliness in every establishment, ventilation and precautions against fire and Inspectors are appointed for the purpose of this Act. The name Board of every establishment shall be in Tamil and wherever other languages are used the version in such other language shall be below the Tamil version.

Maintenance of Registers and records and display of notices

The Act also prescribes various registers and records to be maintained in all the shops and establishments and also prescribes notice which will have to be displayed. The act also prescribes penalty for offence and the State Government are empowered to make rules the carry out the performances of the Act apply to an etablishment, the question will be referred to the Commissioner of Labour. The employer should maintain a register of employment in Form 'E'. The Employer may, in view of maintenance of register, exhibit in his establishment of notice specifying the daily hours of work and intervals for rest. The notice shall be in Form 'G'. The employer shall also exhibit in a conspicuous place of notice in Form J showing the names of persons employed, periods of work, rest interval and weekly holidays and send a copy of the same of the Assistant Commissioner of labour. The Employer shall also maintain a register in form 'K' for the holidays and level granted. The employer should also maintain a visit book. The employer shall issue a Service Book in Form 'N'.

If any employed person is entitled such rights or privilege which are more beneficial to them that what is Provided under the Act, such rights and privileges shall not be affected by the provisions of this act. On any special occasion in connection with a Fair or festivals or a succession of public holidays, the State Government may suspend for a specified period the operation of all or any of the provisions of this Act.

The act makes it compulsory that every employer shall issue service Book to every persons employed on the date of his entry into the service with all entries duly made therein. The Government may examine either permanently or for any specified period in establishments or class of establishments or person or class of persons from all or any of the portions of this rules subject to such conditions as the Government may deem fit.

Penalties and offence

If an employer contravenes the provisions regarding opening and closing hours, daily and weekly hours of work, spread over, closing and grant of holidays, employment of children and young persons, health & safety, holidays and sick leave, pay during annual holidays, payment of wages & deductions he shall be punishable with fine of Rs.25 for a first offence and not exceeding Rs. 250/- for subsequent offences. Selling of goods outside the shop after closing hours is punishable with fine of Rs.10/- for first offence and up to Rs.100/- for second subsequent offence. The Act does not provide any period for filling of a complaint.

While the Act prescribes the penalties as stated above, the rule says that any contravention shall be punishable with fine which may extend to fifty Rupees. This is a stranges anomoly between the Act& Rules. Also the provisions of penalty of find failure of issue of notice while disbanding with service of employed person is an unique one.

THE TAMILNADU LABOUR WELFARE FUND ACT, 1972

It is small piece of Welfare Legislation providing for the constitution of a fund for promoting the welfare of Labour and for certain other matters connected there within the State of Tamilnadu. The act came into force from 1.1.1973. This Act is applicable to all Establishments.

Coverages

1. The act is applicable to Establishment. The term establishment means :

   a. A Factory as defined under Factories Act 1948.

   b. Motor transport undertaking as defined in the Motor Transport Workers Act 1961.

   c. Plantations as defined in the Plantations Labour Act 1951.

   d. Catering establishment as defined in Tamilnadu Catering Establishment Act 1958 wherein 5 or more persons employed or were employed in the proceding 12 months.

   e. Establishment including a Society Registered under the Tamilnadu Societies Registration Act 1975 and Trust employing 5 or more persons.

   f. Other establishment which Govt may notify. The Act, is not applicable to establishment of central or State Governments.

2. The Act covers all the employees employed in an establishment for a period of 30 days during the period of the preceding 12 months and includes all skilled and unskilled manual, supervisory, clerical or technical persons. The persons employed mainly in a Managerial capacity and person employed in a supervisory capacity drawing wages exceeding Rs. 10000/- per mensum and persons employed as apprentice or on part time basis will not come under the definition of employee.

Constitution of Labour Welfare Fund

The Government is empowered to constitute a Fund called the Labour Welfare Fund and shall keep a separate account therefor. The following amount shall be credited to the fund.

1. Unpaid accumulations shall be paid to the Board.
2. All finds including amount realised under standing Orders, from the employees.
3. Deductions made under the Proviso to sub-section 2 of Section 9 of Payment of Wages Act and under the Proviso 2 sub-sec.36 of Tamilnadu Shops and Establishment Act.
4. Contribution by Employers and Employees.
5. Any interest by way of penalty.
6. Any Voluntary Donation
7. Any amount raised by the Board from other sources.
8. Any unclaimed amount credited to the Government in accordance to the Rules made under Payment of Wages Act and Minimum Wages Act
9. Grants or advance from the Govt.
10. All fines imposed and realised from the employers by courts for violations of labour Laws.

Contribution to the fund by the Employee and Employer

Every employee shall contribute Rs.2/- per year to the fund and every employer, in respect of each such employee; shall contribute Rs. 4/- per year and the Government of each such employee, shall contribute Rs.2/- per year to the fund. The employees contribution can be deducted from the wages payable for the month of December. Employees contribution shall be recovered from their last wages paid if he has worked for not less than 30 days during that year and such deductions shall be deemed to be deductions authorised by or under the Payment of wages Act. The employer can also deduct from the wages of employees who where discharged or dismissed or resigned during the year. Such employee's contribution shall be paid by the employer to the Board before 31st January of the year along with employer's contribution and a statement in Form A shall be sent.

Unpaid accumulations

All unpaid accumulations shall be deemed abandoned property. Any unpaid accumulations paid to the board, discharges the liability of the employer to the extend of money credited to the board. Then the board will exhibit a notice on the notice board of establishment and publish the same in the Gazette, inviting claim from employees, their heirs, legal representatives or assigns for any payment due. If claim lis received within six months, the board will transfer the claim to the authority under the payment of wages to adjudicate and decide the claim. If the claim is found valid, order will be passed asking the board to pay the amount. If the claim is found not valid, the claimant may prepare on appeal to the District Court. If no claim is received within six months or the claim is refused by the authority or an appeal such sum shall be credited to the fund.

If the employer fails to pay the board such unpaid accumulations or fines within the time prescribed the secretary of the board may issue notice to pay such amount within thirty days. If the employer fails to comply, the employer shall pay the amount with penal interest at the rate of 1% per months for the first three months and at 11/2 % thereafter.

The Government may make grants or advance, loan to the board for the purpose of this act on such term.

Any sum payable to the board may be recovered as an arrears of revenue.

All fines realised, deduction made and unpaid accumulations during the quarters ending 31st March, 30th June 30th September and 31st Dec shall be credited to the board on or before 15th of succeeding months respectively and a statement of account shall be sent.

Application of the Fund

The fund vested with the Board of trustees may be utilised for the following purposes:

1) Community and Social Education Centres

2) Vocational Training

3) Community Necessity

4. Entertainment and other forms of recreation

5) Convalascent home for T.B. Patients

6) Holiday homes for health Resorts

7) Part time employment for house wives of employees

8) Free Schools

9) Nutritious food for children of the employees

10) Employment opportunity to the disabled employees or widows of the deceased employees

11) Cost of administering this act including the salaries and allowances of the Staff.

12) Such other object as would in the opinion of the Board improve the standard of living and education and ameliorate the social conditions of Labour.

The funds shall not be utilised in financing any measure which the employer is required under any law for the time being in force to carry out. The Board may with the approval of the Government make grants from the fund to any local authority or any other body in aid of any activity for the welfare of employees.

Establishment and constitution of board

The Govt shall establish a Board by name Tamilnadu Labour Welfare Board and it shall be a body corporate having perpetual succession. The Board shall consist of a Chairmen who shall be the Minister in charge of labour and Members shall be such number of Representatives of employers and employees equally represented, such number of members of the State Legislation and such number of officials and non officials as may be prescribed. The term of office of the members of the Board shall be 3 years. A member of the State Legislature shall cease to be a member if he ceases to be a member of the State Legislature. The Board may appoint advisory Committees. The rule prescribes that the Board shall consist of 20 member including a Chairman. The member shall be.

(1) Five representatives of employer (2) Five representatives of employees (3) Three members of State Legislature (4) four govt officials and (5) two independent members. The board shall meet once in every quarters and as often as necessary. All matters at the meeting of the board shall be decided by majority of the votes of members present and voting and the chairman shall have casting vote.

Offences

Any person, wilfully obstructs an inspector in the exercise of his power of discharge of his duties or fails to produce for inspection on demand any register or records or other documents, maintained for the purpose of Act or rules, on conviction, be punishable with imprisonment for a term not exceeding three months or with fine not exceeding Rs. 500/- or both for the first offence and imprisonment not exceeding six months or fine not exceeding offences. Rs. 1000/- or both for second and subsequent offences.

Court shall take cognizance of offence when written complain is made by secretary of board. Presidency Magistrate or a Magistrate of 1st class will be competent court to try the case. The complaint shall be made within 6 months from the date of alleged offence.

Authorities for Inspection

The Inspector of factories appointed under the Factories Act shall be a Inspector for the purpose of this Act. He may make for such examination and hold such enquiry as may be necessary ascertaining whether the provisions of the Act have been and are being compiled with and require production of any prescribed registration records.

Maintenance of Registers

The employer shall maintain the following registers:

1. Register of Wages. 2. Consolidated Register of unpaid accumulations and fines and other deductions 3. Visit Book in which the Inspector may record his remarks. 4. The employer shall before the 31st January of every year forward to the Secretary of the Board a copy of the extracts from the Registers (Register of Wages) pertaining to the previous year.

Suggested Questions

1) Write a brief note on the opening and closing hours of shops and other establishments, under the Tamilnadu shops and Establishment Act, 1947.

2) Explain the salient features of the Tamilnadu Labour Welfare Fund Act,1972.