

The Industrial Disputes (Rajasthan Amendment) Act, 1984

RAJASTHAN

India

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Act 8 of 1984

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The Industrial Disputes (Rajasthan Amendment) Act, 1984 Rajasthan Act No. 8 of 1984 Statement of Objects and Reasons - There existed Sec. 25-O in the Industrial Disputes Act, 1947 which inter-alia provided that an employer, who intended to close down an undertaking of an industrial establishment in which not less than three hundred workmen were employed on an average per working day for the preceding twelve months, should serve, for previous approval atleast ninety days before the date on which the intended closure was to become effective, a notice on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. The appropriate Government was competent to permit the closure or to refuse to grant the permission to the employer. Any employer who closed down an undertaking without complying with the provisions of sub-section (1) of Sec. 25-O was punishable under Sec. 25-R of the said Act. The Supreme Court in its decision in the case of Excel Wear & other Vs. Union of India (reported in 1978 11 LLJ 527) held that Sec. 25-O as a whole and Sec. 25-R in so far as it related to the awarding of punishment for contravention of the provisions of Sec. 25-O were constitutionally invalid as they violated that fundamental rights guaranteed by Art, 19(1)(g) of the Constitution. Consequently the Union Parliament enacted the Industrial Disputes (Amendment) Act, 1982 (Central Act 46 of 1982) inter-alia substituting Sec. 25-O with certain changes and amending Sec. 25-R. However, it was provided in Sec 1(2) of the Industrial Disputes (Amendment) Apt, 1982, that the said amending Act shall come into force on such day the Central Government may by notification in the Official Gazette, appoint. Upto 21st October, 1983, the Central Government had not appointed any date for the coming into force of the said Central Act No. 46 of 1982. The result was that a vacuum was created and employers of undertaking stood let-loose to close down industrial undertaking simply by giving 60 days notice of their intention to close down. In this State, the urgency of a provision like Sec. 25-O, as was substituted in the Industrial Disputes Act, 1947 by the said Central Act No. 46 of 1982, was felt necessary on account of receipt of notices from Krishna Mills, Beawar and Bhilwara Spinners, Bhilwara for closure. The tendency of closing industrial establishments and thereby causing large scale unemployment of workmen had to be curbed immediately. For this purpose the Governor, with instructions of the President, promulgated the Industrial Disputes (Rajasthan

Amendment) Ordinance, 1983 (Ordinance No. 9 of 1983) on 21st October, 1983. One of the objects of this Bill is to replace the said Ordinance to achieve the said objectives. Relying upon the decision of the Supreme Court in *Excel Wear's* case, the Rajasthan High Court, by its majority judgment in F.B. Civil Writ Petition No. 409/1983-Rajasthan Trade Union Kendra versus State of Rajasthan and others (decided on October 19, 1983), struck down Sec. 25-N of the Industrial Disputes Act, 1947 on the ground that the provisions contained in Sec. 25-N are violative of the fundamental rights guaranteed by Art. 19(1) of the Constitution. The result of this decision has been that more than three thousand workmen of the undertaking run by M/s J.K. Synthetics Ltd. at Kota, who were retrenched by their employer, could not get protection of Sec. 25-N. It has, therefore, become necessary to amend Sec. 25-N of the Act, in its application to the State of Rajasthan to remove the constitutional infirmity found by the majority Judges of the Rajasthan High Court in Sec. 25-N. It was felt that Sec. 25-M of the said Act may have also to face challenge some day on the very grounds on which Sec. 25-N and Sec. 25-O have been struck down. It is, therefore, also proposed to amend Sec. 25-M of the Act on the same lines as has been done in the case of Sec. 25-N and Section 25-O. A new sub-section (1-A) is proposed to be inserted in Sec. 25-K of the Act to empower the State Government to apply the special provisions contained in Chapter V-B relating to lay-off, retrenchment and closure in certain establishments, to an industrial establishment in which less than three hundred but not less than one hundred workmen were employed on an average per working day for the preceding twelve months where the State Government is satisfied that maintenance of industrial peace or prevention of victimization of workmen so requires. Sec. 25-P is also proposed to be suitably amended, on the same lines as had been done in the case of Sec. 25-M, 25-N and 25-O. A new section 25-PP is proposed to be added in the Act for making special provision for re-instatement of workmen retrenched before the commencement of this Amendment Act. Provision has been made for review of all such cases of retrenchment by the State Government. Consequential amendments are also proposed in Sec. 25-Q of the Act relating to penalties for lay-off and retrenchment without previous permission. In order to be benefitted from the experience of Labour Officers working in the Labour Department of the State Government, it has been decided that such officers shall also be eligible for appointment as Presiding Officers of Industrial Tribunals and Labour Courts. Hence this Bill. [Received the assent of the President on the 12th day of April, 1984]. An Act further to amend the Industrial Disputes Act, 1947 in its application to the State of Rajasthan. Be it enacted by the Rajasthan State Legislature In the Thirty-fifth Year of the Republic of India, as follows:-

1. Short title and commencement.

- This Act may be cited as the Industrial Disputes (Rajasthan Amendment) Act, 1984. (2) It shall come into force at once.

2. Amendment of section 25-K, Central Act No. 14 of 1947.

- After sub-section (1) of section 25-K of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), hereinafter referred to as the principal Act, the following new sub-section shall be inserted, namely:- "(1-A) Without prejudice to the provisions contained in sub-section (1), the State Government may, if satisfied that maintenance of industrial peace or prevention of victimization of

workmen so requires, by notification in the Official Gazette, apply the provisions of this Chapter to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which such number of workmen, which may be less than three hundred but not less than one hundred as may be specified in the notification, were employed on an average per working day for the preceding twelve months."

3. Amendment of Sec. 25-L, Central Act No. 14 of 1947.

- In clause (b) of Sec. 25-L of the principal act, for the expression "the Central Government shall be the appropriate Government", the expression "the State Government shall have no power under this Chapter" shall be substituted.

4. Amendment of Sec. 25-M, Central Act No. 14 of 1947.

- In Sec. 25-M of the principal Act, -(a) in sub-section (1), between the expression "this Chapter applies" and the expression "shall be laid off", the expression "or is applied under sub-section (1-A) of Sec. 25-K" shall be inserted and for the expression "appropriate Government", the expression "State Government" shall be substituted. (b) in sub-section (2), for the expression "(Amendment) Act, 1976", the expression "(Rajasthan Amendment) Act, 1984" shall be substituted; (c) for the existing sub-section (3), the following sub sections shall be substituted, namely: -(3) In the case of every application for permission under subsection (1) or sub-section (2), the employer shall state clearly the reasons due to which he intends to lay off or continue the lay off of a workman and a copy of such application shall be served on the workman intended to be laid off by registered post with acknowledgment due. (4) Where an application for permission has been made under subsection (1) or sub-section (2) the authority to whom the application has been made, after making such enquiry as it thinks fit and after giving reasonable opportunity of being heard to the employer and the workman, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the terms of contract of service and the standing orders governing the establishment, by order and for reasons to be recorded in writing grant or refuse to grant such permission and such order shall be communicated to the employer and the workman."; (d) the existing sub-section (4) shall be re numbered as sub section (5) thereof; (e) after sub-section (5) as so re-numbered, the following sub sections shall be inserted, namely: -(6) An order of the authority specified under sub-section (1) granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on both the parties. (7) The authority specified under sub-section (1) may, either of its own motion or on the application made by the employer or the workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter to the Labour Court having jurisdiction for adjudication: Provided that where a reference has been made to a Labour Court under this sub-section, it shall pass an award within a period of thirty days from the date of such reference."; and (f) the existing sub-section (5) and (6) shall be re numbered as sub-sections (8) and (9) thereof.

5. Amendment of section 25-N, Central Act No. 14 of 1947.

- In section 25-N of the principal Act, - (a) in sub-section (1), - (i) between the expression "this Chapter applies" and the expression, "who has been", the expression "or is applied under sub-section (1-A) of Sec. 25-K" shall be inserted; and (ii) for clause (c), the following clause shall be substituted, namely: - "(c) three months notice in writing stating clearly the reasons for retrenchment it served on the State Government or such authority or may be specified by the State Government by notification in the Official Gazette by registered post with acknowledgment due, and the permission of the State Government or of such authority is obtained under sub-section (2)." (b) for sub-section (2), the following sub-section shall be substituted namely: - "(2) On receipt of a notice under clause (c) of sub-section (1), the State Government or authority, after making such enquiry as it thinks fit, and after giving reasonable opportunity of being heard to the employer, the workman and the office-bearer of the representative union of the concerned industrial establishment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, requirements of industrial peace, prevention of victimization and unfair labour practice, by order and for reasons to be recorded in writing grant or refuse to grant such permission and such order shall be communicated to the employer, the workman and the office bearer of such representative union." (c) in sub-section (4), the expression "(Amendment) Act, 1976", the expression "(Rajasthan Amendment) Act, 1984", for the expression "(a) of Sec. 25-F", the expression "(c) of sub-section (1)", for the word "appropriate", the word "State" and for the expression "sub-section (2)", the expression "the said clause of the said sub-section" shall respectively be substituted; (d) in sub-section (5) for the word "appropriate", the word "State" shall be substituted; (e) after sub-section (5), the following sub-sections shall be inserted, namely: - "(6) An order of the State Government or the authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties and shall remain in force for one year from the date of such order. (7) The State Government or, as the case may be, the authority may, either on its own motion or on the application made by the employer or the workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall award within a period of thirty days from the date of such reference." (f) the existing sub-sections (6) and (7) shall respectively be renumbered as sub-section (8) and (9) thereof; and (g) in sub-section (9) as so renumbered, - (i) for the expression "(Amendment) Act, 1976", the expression "(Rajasthan Amendment) Act, 1984" shall be substituted; (ii) the expression "or the Central Government" shall be deleted; (iii) for the words "appropriate", wherever occurring the word "State" shall be substituted; and (iv) for the expression "and any order passed by such authority shall be final and binding on the employer and the workman or workmen", the expression "and such authority while deciding such matter shall proceed to hold the enquiry in the manner and have regard to the matters specified in sub-section (2). Any order passed by such authority shall, subject to review under the proviso to this sub-section, be final and binding on the employer and the workman or workmen: Provided that such authority as aforesaid may, either on its own motion or on the application made by the employer or the workman, review the order passed by it under this sub-section or refer the matter to a Tribunal for adjudication and to such reference, the provisions contained in the proviso to sub-section (7) shall, mutatis mutandis, apply", shall be substituted.

6. Substitution of section 25-O, Central Act No. 14 of 1947.

- For section 25-O of the principal Act, the following section shall be substituted, namely:- "25-O. Procedure for closing down an undertaking.- (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies including an employer who has served a notice under sub-section (1) of Sec. 25-FFA on the State Government of his intention to close down such an undertaking but the period of such a notice has not been expired at the commencement of the Industrial Disputes (Rajasthan Amendment) Ordinance, 1983 shall apply for prior permission at least ninety days before the date on which the intended closure is to become effective, to the State Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen by registered post with acknowledgment due.(2)Where an application for permission has been made under subsection (1), the State Government, after making such enquiry as it thinks fit and after giving reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.(3)Where an application has been made under sub-section (1), and the State 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 of sixty days.(4)An order of the State Government granting or refusing to grant permission shall subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.(5)The State Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.(6)Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.(7)Notwithstanding anything contained in the foregoing provisions of this section, the State Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.(8)Where an undertaking is permitted to be closed down under sub-section 12) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months."

7. Substitution of Sec. 25-P, Central Act No. 14 of 1947.

- For Sec. 25-P of the principal Act, the following section shall be substituted namely:-"25-P. Special provision as to restarting of undertaking closed down before commencement of the Industrial Disputes (Rajasthan Amendment) Act, 1984. - (1) Where the undertaking of an industrial establishment to which this Chapter applies had been closed down before the commencement of the Industrial Disputes (Rajasthan Amendment) Act, 1984 and the State Government, after giving reasonable opportunity of being heard to the employer, workmen and the office-bearer of the representative union of the concerned industrial establishment and after making such enquiry as it thinks fit, is satisfied that-(a)such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer;(b)there are possibilities of restarting the undertaking;(c)it is necessary for the rehabilitation of the workmen employed in such undertaking before its closure or for the maintenance of supplies and services essential to the life of the community or both to restart the undertaking; and(d)the restarting of the undertaking will not result in hardship to the employer in relation to the undertaking;it may direct, by order published in the Official Gazette, that the undertaking shall be restarted within such time (not being less than one month from the date of the order) as may be specified in the order.(2)An order of the State Government directing the restarting of the undertaking under sub-section (1) shall, subject to the provisions of sub-section (3), be final and binding on all the parties.(3)The State Government may either on its own motion or on the application made by the employer and after giving to such employer, the workmen and the office-bearer of the representative union of the connected industrial establishment an opportunity of being heard, review its order directing the restarting of the undertaking under sub-section (1) or refer the matter to a Tribunal for adjudication:Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of sixty days from the date of such reference and pending award by the Tribunal, the undertaking shall continue to remain restarted".

8. Insertion of new Sec. 25-PP, Central Act No. 14 of 1947.

- After Sec. 25-P of the principal Act as to substituted, (he following new Section shall be added, namely:-"25-PP. Special provision as to reinstatement of workmen retrenched before the commencement of the Industrial Disputes (Rajasthan Amendment) Act, 1984.- (1) Notwithstanding any award or order of a Tribunal or any judgment, order or direction of any Court upholding the validity of retrenchment of any workman employed in any industrial establishment to which this Chapter applies who is retrenched at any time during six months immediately, before the commencement of the Industrial Disputes (Rajasthan Amendment) Act, 1984, the State Government shall, either on its own motion or on the application made by any such retrenched workman or by the office-bearer of the representative union of the concerned industrial establishment, examine the validity of retrenchment of such workman and if, after making such enquiry as it thinks fit and after giving reasonable opportunity of being heard to the employer, the retrenched workman, or, as the case may be to such office-bearer, it is satisfied that-(a)the retrenchment of the workman was without genuine or adequate reasons;(b)the retrenchment was by way of victimization and unfair labour practice; and(c)the reinstatement of the workman is required for maintaining industrial peace in the industrial establishment,it shall, by order and for reasons to

be recorded in writing, direct the employer to reinstate the retrenched workman within such time as may be specified in the order and if it is not so satisfied it shall by such reasoned order uphold the validity of retrenchment of the workman and shall communicate its order to the employer and the workman.(2)An order of the State Government under sub-section (1), subject to the order passed by it as a result of review under sub-section (3) and where a reference has been made by it to a Tribunal under the said sub-section, subject to the award passed by the Tribunal, shall be final and binding on the employer and the workman.(3)The State Government may, either on its own motion or on the application made by the employer or the retrenched workmen, review its order directing reinstatement of the retrenched workman or, as the case may be, the order up-holding the validity of retrenchment of the workman under sub-section (1) or refer the matter to a Tribunal for adjudication:Provided that where a reference has been made to a Tribunal under this sub-section it shall pass an award within a period of thirty days from the date of such reference."

9. Substitution of section 25-Q, Central Act No. 14 of 1947.

- For section 25-Q of the principal Act, the following section shall be substituted. namely:-"25-Q. Penalties for lay-off and retrenchment without previous permission. - Any employer who-(a)lays off a workman without complying with the provisions of sub-section (1) or sub-section (2) of section 25-M; or(b)contravenes an order refusing to grant permission to lay-off or to continue the lay-off of a workman under sub-section (4) of section 25-M; or(c)contravenes such an order as is referred to in clause (b) passed as a result to review under sub-section (7) of section 25- M; or(d)contravenes the provisions of clause (c) of sub-section (1) or sub-section (4) of section 25-N; or(e)contravenes an order refusing to grant permission to retrench a workman under sub-section (2) or an order under sub-section (9) of section 25-N; or(f)contravenes such an order as is referred to in clause (e) passed as a result of review under sub-section (7) or sub-section (9) of section 25-N; or(g)contravenes the direction to reinstate a retrenched workman given under sub-section (1) of section 25-PP or such a direction given as a result of review under sub-section (3) of the said section,shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees or with both."

10. Amendment of section 25-R, Central Act No. 14 of 1947.

- In section 25-R of the principal Act,-(a)for sub-section (2), the following sub-section shall be substituted, namely:-"(2) Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of S. 25-O or a direction given under section 25-P, shall be punishable with an imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction."; and(b)sub-section (3) shall be omitted.

11. Amendment of section 25-S, Central Act No. 14 of 1947.

- In section 25-S of the principal Act, after the expression "provisions of the Chapter apply" the expression "or are applied under sub-section (1-A) of section 25-K" shall be added.

12. Repeal and Savings.

- The Industrial Disputes (Rajasthan Amendment) Ordinance, 1983 (Ordinance No. 9 of 1983) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act as if sections 6 and 10 of this Act had come into force on the 21st day of October, 1983.