

The Industrial Disputes (West Bengal Amendment) Act, 1989

WEST BENGAL

India

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Act 33 of 1989

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The Industrial Disputes (West Bengal Amendment) Act, 1989 West Bengal Act 33 of 1989 [8th December, 1989.] Assent of the President first published in the Calcutta Gazette, Extraordinary, dated the 8th December, 1989. An Act to amend the Industrial Disputes Act, 1947, in its application to West Bengal. Whereas the Governor under article 201 read with article 200 of the Constitution of India returned to the House of the West Bengal Legislature the Industrial Disputes (West Bengal Amendment) Bill, 1981 (as passed by the West Bengal Legislative Assembly on the 10th September, 1981) and the Industrial Disputes (West Bengal Amendment) Bill, 1984 (as passed by the West Bengal Legislative Assembly on the 23rd April, 1984) with a message dated the 26th June, 1985 in respect of each of the Bills as aforesaid requesting the House to reconsider the Bills as some of the provisions of the Bills has already been given effect to by the Central Government in the Industrial Disputes (Amendment) Act, 1982, with effect from the 21st August, 1984; And Whereas the period of six months, referred to in the proviso to article 201 of the Constitution of India, within which the Bills were to be reconsidered had elapsed; And Whereas it is expedient to amend the Industrial Disputes Act, 1947, in its application to West Bengal, for the purpose and in the manner hereinafter appearing; It is hereby enacted as follows :-

1. Short title.

- This Act may be called the Industrial Disputes (West Bengal Amendment) Act, 1989.

2. Application of the Act.

- The Industrial Disputes Act, 1947, (hereinafter referred to as the principal Act) shall, in its application to West Bengal, be amended for the purposes and in the manner hereinafter provided.

3. Amendment of section 2A of Act 14 of 1947.

- In section 2A of the principal Act, -(a)after the words "dismisses, retrenches", the words "refuses employment" shall be inserted;(b)after the words "dismissal, retrenchment", the words "refusal of employment" shall be inserted.

4. Amendment of section 10.

- In section 10 of the principal Act, after sub-section (1A), the following sub-section shall be inserted :-"(1B) (a) Notwithstanding anything contained elsewhere in this Act, where in a conciliation proceeding of an industrial dispute relating to an individual workman, no settlement is arrived at within a period of sixty days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer in such manner and in such form as may be prescribed, for a certificate about the pendency of the conciliation proceedings.(b)The Conciliation Officer shall, on receipt of the application under clause (a), issue a certificate within seven days from the date of receipt in such manner, in such form and containing such particulars as may be prescribed. A copy of the certificate shall also be sent to the appropriate Government for information.(c)The party may, within a period of sixty days from the receipt of such certificate or, where such certificate has not been issued within seven days as aforesaid, within a period of sixty days commencing from the day immediately after the expiry of seven days as aforesaid, file an application in such form and in such manner and with such particulars of demands as may be prescribed, to such Labour Court or Tribunal as may be specified by the appropriate Government by notification. Different Labour Courts or Tribunals may be specified for different areas or different classes of industries.(d)The Labour Court or Tribunal specified under clause (c) shall, within a period of thirty days from the date of receipt of an application under clause (c), give a hearing to the parties and frame the specific issues in dispute, and shall thereafter proceed to adjudicate on the issues so framed as if it were an industrial dispute referred to in sub-section (1)".

5. Amendment of section 25-0.

- In section 25-0 of the principal Act, -(a)in sub-section (1), after the first proviso, the following proviso shall be inserted :-"Provided further that every application for permission to close down an undertaking shall, having regard to the first proviso to section 25FFF, contain the particulars of the quantum, mode, manner and time of payment of compensation to the workmen, in the manner prescribed, and such employer shall furnish such guarantee as may be required by the appropriate Government to discharge his liability for payment of compensation and other statutory dues to the workmen in the event of such permission being granted under sub-section (2) or deemed to have been granted under sub-section (3).";(b)after sub-section (1), the following sub-section shall be inserted :-"(1A) Where an application for permission has been made under sub-section (1), the appropriate Government may, having regard to the reasons adduced in such application and the interests of the undertaking and the concerned workmen, issue such directions as may be necessary for maintaining normalcy and continuity of work during the notice period.";(c)to sub-section (6), the following Explanation shall be added :-Explanation. - "Benefits under any law" shall include benefits under any contract, agreement, award or settlement under any law';(d)after sub-section

(7), the following sub-section shall be inserted :-"(7A) Every order of the appropriate Government under sub-section (7) shall indicate, for reasons to be recorded, the extent to which compensation computed under sub-section (8) shall be payable in the case, having regard to the facts and circumstances of the same and for securing such payment, the appropriate Government may obtain such information and guarantee specified in the second proviso to sub-section (1) as may be considered necessary.". (e) in sub-section (8), after the words "shall be entitled to receive", the words and brackets "in addition to all legal dues, (including gratuity)," shall be inserted.

6. Substitution of new section for section 25P.

- For section 25P of the principal Act, the following section shall be substituted :-"25P. Special provision as to re-starting of the undertaking closed down before the commencement of the Industrial Disputes (West Bengal Second Amendment) Act, 1986. - (1) If the appropriate Government is of opinion in respect of any undertaking of an industrial establishment to which this Chapter applies and which is closed down before the commencement of the Industrial Disputes (West Bengal Second Amendment) Act, 1986, -(a) that such undertaking was closed down otherwise than on account of unavoidable circumstances beyond the control of the employer, (b) that there are possibilities of re-starting the undertaking, (c) that 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 to re-start the undertaking or both, and (d) that the re-starting of the undertaking shall not result in hardship to the employer in relation to the undertaking, it may, after giving such employer and the workmen an opportunity of being heard, direct, by order published in the Official Gazette, that the undertaking shall be re-started within such time (not being less than one month from the date of the order) as may be specified in the order. (2) Notwithstanding anything contained in sub-section (1) the appropriate Government may, either on its own motion or on the application made by the employer and after giving the employer and the workmen an opportunity of being heard, review its order 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 such award, the undertaking shall not be closed down."

7. Amendment of section 38.

- In section 38 of the principal Act, after clause (a) of sub-section (2), the following clause shall be inserted :-"(al) the manner and the form in which an application for certificate shall be made, the manner and the form in which a certificate is to be issued and the particulars which the certificate shall contain and the manner and the form in which an application shall be filed before a Labour Court or Tribunal, referred to in sub-section (1B) of section 10 and the procedure to be followed by the Industrial Tribunal or the Labour Court, as the case may be, on receipt of such an application under clause (c) of sub-section (1B) of section 10."