

### **Amendments in the West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968.**

The West Pakistan Industrial & Commercial Employment (Standing Order) Ordinance, 1968, hereinafter referred to as the said Ordinance, was promulgated in 1968, to amend and consolidate the laws relating to the industrial employment. The said Ordinance extends to the whole of Pakistan. Amendments are required to be made in the said Ordinance after the pace of time, especially after the promulgation of some laws which have repealed some other laws referred to in the said Ordinance. The provisions of the said Ordinance wherein references have been made to such repealed laws or provisions thereof need to be properly amended by substituting such words with the relevant words from the newly promulgated Industrial Relations Ordinance, 2002, so that the said Ordinance can fulfill the changing needs of the society and serve the purpose of its promulgation in the prevailing circumstances. In the said Ordinance, reference has been made to the Industrial Relations Ordinance 1969 which was repealed under section 80 (1) of the Industrial Relations Ordinance, 2002.

1. Section 12 of the said Ordinance deals with the termination of employment and redressal of an individual's grievance. In this section a reference of the repealed Industrial Relations Ordinance, 1969, is still existing. According to sub-section (3) of section 12 of the said Ordinance, if the services of any workman, are terminated, or he is removed, retrenched or dismissed by the employer such aggrieved workman can take action for redressal of his grievance in accordance with section 25-A of the Industrial Relations Ordinance, 1969. After repeal of the Industrial Relations Ordinance, 2002, the Industrial Relations Act, 2008, has provided such provision in section 41 for the same purpose. So, amendment in the sub-section (3) of section 12 of the said Ordinance is required to be made by omitting the words section 25-A of the Industrial Relations Ordinance, 1969, with section 41 of the Industrial Relations Act, 2008. Sub section (3) of section 12 of the said Ordinance and section 41 of the Industrial Relations Act, 2008 are reproduced as under:-

**Section 12 (3)** The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service except by an order in writing which shall explicitly

state the reason for the action taken. In case a workman is aggrieved by the termination of his services or removal, retrenchment, discharged or dismissal he may take action in accordance with the provision of section **25-A of the Industrial Relations Ordinance, 1969 (XXIII of 1969)** and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance.

**Section 41. Redress of individual grievances.—**

- (1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within three months of the day on which the cause of such grievance arises.
- (2) Where a worker himself brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker.
- (3) Where a worker brings his grievance to the notice of his employer through his shop steward or collective bargaining agent, the employer shall, within seven days of the grievance being brought to his notice communicate his decision in writing to the shop steward or as the case may be the collective bargaining agent.
- (4) If the employer fails to communicate a decision within the period specified in sub-section (2) or, as the case may be sub-section (3), or if the worker is dissatisfied with such decision, the worker or the shop steward may take the matter to his collective bargaining agent or the Labour Court or, as the case may be, the collective bargaining agent may take the matter to the Labour Court, and where the matter is taken to the Labour Court, it shall give a decision within seven days from the date of the



matter being brought before it as if such matter were an industrial dispute.

Provided that a worker who desires to so take the matter to the Labour Court shall do so within a period of two months from the date of the communication of the employer or, as the case may be, from the expiry of the period mentioned in sub-section (2), or sub-section (3), as the case may be.

- (5) In adjudicating and determining a grievance under sub-section (4), the Labour Court shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.
- (6) If a decision under sub-section (4) or an order under sub-section (5) given by the Labour Court or a decision of the Tribunal in an appeal against such a decision or order is not given effect to or complied with within a week or within the period specified in such order or decision, the defaulter shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.
- (7) No person shall be prosecuted under sub-section (6) except on a complaint in writing—
  - (a) by the workman if the order or decision in his favour is not implemented within the period specified therein; or
  - (b) by the Labour Court or Tribunal, if an order or decision thereof is not complied with.
- (8) For the purposes of this section, workers having common grievance arising out of a common cause of action may make a joint application to the Labour Court.

2. Similarly according to sub-section (6) of section 12 of the said Ordinance, if a workman resigns from service or his services are terminated by the employer for any reason other than misconduct, sub-section (6) of section 12 of the said

Ordinance provides the details of the benefits, including the award of a Labour Court under the repealed Industrial Relations Ordinance, 1969, as such, reference of the repealed Ordinance ibid is required to be substituted with the Industrial Relations Act, 2008 (IV of 2008). Sub-section (6) of section 12 of the said Ordinance, is reproduced hereunder:-

**12 (6)** Where a workman resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall, in addition to any other benefit to which he may be entitled under this Ordinance or in accordance with the terms of his employment or any custom, usage or any settlement or an award of a Labour Court under the Industrial Relations Ordinance, 1969 (XXIII of 1969), be paid gratuity equivalent to thirty days wages, calculated on the basis of the wages admissible to him in the last month of service if he is a fixed-rated workman or the highest pay drawn by him during the last twelve months if he is a piece-rated workman, for every completed year of service or any part thereof in excess of six months:

Provided that, where the employer has established a provident fund to which the workman is a contributor the contribution of the employer to which is not less than the contribution made by the workman, no such gratuity, shall be payable for the period during which such provident fund has been in existence.

3. Sub-section (5) of section 15 of the said Ordinance also contains obsolete provisions, providing that if the employer of the workman considers it necessary during the inquiry proceedings into the alleged act of misconduct of such workman, he may suspend concerned workman for a period of not exceeding four days at a time, however, the total period of such suspension shall not exceed from four weeks except where the matter between the workman and the employer is pending before an Arbitrator, a Labour Court, Tribunal or Conciliator for grant of the permission under section 47 of the repealed Industrial Relations Ordinance, 1969. Section 65 of the Industrial Relations Act, 2008, provides the verbatim same procedure as provided in section 47 of the repealed Ordinance ibid. So, sub-section (5) of section 15 of the said Ordinance needs to be



properly amended by substituting the words, "section 65 of the Industrial Relations Act, 2008" and Sub-section (5) of section 12 of the said Ordinance, and section 65 of Industrial Relations Act, 2008 are reproduced hereunder:-

**Section 15 (5)** Where, for the purposes of conducting an inquiry into the alleged misconduct of a workman, the employer considers it necessary, he may suspend the workman concerned for a period not exceeding four days at a time so, however, that the total period of such suspension shall not exceed four weeks except where the matter is pending before an Arbitrator, a Labour Court, Tribunal or Conciliator for the grant of permission under Section 47 of the Industrial Relations Ordinance, 1969 (XXIII of 1969). The order of suspension shall be in writing and may take effect immediately on delivery to the workman. During the period of suspension, the workman concerned shall be paid by the employer subsistence allowance of not less than fifty per centum of the wages. If the workman is found not guilty, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

**Section 65.** Conditions of service to remain unchanged while proceedings pending.—(1) No employer shall, while any conciliation proceedings or proceedings before an Arbitrator, a Labour Court or Tribunal in respect of an industrial dispute are pending, alter to the disadvantage of any workman concerned in such dispute, the conditions of service applicable to him before the commencement of the conciliation proceedings or of the proceedings before at the Arbitrator, the Labour Court or Tribunal, as the case may be, nor shall he—

- (a) Save with the permission of the Conciliator, while any conciliation proceedings are pending; or
- (b) save with the permission of the Arbitrator, the Labour

Court or Tribunal, while any proceedings before the Arbitrator, Labour Court or Tribunal are pending, discharge, dismiss or otherwise punish any workman except for misconduct not connected with such dispute.

(2) Notwithstanding anything contained in sub-section (1), an officer of a registered trade union shall not, during the pendency of any proceedings referred to in sub-section (3), be discharged, terminated, dismissed or otherwise punish for misconduct, except with the previous permission of the Labour Court. However, the terms and conditions of the employment secured by the workers through collective bargaining, agreements, settlements, awards and decisions of Courts shall continue to be binding upon the parties until revised for betterment of workers.

4. In the light of the above paras, it is, therefore, suggested that Commission may make recommendations for the amendments in the West Pakistan Industrial & Commercial Employment (Standing Order) Ordinance, 1968.

Comparative table is as under

EXISTING PROVISION.	PROPOSED AMENDMENT.
12. (1).....	12. (1) .....No Change.....
(2) .....	(2).....No Change .....
(3) The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken. In case a workman is aggrieved by the termination of his removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of Section 25-A of the Industrial	(3) The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken. In case a workman is aggrieved by the termination of his removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of Section 41 of the Industrial



<p><u>Relations Ordinance, 1969 (XXIII of 1969)</u> and thereupon the provisions of the said Section shall apply as they apply to the redress of an individual grievance.</p>	<p><b>Relations Act, 2008 (IV of 2008)</b> and thereupon the provisions of the said Section shall apply as they apply to the redress of an individual grievance.</p>
<p>12. (1) No change.....  (2).....No change.....  (3).....No change.....  (4).....No change.....  (5) ... No change.....  (6) Where a workman resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall, in addition to any other benefit to which he may be entitled under this Ordinance or in accordance with the terms of his employment or any custom, usage or any settlement or an award of a Labour Court under the <u>Industrial Relations Ordinance, 1969 (XXIII of 1969)</u>, be paid gratuity equivalent to thirty days wages, calculated on the basis of the wages admissible to him in the last month of service if he is a fixed-rated workman or the highest pay drawn by him during the last twelve months if he is a piece-rated workman, for every completed year of service or any part thereof in excess of six months:  Provided that, where the employer has established a Provident Fund to which the workman is a contributor the contribution of the employer to which is not less than the contribution made by the workman, no such gratuity, shall be payable for the period during which such Provident Fund has been in existence.</p>	<p>12. (1) ...No change.....  (2) ....No change.....  (3) ....No change.....  (4).....No change.....  (5) ....No Change .....  (6). Where a workman resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall, in addition to any other benefit to which he may be entitled under this Ordinance or in accordance with the terms of his employment or any custom, usage or any settlement or an award of a Labour Court under the <b>Industrial Relations Act, 2008 (IV of 2008)</b>, be paid gratuity equivalent to thirty days wages, calculated on the basis of the wages admissible to him in the last month of service if he is a fixed-rated workman or the highest pay drawn by him during the last twelve months if he is a piece-rated workman, for every completed year of service or any part thereof in excess of six months:  Provided that, where the employer has established a Provident Fund to which the workman is a contributor the contribution of the employer to which is not less than the contribution made by the workman, no such gratuity, shall be payable for the period during which such Provident Fund has been in existence.</p>

15.(1) .....	15. (1) ...No Change
(2) .....	(2).....No change.....
(3) .....	(3).....No change.....
(4) .....	(4).....No change.....
(5) Where, for the purposes of conducting an inquiry into the alleged misconduct of a workman, the employer considers it necessary, he may suspend the workman concerned for a period not exceeding four days at a time so, however, that the total period of such suspension shall not exceed four weeks except where the matter is pending before an Arbitrator, a labour Court, Tribunal or Conciliator for the grant of permission under <u>Section 47 of the Industrial Relations Ordinance, 1969 (XXIII of 1969)</u> . The order of suspension shall be in writing and may take effect immediately on delivery to the workman. During the period of suspension, the workman concerned shall be paid by the employer subsistence allowance of not less than fifty per centum of the wages. If the workman is found not guilty, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.	(5) Where, for the purposes of conducting an inquiry into the alleged misconduct of a workman, the employer considers it necessary, he may suspend the workman concerned for a period not exceeding four days at a time so, however, that the total period of such suspension shall not exceed four weeks except where the matter is pending before an Arbitrator, a labour Court, Tribunal or Conciliator for the grant of permission under <b>Section 65 of the Industrial Relations Act, 2008 (IV of 2008)</b> . The order of suspension shall be in writing and may take effect immediately on delivery to the workman. During the period of suspension, the workman concerned shall be paid by the employer subsistence allowance of not less than fifty per centum of the wages. If the workman is found not guilty, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

### Commission's Deliberations on 05 December, 2009

The Commission considered the consequential amendments in Section 12 (3), (6), and Section 15 (5) of the Ordinance 1968 for replacing the name of the repealed Industrial Relations Ordinance, 1969 (XXIII of 1969) with the Industrial Relations Act 2008. The Commission observed that the said Ordinance now stands repealed after the passing of Industrial Relations Act 2008 so the provision may be amended accordingly.