

The Industrial Employment (Standing Orders) Act, 1946

UNION OF INDIA

India

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Act 20 of 1946

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The Industrial Employment (Standing Orders) Act, 1946[23rd April, 1946]Act No. 20 of 1946An Act to require employers in industrial establishments formally to define conditions of employment under themWHEREAS it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them;It is hereby enacted as follows:—

1. Short title, extent and application.—

(1)This Act may be called the Industrial Employment (Standing Orders) Act, 1946.(2)It extends to the whole of India.(3)It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months:Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.(4)Nothing in this Act shall apply to—(i)any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) apply; or(ii)any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961) apply:Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961), the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.

2. Interpretation.—

In this Act, unless there is anything repugnant in the subject or context,—(a)“appellate authority”

means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act: Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963 (39 of 1963), that court or authority shall be deemed to be the appellate authority; (b) “appropriate Government” means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government: Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties; (c) “Certifying Officer” means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act; (d) “employer” means the owner of an industrial establishment to which this Act for the time being applies, and includes—(i) in a factory, any person named under clause (f) of sub-section (1) of section 7, of the Factories Act, 1948 (63 of 1948), as manager of the factory; (ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department; (iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment; (e) “industrial establishment” means—(i) an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (4 of 1936), or (ii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948), or (iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890 (9 of 1890), or (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen; (f) “prescribed” means prescribed by rules made by the appropriate Government under this Act; (g) “standing orders” means rules relating to matters set out in the Schedule; (h) “trade union” means a trade union for the time being registered under the Indian Trade Unions Act, 1926 (16 of 1926); (i) “wages” and “workman” have the meanings respectively assigned to them in clauses (rr) and (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947).

3. Submission of draft standing orders.—

(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. (2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. (3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong. (4) Subject to such conditions as may be prescribed, a group of employers in similar

industrial establishments may submit a joint draft of standing orders under this section.

4. Conditions for certification of standing orders.—

Standing orders shall be certifiable under this Act if—(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and (b) the standing orders are otherwise in conformity with the provisions of this Act, and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

5. Certification of standing orders.—

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

6. Appeals.—

(1) Any employer, workmen, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within thirty days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act. (2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof of the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

7. Date of operation of standing orders.—

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

8. Register of standing orders.—

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

9. Posting of standing orders.—

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

10. Duration and modification of standing orders.—

(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen, or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation. (2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen a certified copy of that agreement shall be filed along with the application. (3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders. (4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

10A. Payment of subsistence allowance.—

(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman

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

11. Certifying Officers and appellate authorities to have powers of civil court.—

(1)Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).(2)Clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such Officer or authority, as the case may be.

12. Oral evidence in contradiction of standing orders not admissible.—

No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.

12A. Temporary application of model standing orders.—

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

of Maharashtra.

13. Penalties and procedure.—

(1)An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.(2)An employer who does any act in contravention of the standing orders finally certified under this Act or his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.(3)No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.(4)No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the second class shall try any offence under this section.

13A. Interpretation, etc., of standing orders.—

If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman 9[or a trade union or other representative body of the workmen], may refer the question to any of the Labor Courts constituted under the Industrial Disputes Act, 1947 (14 of 1947), and specified for the disposal of such proceeding by the appropriate government by notification in the Official Gazette, and the Labor Court to which the question is so referred shall after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

13B. Act not to apply to certain industrial establishments.—

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

14. Power to exempt.—

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

14A. Delegation of powers.—

The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or any rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—(a)where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification.(b)where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

15. Power to make rules.—

(1)The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may—(a)prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition;(b)set out model standing orders for the purposes of this Act;(c)prescribe the procedure of Certifying Officers and appellate authorities;(d)prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders;(e)provide for any other matter which is to be or may be prescribed:Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government.(3)Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

See sections 2(g) and 3(2)MATTERS TO BE PROVIDED IN STANDING ORDER UNDER THIS ACT(1)Classification of workmen, e.g. , whether permanent, temporary, apprentices, probationers, badlis.(2)Manner of intimating to workmen periods 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 re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.(8)Termination of employment, and the notice thereof to be given by employer and workmen.(9)Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.(10)Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.(11)Any other matter which may be prescribed.