

# **THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946**

**[Along with amendments effected by Bombay Act  
21 of 1958]**

CASEMAN

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**The Industrial Employment (Standing Orders) Act, 1946**

**REVISED SIXTH EDITION**

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## Preface to Sixth Edition

It is our great pleasure to present to the student community the sixth edition of our book on the *Industrial Employment (Standing Orders) Act, 1946*. Pursuant to a revision in the Syllabus of the LL.B. examination in several universities, this Act has been prescribed for study in Labour Law.

Although this Act is a piece of central legislation, substantial amendments were made to it by *Bombay Act 21 of 1958*, in the application of its provisions to the erstwhile State of Bombay, now, Maharashtra and Gujarat. Although the Central Act envisages its application to industrial establishments employing *one hundred* or more workmen, the Bombay Amendment has reduced this number *to fifty* or more workmen, resulting in the application of this Act to many more industrial establishments than would otherwise have been the case. This and other important amendments in force in Maharashtra and Gujarat are explained in this book in a lucid and easy-to-understand language. Wherever necessary, the observations of the Supreme Court and the various High Courts have also been referred to.

The bare text of the Industrial Employment (Standing Orders) Act, 1946 and the Rules made under the Act have been given in Appendix I and Appendix II respectively. We trust that this book will be of great use to the student community.

Publishers

### Books recommended for further reading

K. D. Srivastava H. L. Kumar: Industrial Employment (Standing Orders) Act, 1946

S. D. Puri K. M. Desai : Practical Guide to Industrial Employment (Standing Orders) Act and Rules

S.D.Puri : The Industrial Employment (Standing Orders) Act, 1946

K.M.Desai : The Industrial Employment (Standing Orders) Act. 1946

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**List of abbreviations of Law Reports referred to in this book**

CLR - Current Labour Reports  
FJR - Factories Journal Reports  
FLR - Factories & Labour Reports  
LIC (or Lab.IC) - Labour & Industrial Cases  
LLJ - Labour Law Journal  
LLN - Labour Law Notes  
LLR - Labour Law Reporter

## Chapter I

### INTRODUCTORY

#### (Sections 1,13-B & 14)

The following *three* topics are discussed in this Chapter:

- A. Background, aims and objects of the Act
- B. How the Act seeks to achieve its objectives
- C. Applicability of the Act.

Questions : (M.U. - Mumbai University)

What are the aims and objects of the Industrial Employment (Standing Orders) Act, 1946 ? (2 marks) M.U. Apr. 2011

Explain the objects, scope and features of the Industrial Employment (Standing Orders) Act, 1946. M.U. Nov. 2011

Discuss the need, object and scope of the Industrial Employment (Standing Orders) Act, 1946. M.U. Apr. 2008

What are the objectives of the Industrial Employment (Standing Orders) Act, 1946? How does the Act seek to achieve these objectives ? M.U. Apr. 2017

To which Industrial establishments is the Industrial Employment (Standing Orders) Act, 1946 ? Applicable? (2 marks) M.U. Apr. 2011 Nov. 2014 Jan. 2018

#### A. Background, Aims and Objects of the Act

Industrial harmony is the goal of every modern economy. When peaceful relations exist between the employer and the employed, the path to industrial progress and prosperity is laid wide open. Before the Industrial Employment (Standing Orders) Act was passed in 1946, every employer was at full liberty to fix the service conditions of his employees, making the best bargain he could make with them. As the employee had little - or no - bargaining power, he was admittedly at a great disadvantage. The result was that different sets of service conditions existed in different establishments, the only common feature being that all such terms and conditions were tilted heavily in favour of the employer, who could afford to follow a hire-and-fire policy, often guided by his personal whims and fancies, and usually accompanied by a degree of exploitation of the hapless workman.

Before the days of the industrial revolution, it was the general belief that the operation of the laws of demand and supply would be sufficient to enable the employer and his employees to negotiate and agree upon terms beneficial to both the sides. However, the era of mass production belied any such expectation. Individually, the workman had close to zero bargaining power and the only option left to the employees was to organise themselves into trade unions, which sometimes threatened industrial peace.

Commenting on the state of affairs before the Act was passed, the Supreme Court (in *Agra Electric Supply Co. v. Alladin*, (1969) 11 LLJ 540) observed as follows:

“Such a state of affairs led to confusion and made possible discriminatory treatment between employees and employees, though all of them were appointed in the same

premises and for the same or similar work. Such a position is clearly incompatible with the principles of collective bargaining and renders their effectiveness difficult, if *not* impossible.”

In *Western India Match Co. Ltd. v. Workmen*, (1974 (3) SEE 330), the Supreme Court observed as under:

“In the sunny days of the market economy theory, people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. They had an abiding faith in the unity of this law. But the experience of the working of the law over a long period has belied their faith. Later generations discovered that the workman did *not* possess adequate bargaining strength to secure fair terms and conditions of service. It was, therefore, considered that the society has also an interest in the settlement of the terms of employment of industrial labour. While formerly, there were two parties at the negotiating table - the employer and the workman - it is now thought that there should also be present a third party, the State, as representing the interests of the society.”

The scene changed in 1946, when the era of *laissez-faire* was almost over. When the Act came into force (on April 23, 1946), the employer lost his freedom to fix the service conditions of his workmen in a unilateral manner. Contractual terms of service, where the workman virtually had to sign on the dotted line, were replaced by statutory service conditions, *i.e.*, service conditions stipulated by the law. On the one hand, this gave the much needed protection to the workmen; on the other, it also brought about uniformity in the service conditions of workmen employed by different employers. As observed by the Supreme Court in *Re. Glaxo Laboratories* (1984 1 LLJ 16), the Act was meant to compel the employer, by statute, to prescribe minimum conditions of service, subject to which employment is given by him.

The Act is *the first central legislation* with the objective of having uniform Standing Orders (*i.e.* terms and conditions relating to recruitment, transfer, age of retirement, attendance, leave, payment of wages, *etc.*) throughout the country. For the first time in the industrial history of India, the employer is required by law to crystallise the conditions of service of his employees, and get them certified by the governmental authorities. It precludes him from entering into agreements with his employees which would be inconsistent with the Standing Orders of his establishment. Basically, the Act is a *piece of social legislation to prevent exploitation of industrial workmen*.

In the *Statement of Objects and Reasons* of the Act, it is stated as under:

“Experience has shown that Standing Orders defining the recruitment, discharge, disciplinary action, holidays, leave, *etc.* go a long way towards minimising friction between the management and workers in industrial undertakings. Discussion on the subject at the tripartite Indian Labour Conference revealed a consensus of opinion in favour of legislation. The Bill accordingly seeks to provide for the framing of Standing Orders in all industrial establishments.”

In the words of the Supreme Court, the *object* underlying the Act is to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and to ensure that these terms and conditions are known to the employees before they accept the employment. From the days of hire-and-fire, the movement in our country has been to certainty of employment. (*Salem Erode Electricity Co. Ltd. v. Employees' Union*, AIR 1966 SC 808)

Moreover, prior to the passing of the Act, several employers had no written terms of contract with their workmen, and when disputes arose, the court was faced the problem of interpreting the conditions of service of an implied contract of employment between

the parties. Thus, *one of the principal objects of the Act* was that, employers would define the conditions of employment with sufficient precision and bring such terms and conditions of employment to the notice of the workmen. *Another important objective of the Act* was to bring about a degree of standardisation in such service contracts for all workmen.

The Act is thus an important piece of *social legislation* relating to industrial establishments; it guarantees *fairness and reasonableness* in service conditions of all workmen to which the Act applies.

As observed by the Supreme Court, this statute was enacted in order to achieve industrial harmony and peace, and it requires the management to define, with sufficient precision and clarity, the conditions of employment under which the workmen work in their establishments. The *underlying object of the Act* was to introduce uniformity in the conditions of employment of workmen and to make such terms and conditions widely known to all the workmen *before* they accepted the employment. (*Upton India Ltd. V. Shammi Bhan* (1998) 6 SEE 538)

The *object and purpose* of the Act are also reflected in its *Long Title* and its *Preamble*. It is an Act requiring employers in industrial establishments to which it is applicable, to formally define the conditions of employment under them. It is an Act to provide for rules, defining with sufficient precision, certain conditions of employment in such establishments. The *aim* of the Act is *not only to so define the employment conditions, but also to make such conditions known to the workmen employed in the industrial establishment*.

In *Commissioner of Labour v. ACC Ltd.* (AIR 1955 Bom 363), a Division Bench of the Bombay High Court, after examining the scope and purpose of the Act, observed that the language of the legislation makes it clear that, after the passing of the Act, every employer must make provisions for every matter embodied in the Schedule of the Act. He must also ensure that the Standing Orders applicable to his employees are in conformity with the Model Standing Orders. The only deviation which is permitted is a case where conformity with the Model Standing Orders would be impracticable in the case of that particular establishment.

In *ACC Ltd.'s case* (above), the Bombay High Court did *not agree* with the view taken by a Single Judge of the Madras High Court, Mr. Justice Horwill (in *Baktavatsalu v. Chrome Leather Co.*, AIR 1951 Mad. 857), that the sole purpose of the Act was to clarify the existing contract between the parties, and *not* to provide any machinery for changing the existing conditions. The Bombay High Court went on to observe that if only Mr. Justice Horwill had carefully referred to S. 3 of the Act, he would *not* have come to a conclusion that the purpose of the Act was as circumscribed as he thought it to be.

In the above case, the Bombay High Court also had to give a ruling on whether employers who already had existing terms of service when the Act came into force, were also bound to comply with the Model Standing Orders under the Act. The Court answered the question in the affirmative, rejecting the argument that it was only in those cases where there were no existing terms and conditions of service that the employer would have to conform with the Model Standing Orders.

The above view was later confirmed by the Supreme Court of India, which observed that it was *not* intended that there should be different conditions of service for those who are employed before and those employed after the Standing Orders came into force. Once the Standing Orders come into the force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter. (*Agra Electric Supply Co. Ltd. v. Aladdin*, (1969) 2 SEE 598 and *U.P. Electric*

*Supply Co. Ltd. v. Their Workmen*, (1972) 2 SEC 54)

## B. How the Act seeks to achieve its objectives

The Act seeks to provide uniform Standing Orders for all workmen in industrial establishments to which the Act applies. In simple language, Standing Orders are the rules and regulations of the employer, relating to day-to-day matters governing the terms of employment, like-leave, holidays, shift working, attendance, late coming, termination of employment, suspension for misconduct, etc.

As observed by the Allahabad High Court, the Act contains a general provision requiring employers to define terms and conditions of employment under them and to make such terms and conditions known to the workmen employed by them from the very beginning. (*Narendra Pal Gahlot v. State of U.P.*, (1994) LLR 21)

S. 3 of the Act casts an obligation on the employer to submit to the Certifying Officer, draft Standing Orders proposed to be adopted in his industrial establishment. Such a draft must cover all the matters listed in the Schedule to the Act (as amended from time to time), some instances whereof are given above. Such draft Standing Orders must also be in conformity with the Model Standing Orders notified under the Act, as also with all the provisions of the Act. Further, it is the function of the Certifying Officer to ensure that such Standing Orders are *fair and reasonable*.

Under S. 5, the Certifying Officer may certify the draft, with or without modifications, after giving a hearing to the employer and the trade union or representatives of the workmen. Unless an appeal is filed, the Standing Orders, as so certified, become final and come into operation. They are to be registered with the authorities and have also to be prominently displayed near the entrance of the establishment. Any modification in such Standing Orders also needs to be certified, following the same procedure.

Pending the above procedure of certification, the model Standing Orders prescribed under the Act are applicable to the establishment. (S. 13-A)

*In Maharashtra, however, the above procedure is not applicable.* The Act has been amended in its application to the State of Maharashtra, and the Model Standing Orders made under the *Maharashtra Rules* automatically become applicable to all establishments in the State, and the procedure outlined above applies only to *amendments* desired to be made in the Model Standing Orders. This has brought about a *greater uniformity* in Standing Orders prevailing in the State, leaving *sufficient flexibility* to each establishment to get appropriate amendments certified by the authorities for that particular establishment.

The Act also provides for payment of *subsistence allowance* to a suspended workman, pending investigation or inquiry into charges of misconduct against him. (S. 10-A)

Nominal penalties are prescribed by S. 13 of the Act for violation of the provisions of the Act or of the Standing Orders made thereunder. The Central and State Governments are also empowered to make Rules for the proper implementation of the Act. (S. 15)

The above is only a bird's eye view of the provisions of this Act which has, *in a span of fifteen sections*, brought about a *radical beneficial change in the industrial law of India*. The contents of these sections are dealt with at greater length in the Chapters that follow. (A reference may be made to the bare text of the Act given in Appendix I.)

## C. Applicability of the Act (Ss. 1, 13-B & 14)

The Act extends to the whole of India and is applicable only to industrial

establishments employing the specified minimum number of workmen. There are also certain establishments to which it does *not* apply. The appropriate government also has the power to exempt industrial establishments from all or any of the provisions of the Act.

*Establishments which are covered by the Act*

The Act is applicable to every “industrial establishment” (as defined in the next Chapter) *where one hundred or more workmen are employed*. Liberty is, however, given to the government to apply the Act even to an industrial establishment employing less than one hundred workmen.

In the *State of Maharashtra*, however, the Act has been made applicable to:

- a) every industrial establishment where *fifty or more* workmen are employed; and
- b) every establishment covered by the Bombay Shops & Establishment Act, 1948.

It may be noted that it is *not necessary* that the establishment should have employed 100 (or, as the case may be, 50) workmen throughout the year. It is clarified that the Act becomes applicable even if such number of workmen were employed *even for one single day* in the preceding twelve months.

Once the Act becomes applicable to an industrial establishment, it does *not* cease to apply just because the number of workmen has later fallen to below 100 (or 50 in Maharashtra). There is nothing in the Act which provides for cessation of the applicability of the Act in such a case. (*Balakrishna Pillai v. Anant Engineering Works Pvt. Ltd.*, 1975 II LLJ 391)

*Establishments which are not covered by the Act (Ss. 1 & 13-B)*

The Act does *not* apply:

- (a) to any industry to which Chapter VII of the Bombay Industrial Relations Act, 1966. Applies;
- (b) to any industrial establishment to which the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, applies: *and*
- (c) to any industrial establishment in so far as the workmen employed in that establishment are workmen to whom the following Rules and Regulations apply, namely,—
  - I. Fundamental & Supplementary Rules;
  - II. Civil Services (Classification, Control & Appeal) Rules;
  - III. Civil Services (Temporary Service) Rules;
  - IV. Revised Leave Rules;
  - V. Civil Service Regulations;
  - VI. Civilians in Defence Service (Classification, Control & Appeal) Rules;
  - VII. Indian Railways Establishment Code; *and*
  - VIII. any other Rules or Regulations as may be notified by the appropriate government in the Official Gazette.

An interesting question faced by the Delhi High Court in one case was whether the Act would apply to the Air India Corporation. The Court observed that one of the important requirements of S. 13-B is that a notification must be issued by the appropriate government to this effect. It was *not* disputed that, in this case, the appropriate government would be the Central Government. However, the facts before the court showed that the notification in question was issued by Air India, and *not* by the Central Government. This being so, it could *not* be said that the requirement of S. 13-B was satisfied. (*Air India Corp. v. Union of India*, 1991 LLR 158)

### *Power to exempt (S. 14)*

In addition to the above, it is also provided that the appropriate government, as defined in S. 2 of the Act (see next Chapter) may exempt conditionally or unconditionally, any industrial establishment or class of industrial establishments, from *all* or *any* of the provisions of the Act. However, this can be done only by a notification in the Official Gazette.

The Madras High Court has observed that the power conferred on the appropriate government by S. 14 of the Act to exempt an industrial establishment does *not* include the power to exempt a section of the establishment or a particular class of workers in a given establishment. (*Raman Nambisan v. Madras S.E.B.*, (1967) 1 LLJ 252)

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## Chapter II

### DEFINITIONS (Section 2)

Question :

Define “Appellate authority” under the I.E. (S.O.) Act. (2 marks) M.U. Nov. 2013 Apr. 2016

Write a short note on: Appropriate government.

Write a short note on: “Employer” under the Industrial Employment (SO) Act, 1946. M.U. Nov. 2011

What is the meaning of “Industrial establishment under the Industrial Employment (SO) Act, 1946 (2 marks) M.U. Nov. 2011

Several terms used in the Act have been defined by S. 2. However, these definitions apply unless there is anything repugnant in the subject or context. This means that although normally, such definitions have to be given effect to, there may be a slight departure from the normal rule in a particular section of the Act, on account of the subject or context in which the word has been used in that section. Thus, the Court would, in such cases, look *not only* at the definition of that term in S. 2. *but also* at the context or background in which it is used in that particular section.

The following *nine* terms are defined by the Act.

#### (a) Appellate authority [S. 2(a)]

An appellate authority has been defined as an authority appointed by the appropriate government (as defined below) to exercise the functions of an appropriate authority under the Act. Such an appointment is to be made by a notification in the Official Gazette, specifying the area within which such an authority is to exercise its powers.

(b) Appropriate government [S. 2(b)]

Appropriate government means —

- I. *the Central Government* in respect of industrial establishments under the control of the Central Government, or in respect of railways, major ports, mines and oil fields: *and*
- II. *the State Government* - in all other cases.

If a question arises as to whether an industrial undertaking is or is *not* under the *control of the Central Government*, the question is to be decided by the Central Government itself, after hearing all the concerned parties. Such a decision is declared to be *final and binding*.

In one case, the question before the Division Bench of the Patna High Court was whether the industrial undertaking owned by *Sindhri Fertilizers and Chemicals Ltd.* could be said to be *under the control of the Central Government*, within the meaning of S. 2(b) of the Act. The company had 3,00,000 shares of which 2,99,999 belonged to the President of India, and one to the Secretary of the Production Department, Government of India. Moreover, under the Articles of the company, the President of India had complete control over the working of the company. This being so, it was *held* that it was under the control of the Central Government, and not the State Government. (*Sindhri Workers' Union v. Commissioner of Labour*, AIR 1959 Pat 36)

On similar lines, the Madhya Pradesh High Court has *held* that *Heavy Electrical (India) Ltd.*, which was a Government Company, was an undertaking under the control of the Central Government. (*S. K. N. Khan v. State Industrial Court*, (1978) 2 LLN 164)

*Whether two governments can be the "appropriate government" for the same establishment !:*

It appears quite logical that there can be *only one government* which can be the "appropriate government" for a particular industrial establishment. As observed by a Division Bench of the Kerala High Court, the consequences of holding that more than one government can be the "appropriate government" for the *same* establishment would be "*startling*". (*J & J De Chase Distributors v. State of Kerala*, (1974) 2 LLJ 9)

The same view was also taken by the Bombay High Court, where a Division Bench *held* that two governments *cannot* be the "appropriate government" for the same establishment. (*General Superintendence Company of India v. Goa Dock Labour Union*, (1983) 1 LLJ 5)

However, a *contrary view* has been taken by a Single Judge of the Delhi High Court, who interestingly found nothing in the concept of multiplicity of governments to be inconsistent with either the provisions or scheme of the Act or the objects sought to be achieved by it. (*Associated Traders & Engineers Pvt. Ltd. v. Addl. Industrial Tribunal*, (1976) 49 FJR 187)

(c) Certifying Officer [S. 2(c)]

"Certifying Officer" means and includes:

- (a) A Labour Commissioner,
- (b) A Regional Labour Commissioner, *or*
- (c) 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 the Act.

#### (d) Employer [S. 2(d)]

Under the Act, an employer is defined to mean the owner of an industrial establishment to which the Act applies, and includes —

- I. In a factory — any person named under S. 7(1)(f) of the Factories Act, 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 appointed — the head of the department; *and*
- III. In any other industrial establishment,—
  - (a) any person responsible to the owner for the supervision and control of the industrial establishment; *and*
  - (b) where a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen on the premises of the establishment for execution of the work which is ordinarily part of such establishment, then in relation to such workmen — the owner of the industrial undertaking.

[Note : Clause (iii)(b) is applicable only in the State of Maharashtra. ]

It has been *held* that a person who is merely the owner of the premises where machinery is installed, but who has *neither* control over the manufacturing process *nor* any connection with the engagement of workers, *cannot* be called the “owner”. Therefore, he *cannot* be proceeded against as an “employer” under the Act. (*J. P. Asar v. State of Maharashtra*, (1964) 2 LLJ 7)

However, a liquidator who has the ultimate control over the affairs of a factory, including the power to run the factory or sell it as a going concern, would be the “employer” for the purposes of the Act. (In *Re. Mahalaxmi Cotton Mills (in Liquidation)*, AIR 1960 Cal 199)

#### (e) Industrial establishment [S. 2(e)]

An industrial establishment means:

- (i) an industrial establishment as defined in S. 2(ii) of the Payment of Wages Act, 1936; *or*
- (ii) a factory as defined in S. 2(m) of the Factories Act, 1948; *or*
- (iii) a railway as defined in S. 2(4) of the Indian Railways Act, 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. (*Clause (iv) does not, however, apply in Maharashtra.*)

One of the important ingredients of a “factory” is that a manufacturing process must be carried on therein. It has been *held* that making of bread in a bakery, and even the cutting of bread into slices, are *both* “manufacturing processes”. (*New Grand High Class Bakery v. E.S.I. Corporation*, (1976) 49 FJR 405)

If there is an industrial school where articles are manufactured only for the purpose of demonstration and instruction to its students, it is *not* a factory, *even if* the articles so produced are saleable. (*State of Kerala v. V. M. Muloth*, (1961) 1 LLJ 184)

An interesting question before a Single Judge of the Madras High Court was whether the laundry department of a hospital could be considered to be a “factory”. It was engaged only in washing the linen used in the hospital, and *not* even for washing clothes. The Court *held* that the laundry was only a subsidiary department of the hospital, which itself was *not* a “factory”. It was, therefore, *held* that when the main institution is *not* a “factory”, a department thereof *cannot* be one. (*P.S.S. Sundar Rao v. Inspector of Factories*, (1984) 2 LLN 315)

A Full Bench of the Supreme Court was called upon to decide if the publication department and press of a university would fall under the present definition. It was argued that universities were purely educational institutions having a number of departments, the main object of which was to impart education to the youth of the country, and that the said department which was intended only to cater to the needs and requirements of the students could *not* be regarded as a “factory” or an “industry”. Rejecting this argument, the Supreme Court *held* that printing of text books, journals, registers, forms *and* various items of stationery clearly constitute “manufacture”, and that therefore, the department of publication and press was a “factory”. (*Andhra University v. R.R.F. Commissioner*, AIR 1986 SC 463)

The above view was followed by the same court in *Osmania University v. Regional Director, ESI Corporation* (AIR 1986 SC 466).

(f) Prescribed [S. 2(f)]

The term “prescribed”, as used in the Act, means prescribed by Rules made under the Act by the Appropriate Government, as for instance, *the Industrial Employment (Standing Orders) Central Rules, 1946* and *the Bombay Industrial Employment (Standing Orders) Rules, 1959*, which are in force in the State of Maharashtra.

(g) Standing Orders [S. 2(g)]

Standing Orders are defined to mean rules relating to matters set out in the Schedule to the Act. These are discussed at length in the next Chapter, to which a reference may be made.

(h) Trade Union [S. 2(h)]

The term trade union means a trade union which is, for the time being, registered under the Indian Trade Unions Act, 1926.

(i) “Wages” and “workman” [S. 2(i)]

The terms “wages” and “workman”, when used in the Act, are to be understood to have the same meanings as are assigned to them under Ss. 2(rr) and 2(s), respectively, of the Industrial Disputes Act, 1947, - which are as under:

S. 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, and includes -

- (i) such allowances (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 or of any concessional 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 does *not* include
  - (a) any bonus;
  - (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force; *and*
  - (c) any gratuity payable on the termination of his service.

S. 2(s): “Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the

purposes of any proceeding under this Act in relation to an industrial dispute, includes any such 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 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 as an officer or other employee of a prison;  
*or*
- (iii) who is employed mainly in a managerial or administrative capacity; *or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

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## Chapter III

### STANDING ORDERS

The following four topics are discussed in this Chapter:

- A. Meaning of Standing Orders
- B. How Standing Orders are framed and certified
- C. Model Standing Orders
- D. Illustrative examples of Standing Orders.

Questions:

Define the term "Standing Orders" under the Industrial Employment (SO) Act, 1946.

(2 marks) M.U. Apr. 2010 Apr. 2016

Explain in detail the procedure for framing and certification of Standing Orders.

M.U. Jan. 2017 Jan. 2018

What are standing orders? Why are they important? How are they certified?

State any two powers of a Certifying Officer. (2 marks) M.U. Apr. 2010 Apr. 2016 Jan. 2017

Discuss framing of Standing Orders under the I.E. (S.O.) Act. M.U. Nov. 2015

What are Standing Orders? How can they be certified? What is the procedure for modification of Standing Orders? M.U. Nov. 2013

Write a short note on: Certifying Officer under the Industrial Employment (Standing Orders) Act. M.U. Apr. 2016

Discuss the certification of Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. M.U. Nov. 2007

Define "Certifying Officer" and explain the power of a Certifying Officer under the Industrial Employment (SO) Act, 1946. Explain the procedure for certification of draft amendments of Standing Orders under the Act. M.U. Nov. 2009

State any powers of a certifying officer under the I.E. (S.O.) Act. (2 marks) M.U. Jan. 2018

Write a short note on: Procedure for submission and certification of Standing Orders. M.U. Apr. 2008

What are Standing Orders? How are they certified? M.U. Nov. 2012

What is the date on which Standing Orders come into operation? (2 marks) M.U. Apr. 2014

Write a short note on: Definition of "Certifying Officer" and his powers under the Industrial Employment (SO) Act, 1946. M.U. Nov. 2010

Write a short note on: Modification of Standing Orders.

What is "Modification" of a Standing Orders? (2 marks) M.U. May 2012 Nov. 2013 Jan. 2017 Jan. 2018 May 2018

Name any two powers of certifying officers under the I.E. (S.O.) Act. M.U. Nov. 2014

What is a "Standing Order"? Can it provide for matters not contained in the Schedule to the Industrial Employment (Standing Orders) Act, 1946?

What does Model Standing Orders mean? (2 marks) M.U. Nov. 2012 Nov. 2014 Apr. 2015

Write a short note on: Difference between Model Standing Orders & Certified Standing Orders.

Briefly explain the scope, object and matters to be provided for in the Model Standing

Orders under the Industrial Employment (SO) Act, 1946. M.U. Nov. 2010  
 When do Model Standing Orders apply? Discuss. M.U. Nov. 2007  
 Write a short note on: Model Standing Orders. M.U. Apr. 2015 Jan. 2017 Jan. 2018  
 What are Standing Orders? State the matters to be provided for in the Model Standing Orders under the Act. M.U. Apr. 2009 Apr. 2010 Apr. 2011 May 2012  
 Who frames Model Standing Orders? (2 marks) M.U. Nov. 2015  
 Give two examples of misconduct under Standing Orders. (2 marks) M.U. Apr. 2015  
 Discuss the punishments for the misconduct under the I.E. (S.O.) Act. M.U. Apr. 2015

### A. Meaning of Standing Orders

To put it very simply, Standing Orders are the written rules and regulations of an employer, relating to matters governing the terms of employment and the conduct of the workmen. They are like bye-laws governing matters such as payment of wages, what leave the employee would be entitled to, rules relating to his attendance and late coming, termination of his employment, disciplinary action against him for misconduct, medical examination and medical aid, and soon.

Under S. 2(g) of the Act, "Standing Orders" are defined to mean the rules relating to the following matters set out in the *Schedule* of the Act. This Schedule, as amended, lists the following matters, namely —

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or *badlis*.
- 1 -A. Workmen's Tickets and Registers (*For Maharashtra only*)
- 2 Manner of intimating to the 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.
- 7-A. Closing and re-opening of the entire industrial establishment or departments thereof, and the rights and liabilities of the employer and Rvt workmen arising therefrom. (*For Maharashtra only*)
8. Termination of employment, and the notice thereof to be given by the employer and the 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. Service Record, that is, matters relating to service card, token tickets, certification of service, change of residential address of workmen and record of age. !
12. Confirmation.
13. Age of retirement.
14. Transfer.
15. Medical aid in case of accidents.
16. Medical examination.

17. Secrecy.
18. Exclusive service.
19. In the case of industrial establishments in coal mines,—the following additional matters, namely,—
  - (i) Railway travel facilities.
  - (ii) Method of filling vacancies
  - (iii) Liability of the Manager of the establishment, ‘
  - (iv) Service Certificate.
  - (v) Exhibition and supply of Standing Orders.

As observed by the Supreme Court, Standing Orders are binding on the employer and the employee. These are statutorily imposed conditions of service. However, *they are not statutory provisions in themselves*, that is to say, even when approved, *Standing Orders do not become ‘law’* in the sense in which Rules and Notifications issued under delegated legislation become after they are published in the Official Gazette. {*Rajasthan SRTC v. Krishna Kant*, AIR 1955 SC 1715)

#### B. How Standing Orders are framed and certified (Ss. 3 to 10)

As far as framing, certification and application of Standing Orders are concerned, S. 3 to 10 of the Act lay down the necessary procedure to be followed in this connection. However, in 1958, these sections were substantially amended in their application to the erstwhile Bombay State (*now*, States of Maharashtra and Gujarat), and therefore, this topic can best be discussed under the following *two* heads:

- (i) Position under the Central Act
- (ii) Position under the Bombay Amendment.

##### (i) Position under the Central Act

Under S. 3 of the Act, within a period of *six months* from the date on which the Act becomes applicable to an industrial establishment, the employer must submit to the Certifying Officer {*i.e.* the Labour Commissioner or the Regional Labour Commissioner), five copies of the draft Standing Orders proposed to be adopted by the employer in his industrial establishment.

When doing so, the employer must carefully ensure that such draft contains all the matters set out in the Schedule to the Act (-see above-), so far as such matters are applicable to his establishment. Along with the draft, the employer must also submit a statement containing particulars of the workmen employed by him, as also the name of the trade union, if any, to which they belong. Liberty is also given to a group of employers who have similar industrial establishments to submit a joint draft of the Standing Orders.

On receipt of the draft, the Certifying Officer forwards a copy thereof to the trade union, if any, calling for its objections *within a period of fifteen days*. If there is no trade union, the draft is to be sent to the workmen for their objections, with the same period, in such manner as may be prescribed.

After hearing both the sides, that is, the employer and the trade union or representatives of the workmen, as the case may be, the Certifying Officer passes an order on whether any additions or modifications are necessary in the draft, to make them certifiable under the Act. After making the necessary amendments, if any, the said Officer must, *within seven days*, send copies of the certified Standing Orders to the employer, as also to the trade union or prescribed representatives of the workmen, as the case may be.

It is, however, to be noted that Standing Orders are certifiable under the Act only if the following *two conditions* are satisfied, namely,—

- (a) Provisions should be made in the Standing Orders for every matter set out in the Schedule to the Act, so far as the same is applicable to that industrial establishment; *and*
- (b) The Standing Orders should otherwise be in conformity with all the provisions of the Act.

*Originally*, the Act provided that it was *not* within the jurisdiction of the Certifying Officer to adjudicate whether the Standing Orders submitted to him for certification were *fair or reasonable*. However, the Act was amended in 1956, and *now* it has become the function of the Certifying Officer also to adjudicate upon the *fairness or reasonableness* of the provisions of such Standing Orders. (S. 4)

As observed by a Full Bench of the Supreme Court, *prior to the 1956 Amendment*, it was *not* open to the Certifying Officer to examine the fairness of the Standing Orders. However, *after the said Amendment*, it has become his function to do so. The result is that, today, *firstly*, the Standing Orders have to provide for all the topics specified in the Schedule to the Act, and have to be otherwise in conformity with the Act. *Secondly*, the reasonableness of the Standing Orders will also be examined by the authorities and suitable modifications can be made by them. (*Bagalkot Cement Co. Ltd. v. R. K. Pathan*, AIR 1966 SC 1471)

Thus, a duty is cast on the Certifying Officer to see that the draft Standing Orders or the modification thereof should conform with the Model Standing Orders. However, this is *not* all. He also has to ensure that they are *reasonable and fair*. (*Indian Oil Corporation Ltd. v. Joint Chief Labour Commissioner*, (1990) 76 FJR 93)

It is to be noted that Standing Orders may be questioned under Art. 226 of the Constitution of India if the certified Standing Orders are illegal, arbitrary and violative of the principles of natural justice. (*Narendra Pal Gahlot v. State of U.P.*, (1994) LLR21)

The Supreme Court has observed that, while adjudging whether the Standing Orders are fair and reasonable, the Certifying Officer must consider and weigh the social interests of the workmen. This is the real touchstone on which the fairness and reasonableness of the Standing Orders would have to be considered by the authorities. (*Western India Match Co. Ltd. v. Workmen*, AIR 1973 SC 2650),

If any workman, employer or trade union is aggrieved by the order of the Certifying Officer, he (or it) may, *within thirty days*, file an *appeal* before the appellate authority, who may confirm the Standing Orders either in the form certified by the Certifying Officer or with such modifications as may be necessary, and intimate the same to the parties *within a period of seven days*.

In one case, the Order certifying the Standing Orders was passed on 4.1.1991 and dispatched on 7.1.1991. The Petitioner received the same on 9.1.1991, and the appeal was filed on 6.2.1991. When the appeal was dismissed as time-barred, the Petitioner filed a Writ Petition in the Delhi High Court. The court *held* that when calculating the above period of thirty days, the day on which such order was dispatched, namely, 7.1.1991, has to be excluded. The appeal was, therefore, *not* time-barred. (*Badaipur Power Engineers' Asso. V. Dy. Chief Labour Commissioner*, 1993 I LIE 636)

After being certified, the Standing Orders come into operation on the expiry of *thirty days* from the date on which authenticated copies are sent by the Certifying Officer. If, however, an appeal is filed, they come into operation on the expiry of *seven days* from the date on which the order of the appellate authority is sent to the employer and to the trade union or the representatives of the workmen, as the case may be. (S. 7)

It is also provided that during the time-gap between the date on which the Act becomes applicable to an establishment and the date on which the certified Standing Orders of that establishment come into operation (-as above-), *the Model Standing*

*Orders apply to that establishment.* (S. 12-A)

The certifying authority is also under a duty to file all certified Standing Orders in a Register, and furnish a copy thereof to any person applying for the same, on payment of the prescribed fees. (S. 8)

The Act also makes it the duty of the employer to prominently display the Standing Orders as certified, at or near the entrance through which a majority of the workmen enter the industrial establishment, as also in all departments where workmen are employed. The Standing Orders are required to be so posted (/a, displayed) in English and in a language understood by most of the workmen. (S. 9)

The Bombay High Court has clarified that S. 7 of the Act is quite clear and precise in its language, and it brings the Standing Orders into operation on a particular date. Therefore, it *cannot* be said that the Standing Orders which have come into operation under S. 7 would *not* bind the workmen unless the notice contemplated by S. 9 is given to them by posting the Standing Orders in the language of the majority. Thus, if Standing Orders are in operation at the relevant time, the non-posting of such Orders in the Marathi language, as required by S. 9, would *not* defeat their effect. (*Caltex (India) Ltd v. Damodar Rajaram Bhosle*, 1955 (2) LLJ 139)

The same view was taken by the Bombay High Court in a subsequent case, when it *held* that non-compliance with S. 9 of the Act would *not* make the provisions of S. 7 non-effective or non-binding. (*Ismail Papamia v. Labour Appellate Tribunal of India*, AIR 1956 Born 584)

Once Standing Orders are finally certified under the Act, they are *not* liable to be modified until the expiry of *six months* from the date on which they came into operation, unless it is done under an agreement between the employers and the employees and the trade union, as the case may be. If such an agreement is arrived at, the modifications have to be sent to the Certifying Officer, along with the necessary application, and the same procedure and provisions will apply to the certification of these modifications, as apply to the first Standing Orders. (S. 10)

The Kerala High Court has clarified that the word “modification” used in S. 10 is *not* to be given a restricted meaning, implying only minor changes. The expression is broad enough to cover even the *deletion* of a clause. (*I.E.E.U., Cochin v. Indian Express*, (1999) 1 LLJ 490)

When certifying Standing Orders, the Certifying Officer and the appropriate authorities can exercise all the powers of a civil court for the purpose of:

- (i) receiving evidence;
- (ii) administering oath;
- (iii) enforcing the attendance of witnesses: *and*
- (iv) compelling the disclosure and production of documents.

The said authorities are also deemed to be a “civil court” within the meaning of S. 345 and S. 346 of the Criminal Procedure Code, 1973. [S. 11(1)]

The Allahabad High Court has clarified that if the certifying authority or the appellate authority has recorded findings on extraneous considerations or under some misconception of law, a party can always file a Writ Petition under Art. 226 of the Constitution and call upon the court to quash such findings. (*Central Workshop Karamchari Sangh v. Industrial Tribunal*, 1978 Lab IC1560)

When certified Standing Orders come into force, they bind, *not only* the existing employees, *but also* those who are appointed subsequently (*Hyderabad Allwyn Co. Ltd. v. Addl. Industrial Tribunal*, (1990) 76 FJR 139)

This also means that an employer *cannot* have two sets of Standing Orders, one for

the old workmen and the other for new employees. The *object of the Act* is to have uniform Standing Orders for *all* employees (*Agra Electric Supply Co. Ltd. V. ShriAHadin & Ors.*, 1969 II LLJ 540)

*Whether draft Standing Orders submitted for certification can include matters falling outside the matters listed in the Schedule of the Act*

An interesting question is whether it is open to an establishment to include in its draft Standing Orders, matters *not* enumerated in the Schedule, and if it does so, whether the Certifying Officer would be justified in refusing to certify such Standing Orders. The High Courts of Mysore and Madras had taken the view that it is open to the parties concerned to include in their Standing Orders, matters which fall outside the Schedule to the Act. As observed by the Mysore High Court in one case, the employer is bound by law to make a provision for all matters referred to in the Schedule. However, that does *not* mean that a provision *cannot* be made for any additional matter. (*Mysore Kirloskar Employees' Asso. v. Industrial Tribunal*, AIR 1959 Mys. 235)

However, in 1966, the Supreme Court did *not* accept the above reasoning, t In *Rohtak & Hissar Districts Electric Supply Co. Ltd. v. State of U. P.* (AIR 1966 SC 1471), the court *held* that if the draft Standing Orders make a provision for any item which does *not* fall in the Schedule, the certifying authorities would be fully justified in *not* including these matters in the certified Standing Orders.

The above decision was followed in a later decision of the Supreme Court, where the court *held* that Standing Orders *cannot* relate to matters outside the Schedule. The Court rejected a forceful argument that the scheme of the Act was to provide for the minimum, and *not* to exclude other items. (*Workmen of Lakheri Cement Works Ltd. v. ACC Ltd.*, AIR 1969 SC 132)

*Inconsistency between Standing Orders and Contract of Service / Appointment Letter*

As the Act gives binding force to Standing Orders, the terms of conditions of employment contained in the service agreement or appointment letter *cannot* override the Standing Orders. In one case, the certified Standing Orders of a company provided for two months' probation, but by a special agreement, the management sought to provide for a probation period of six months. The Supreme Court *held* that the special agreement for an additional period of four months (six months, instead of two) would be an act in contravention of the Standing Orders of the company. (*Western India Match Co. Ltd. v. Workmen*, 1973 (2) LLJ 403)

On the question of inconsistency between the Standing Orders and the terms and conditions contained in the appointment letter, the Rajasthan High Court (in *Eicher Good Earth Ltd. v. Rajender Kuram Soni*, 1993 LLR 524) observed as follows:

"On the question as to whether the provision contained in the certified Standing Orders will prevail in case of its conflict with the terms and conditions contained in the contract of employment, that is, the appointment letter, it is necessary to bear in mind that certified Standing Orders are framed under the Act, and once the Standing Orders are framed by the employer and are certified, they have the force of law. As against them, conditions of service contained in the letter of appointment or contract of employment do *not* have statutory force. When there is a conflict between a provision of law or an instrument having the force of law and the contract entered into .between the parties, the former will prevail."

On the same lines, a Division Bench of the Madras High Court has *held* that no Service Regulations of the establishment can prevail over the Standing Orders formulated and certified under the Act. (*S. Alamelu v. Superintending Engineer*, 1990 (2)

LLN 489)

The Bombay High Court has also clarified that a Standing Order would prevail over a contract of service which is inconsistent with the Standing Order. (*Indian Tobacco Co. v. Industrial Court*, 1990 (1) LLN 206)

(ii) Position under the Bombay Amendment

As stated above, in the erstwhile State of Bombay (*now*, Maharashtra and Gujarat), the Act was amended in 1958, to do away with certification of draft Standing Orders. The said Amendment inserted a new section, S. 2-A, which provides that if the Act applies to an industrial establishment the Model Standing Orders for all matters set out in the Schedule would apply to such an establishment from the notified date. This would *not*, however, affect any Standing Order which has been finally certified and has already come into operation prior to the date of the 1958 Amendment.

As far as industrial establishments covered by the Bombay Amendment are concerned, the application of the Act has been substantially modified by *the addition of S. 2-A, the amendment of S. 3 and the deletion of S. 4 of the Act*. Briefly stated, the effect of these amendments is as under:

1. Model Standing Orders (— discussed later in this Chapter —) apply to such industrial establishments from the notified date, namely, January 15, 1959. Standing Orders which were earlier certified, and have come into force prior to this date are, however, *not affected*, and continue to be in force.
2. When such Model Standing Orders are sought to be amended in their application to a particular industrial establishment, the employer or any workman must submit to the Certifying Officer, five copies of the *draft amendments* for adoption by that undertaking. However, no such “amendment” can provide for the deletion or omission of any matter listed in the Schedule to the Act.
3. Thereafter, the *same procedure applies* to the certification of such amendments, as applies to the certification of the draft Standing Orders, discussed above. The provisions of the Act with regard to appeals, date of operation, registration, etc. of *certified Standing Orders* also apply *mutatis mutandis* in such cases.

*Differences between the provisions of the Central Act and the Bombay Amendment with regard to Model Standing Orders*

As seen above, under the Central Act, the employer is obliged to frame draft Standing Orders for his establishment, and send the same to the Certifying Officer for certification. Until the draft is finally certified, the Model Standing Orders apply to that establishment.

However, under the Bombay Amendment, as soon as the Act becomes applicable to an industrial establishment, the Model Standing Orders apply to it, and thus there is no need to draft Standing Orders and send them for certification to the authorities. However, it is open to the employer and the workmen to submit to the Certifying Officer-*draft amendments* to such Standing Orders for certification.

Thus, whilst under the Central Act, the Model Standing Orders will apply only during the time taken for certification, after which the Standing Orders drafted by the establishment and certified by the authorities will apply, under the Bombay Amendment, the Model Standing Orders will immediately apply, until draft amendments thereto, if any have been sent to the authorities and certification has been received. In other words, under the Central Act, the Certifying Officer certifies the draft *Standing Orders* whereas under the Bombay Amendment, he has to certify *only the amendments, if any*, submitted to him.

As a natural consequence, appeals under the Central Act will be against the decision of the Certifying Officer when he certifies the *draft* submitted to him, whereas under the

Bombay Amendment, the appeal would lie against his order in connection with the *amendments to the Model Standing Orders* sent to him for certification.

Likewise, under the Central Act, the Register would contain the Standing Orders of the establishment as certified by the authorities. Under the Bombay Amendment, it would contain the Model Standing Orders together with *certified amendments*.

As seen earlier, under the Central Act, it is the duty of the employer to display, near the entrance of his establishment, the text of the certified Standing Orders. Under the Bombay Amendment, he would have to display the Model Standing Orders, with certified amendments, if any.

### C. Model Standing Orders (S. 12-A)

S. 12-A provides that notwithstanding the above provisions contained in S. 3 to S. 12 of the Act, during the time-gap between the date when the Act becomes applicable to an industrial establishment and the date on which the certified Standing Orders of that establishment come into operation, *the Model Standing Orders would apply to such an establishment*, and all the above provisions of the Act which apply to certified Standing Orders would also be applicable to such Model Standing Orders.

The above provision does *not*, however, apply to an industrial establishment in respect of which the appropriate government is the Government of Maharashtra or the Government of Gujarat. This is so, because in Maharashtra and Gujarat, the Model Standing Orders are *not meant to be in force only for the limited period pending certification*. Under the *Bombay Amendment of 1958*, the Model Standing Orders apply immediately, and continue to apply in the future, subject to such amendments as may be certified by the authorities from time to time.

The application of the Model Standing Orders to establishments in Maharashtra has been discussed at length under the topic entitled “Position under the Bombay Amendment” above, to which a reference may be made.

#### *Model Standing Orders framed under the Central Act*

As far as the Central Government is concerned, the Rules framed under the Act are known as the *Industrial Employment (Standing Orders) Central Rules, 1946*. Under these Rules, the following *three* Model Standing Orders have been framed, namely,—

1. Model Standing Orders in respect of industrial establishments which are *not* coal mines.
2. Model Standing Orders in respect of industrial establishments which are coal mines.
3. Model Standing Orders on additional items and applicable to *all* industries.

These Rules have been reproduced in Appendix II, to which a reference may be made.

#### *Model Standing Orders In the State of Maharashtra*

As far as Maharashtra is concerned, the relevant Rules made under the Act are the *Bombay Industrial Employment (Standing Orders) Rules, 1959*, under which the following *three* Model Standing Orders have been framed, namely,—

1. Model Standing Orders *for* workmen doing manual or technical work,
2. Model Standing Orders for workmen employed for clerical or supervisory work.
3. Model Standing Orders for working journalists.

All the *six* Model Standing Orders referred to above do *not* obviously have the same content. However, they all deal with common matters such as classification of workmen, publication of holidays and pay days shift working, attendance and late coming, festival

holidays and leave; date of payment of wages, termination of employment, disciplinary action for misconduct, age of retirement, and so on.

Note: *The Central Model Standing Orders for industrial establishments not being coal mines* are included in Appendix II to this book, to which a reference may be made. Later on, in 1983, the Central Government published *Model Standing Orders on additional items, applicable to all industries*. These are also set out in the said Appendix

#### D. Illustrative examples of Standing Orders

The Standing Orders relating to a few topics are briefly discussed below, only to give an idea of how these conditions of service are dealt with in the Model Standing Orders prescribed under the *Central Rules*.

##### 1. Classification of workmen

All workmen should be classified under the following six heads:

- (i) Permanent
- (ii) Probationers
- (iii) *Badli*s
- (iv) Temporary
- (v) Casual
- (vi) Apprentices.

Each of these terms is also defined in the Central Rules. Thus, a *badli* workman is defined as a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent. A reference may be made to the Central Rules given in the Appendix to the book.

##### 2. Age of retirement

The Central Model Standing Orders provide that the age of retirement or superannuation of a workman can be agreed upon between the employer and the workmen in a settlement or award which is binding on both the sides. If there is no such agreed age in a given establishment, the retirement age of the workmen shall be *on completion of fifty-eight years*.

##### 3. Shift working

More than one shift can be worked in any department of the establishment at the discretion of the employer. If more than one shift is worked, a workman is liable to be transferred from one shift to another. However, no shift working is to be discontinued, without giving *two months' prior notice* to the workman — unless this is done under an agreement with the affected workman.

##### 4. Transfer

Originally, “transfer” was *not* one of the topics enumerated in the Schedule of the Act. This being so, several courts had then *held* that Standing Orders could *not* be made with regard to transfer of employees. However, the position changed in 1983, when “transfer” (and some other items) were added to the Schedule to the Act. The provisions relating to transfer *now* provided for in the Model Standing Orders are as under.

A workman may be transferred according to exigencies of work from one shop or depot to another, or from one establishment to another under the same employer. Such transfer should be from one job to another which the workman is capable of doing, and the terms and conditions of service *cannot* be adversely affected by such transfer.

*If the transfer is to another State*, the workman's consent is necessary, unless there is a specific provision to that effect in his letter of appointment. In case of such a transfer, reasonable notice thereof and reasonable joining time should be allowed. The workman must also be paid traveling allowance, transport charges and incidental

expenses.

#### 5. *Disciplinary action for misconduct*

A workman may be suspended if found guilty of misconduct, which would include the following acts and omissions:

- (a) willful insubordination or disobedience, whether alone or in conjunction with others;
- (b) theft, fraud or dishonesty in connection with the employer's business or property;
- (c) habitual absence without leave for more than ten days;
- (d) habitual late attendance;
- (e) habitual negligence or neglect of work;
- (f) sleeping on duty (*only for workmen in coal mines*);
- (g) smoking underground or within the mine area or in prohibited places (*only for workmen in coal mines*);
- (h) any breach of the Mines Act, 1952, or Rules or Regulations made thereunder (*only for workmen in coal mines*);
- (i) habitual money-lending (*only for workmen in coal mines*);
- (j) sexual harassment, which includes such unwelcome sexually determined behaviour, whether directly or by implication, such as —
  - (i) physical contact or advances; or
  - (ii) demand or request for sexual favours; or
  - (iii) sexually coloured remarks; or
  - (iv) showing pornography; or
  - (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

What is "habitual" misconduct is *not* defined in the Act. However, the *Maharashtra Model Standing Orders* provide that an act of misconduct *cannot* be treated as "habitual" unless the workman has committed that act *on at least three occasions within the space of one year*.

#### 6. *Medical aid in case of accidents*

If a workman meets with an accident in the course of his employment, the employer must, at his expense, make satisfactory arrangements for immediate and necessary medical aid to the injured workman and also arrange for his further treatment, if necessary.

#### 7. *Secrecy*

No workman shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property of an industrial establishment out of the work premises except with the written permission of his immediate superior. Nor can he, in anyway, pass or cause to be passed, or disclose or cause to be disclosed, any information or matter concerning the manufacturing process, trade secrets and confidential documents of the establishment to any unauthorised person, company or corporation without the written permission of the employer.

#### 8. *Exclusive service*

A workman shall *not*, at any time, Work against the interest of the industrial establishment in which he is employed, and shall *not* take up any employment in addition to his job in the establishment, which may adversely affect the interests of his employer.

#### 9. *Confirmation of service of workmen*

The employer shall confirm the eligible workman in accordance with the terms and conditions of the letter of employment, and issue a Letter of Confirmation to him. An entry with regard to his confirmation must also be made in his Service Card within a period of *thirty days*.

#### 10. *Medical examination*

If the recruitment rules specify a medical examination of a workman on his first appointment, the employer must, at his expense, make arrangements for such medical examination by a registered medical practitioner.

## Chapter IV

### MISCELLANEOUS PROVISIONS (Sections 10-A to 15)

The following topics are discussed in this Chapter:

- A. Payment of subsistence allowance (S. 10-A)
- B. Correction of clerical or arithmetical mistakes [S. 11(2)]
- C. Oral evidence *not* admissible in contradiction of Standing Orders (S-12)
- D. Penalties under the Act (S. 13)
- E. Appeals
- F. Interpretations of Standing Orders (S. 13-A)
- G. Delegation of powers (S. 14-A) H. Power to make Rules (S. 15)

Questions:

Write a short note on: Payment of subsistence allowance. M.U. Apr. 2011 May 2012

Nov. 2013 Apr. 2016 Jan. 2017 Apr. 2017 May 2018

What is the rate at which subsistence allowance is payable to a suspended workman under the Industrial Employment (SO) Act, 1946? (2 marks) M.U. Nov. 2012

Write a note on : Penalties under the Industrial Employment (Standing Orders) Act. 1946.

Which court can try offences under the I.E. (SO) Act? (2 marks) M.U. Apr. 2014

Write a short note on: Appeals under the I.C. (SO) Act .

#### A. *Payment of Subsistence Allowance (S. 10-A)*

When any workman is suspended by the employer pending investigation or inquiry into charges of his conduct against him, he is entitled to subsistence allowance as set out in S. 10-A of the Act. As the very name suggests, this is an allowance for the

*subsistence or survival* of the employee and his family, and is to be paid at the following rates, namely,—

- (a) at the rate of 50% of his current wages *for the first ninety days* of his suspension; and
- (b) at the rate of 75% of his current wages *for the remaining period* of his suspension, if the delay in conducting disciplinary proceedings was *not* due to the conduct of the workman himself.

If there is any dispute between the parties regarding the subsistence allowance payable to the workman, as above, the same is to be referred to a Labour Court constituted under the Industrial Disputes Act, 1947, and the matter is to be decided by the said court after hearing all the parties. Such a decision is final and binding on the parties.

In one interesting case, after an enquiry was instituted against an employee, he approached a court, and obtained a stay of the enquiry on the ground that he was also prosecuted in a criminal court on the same set of facts. The employer thereupon reduced the subsistence allowance on the ground that the delay in completing the inquiry was clearly attributable to the employee himself. Rejecting this contention of the employer, the Supreme Court *held* that the employee had *bona fide* approached the civil court for a stay against the domestic enquiry until the disposal of the criminal case. It could *not*, therefore, be said that the delay occasioned in the disciplinary proceedings was directly attributable to him, and *the employer was not justified in reducing his subsistence allowance.* (*B. D. Shetty v. CEAT Ltd.*, 2002 I CLR 69)

It is also provided that if there is *any other law* in the concerned State, under which the provisions relating to subsistence allowance are more beneficial than what is stated above, the workman is entitled to subsistence allowance under such other law, and *not* at the rates given above.

The Bombay High Court has *held* that the expression “any other law” *cannot* be read to mean Model Standing Orders in force in that State, as the expression used is “any other law” and *not* “any law” (*Kishore Icchaporia v. M. R. Bhopa*, (1987) 2 LLN 263)

The Gujarat High Court has observed that, during the period of suspension, the employee *cannot* take up any employment elsewhere or engage himself in any profession, trade or business. (*Bidhu Deb Roy v. J. M. Savery*, (1993) LLR 187)

If an employer does *not* provide work to a *badli* workman by issuing a “no duty order”, it would *not* amount to suspension from work. Now, if there is no suspension from work, the question of payment of subsistence allowance also does *not* arise. (*Maharashtra State Road Transport Corp. v. Uttam Raserao*; (2003) I Labour Law Journal, 62 Born)

Bombay High Court has clarified that allowances like house rent allowance, medical allowance and educational allowance are all part of the subsistence allowance to be paid to a suspended workman. (*Association of Engineering Workers v. Permanent Magnets Ltd.*, (1999) II CLR 762)

The Andhra Pradesh High Court has taken the view that since the right to claim payment of subsistence allowance accrues under the present Act, this provision should be read into the terms of employment of the employee. Thus, *subsistence allowance is superimposed by the statute even if it is not provided for in the contract of employment.* The court also observed that it squarely fell within the definition of “wages”. (*India Leaf Spring Manufacturing Co. Pvt. Ltd. V Appellate Authority*. (1993) 1 LLN 833)

## B. Correction of Clerical or Arithmetical Mistakes C. [s. 11(2)]

S. 11(2) provides that clerical or arithmetical mistakes or errors arising from

accidental slip or omission can be corrected by the Officer concerned— or even by his successor.

What amounts to an “accidental slip” is a question to be decided on the facts of each individual case. Thus, in one case, the management had proposed a draft Standing Order under which late attendance for ten minutes in a week would be excused. The workers’ plea to raise this to thirty minutes in a week was rejected by the Industrial Tribunal, and the draft Standing Order, as proposed by the management, was accepted “in toto”. However, in the final Order of the Industrial Tribunal, the relevant portion read as follows:

“The employee will be allowed ten minutes grace time *for every working day* subject to a maximum of 30 minutes grace time per week.”

When the company filed an application under S. 11 for correction of this apparent slip, the Industrial Tribunal rejected the same. A Writ Petition was then filed by the company before the Mysore High Court, which accepted the contention of the company, and observed that undoubtedly, this was an accidental slip, as the Industrial Tribunal had certified the very Standing Order which it had, in fact, rejected. (*N.Q.E.F. Ltd. v. Industrial Tribunal*, AIR 1970 Mys 149)

### C. Oral evidence *not* admissible in contradiction of Standing Orders (S. 12)

No oral evidence can be given in any court to add to, or otherwise vary or contradict any Standing Orders or Model Standing Orders with amendments (in Maharashtra), which have been finally certified under the Act.

The Allahabad High Court had taken the view that although S. 12 bars oral evidence in contradiction of Standing Orders, there is no such bar for a written contract. Therefore, it would be open to an employee to enter into a written contract with the employer in variance with the Standing Orders. This view was diametrically opposed to the view taken by other High Courts, and was later overruled by the Supreme Court in *Western India Match Co. Ltd. v. Workmen* (AIR 1973 SC 2650), where it was *held* that the employer could *not* enter into any agreement with a workman which is inconsistent with the Standing Orders of that establishment.

### D. Penalties under the Act (S. 13)

The Act imposes various monetary penalties for violation of its provisions. It is submitted that, however appropriate these penalties might have been when the Act was drafted, they appear to be ridiculously low in today’s context, as will be clear from the following Table:

<i>Person on whom fine is imposed</i>	<i>Person on whom fine is conviction</i>
Any employer— (a) who fails to submit draft Standing Orders as required by S. 3; or (b) who modifies his Standing <i>nm</i> Orders otherwise than in <i>esw s</i> accordance with S. 10	(1 )Fine upto Rs 5,000 plus Further fine of upto Rs 200 per day in the case of continuing offences.
(2) Any employer who does an act in contravention of Standing Orders finally certified under the Act for his industrial establishment	(2) Fine upto Rs 100 Plus Further fine upto Rs 25 per day in the case of continuing offences

The penalties as applicable in the State of Maharashtra are as under:

- (1) Any employer who modifies Standing Orders, Model Standing Orders or amendments thereof otherwise than in accordance with the Act. Fine upto Rs 5,000; *plus* Further fine upto Rs 200 per day in case of continuing offences.
- (2) Any employer who does any act in contravention of certified Standing Orders or their amendment or the Model Standing Orders, as the case may be. Fine upto Rs. 100 ; *plus* Further Fine of upto Rs 25 per day in case of continuing offences.
- (3) Any person who contravenes the Act or any Rule made thereunder, in cases other than those under. Fine upto Rs 100 for the *first offence*; Fine upto Rs 200 for *subsequent offences*; *plus* Fine upto Rs 25 per day in case of continuing offences.

#### *Prosecutions for offences under the Act*

All prosecutions for offences punishable under the Act can be instituted only after obtaining the previous sanction of the appropriate government. Moreover, no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the Second Class, is authorised to try any offence under the Act.

#### *Payment of compensation {Applicable under the Bombay Amendment only}*

Apart from the above fines, the court may also direct the employer to pay to the affected workman, such compensation as may be determined by it. Any employer who fails to pay such compensation can land up in jail for a maximum period of *three months*.

### E. Appeals [ Ss. 6 &(1) ]

As seen in Chapter III, if any workman, employer or trade union is aggrieved by the order passed by the Certifying Officer under S. 5(2) of the Act, he (or it, as the case may be) may, *within thirty days*, file an appeal before the appellate authority, who may confirm the Standing Orders either in the form certified by the Certifying Officer or after amending the Standing Orders by making such modifications or additions thereto as it thinks necessary. Earlier, the period for filing and appeal was *twenty-one days*. This period was increased to *thirty days* by an amendment to the Act passed in 1961. The appellate authority must, *within seven days* of its order, send copies thereof to the Certifying Officer, the employer and the trade union or the prescribed representatives of the workmen, accompanied by copies of the amended Standing Orders, unless such standing orders as certified by the Certifying Officer have been confirmed without any amendment by the appellate authority. (S. 6)

The appellate authority has all the powers of a civil court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the discovery and production of documents. It is also deemed to be a “civil court” within the meaning of Ss. 345 and 346 of the Criminal Procedure Code. [S. 11(1)]

### F. Interpretation of Standing Orders (S. 13-A)

If any question arises as to the *application* or *interpretation* of any Standing Order, or any amendment thereof, the matter is to be referred to any one of the Labour Courts specified for this purpose by the appropriate government, and after hearing the parties, such court decides the question, which is final and binding on the parties.

Such a reference can be made by:

- (a) any employer; *or*
- (b) any workman; *or*

(c) any trade union or other representative body of workmen.

It may be noted that although the decision of the Labour Court is final and binding, as stated above, if such court commits any error apparent on the face of the record, the aggrieved party can always file a Writ Petition in the High Court under S. 226 of the Constitution. (*Ramkumar Singh v. Tannery & Footwear Corp.*, 1979 (34) FLR 1)

The Gujarat High Court has *held* that, where such a reference is made, the function of the Labour Court is only to decide on the application or interpretation of Standing Orders, and it has no power to grant any interim relief. (*Amini Hohn v. Barofarm Chemicals Ltd.*, 1992 II CLR 555)

The High Court of Punjab and Haryana has observed that Standing Orders *cannot* be challenged in a claim petition filed under S. 33(2) of the Industrial Disputes Act, 1947. (*P. C. Gupta v. Joint Labour Commissioner, Haryana*, (1990) 60 FLR 47)

#### G. Delegation of powers (S. 14-A)

The appropriate government may, by notification in the Official Gazette, direct that any power which is exercisable by such court under this Act or the Rules made thereunder, shall, in relation to such matters and subject to such conditions as may be specified, also be exercisable —

- (i) when the appropriate government is the *Central Government*,—
  - (a) by such Officer or authority subordinate to the Central Government, or
  - (b) by the State Government, or
  - (c) by such Officer or authority subordinate to the State Government, as may be specified in the notification; *and*
- (ii) when the appropriate government is the *State Government*— by such Officer or authority subordinate to the State Government as may be specified in the notification.

#### H. Power to make Rules (S. 15)

The Act provides that the appropriate government may, after previous publication, by notification in the Official Gazette, make Rules to carry out the purposes of the Act. Such Rules may, in particular—

- (a) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying Standing Orders certified under the Act in accordance with any such modification;
- (b) set out Model Standing Orders for the purposes of the 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; *and*
- (e) provide for any other matter which is to be, or may be, prescribed.

The Rules made by the Central Government under this section are to be placed before each House of Parliament while it is in session for a period of thirty days, and if before the expiry of the next session, both the Houses agree in making any modification in the Rules, or if both Houses agree that such a Rule should *not* be made, then the Rule has effect in such modified form, or no effect, as the case may be. However, such modification or annulment *cannot* affect the validity of anything previously done under that Rule.

Pursuant to this power conferred by S. 15 of the Act, the *Central Government* has framed Rules called the *Industrial Employment (Standing Orders) Central Rules, 1946*,

given in Appendix II to this book. Likewise, the erstwhile Government of Bombay had made Rules called the *Bombay Industrial Employment (Standing Orders) Rules, 1959*, which apply today to Maharashtra and Gujarat.

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## Appendix -1

### Industrial Employment (Standing Orders) Act, 1946

#### 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 provision 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 II 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 provision 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 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 oilfield, 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 (t) 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 of India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of 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).

#### Note

S. 2 of the Act defines some important terms used in the body of the Act.

#### 2A. Application of model standing orders to every industrial establishment —

- (1) Where this Act applies to an industrial establishment, the model standing orders for every matter set out in the Schedule applicable to such establishment from such date as the State Government may by notification in the Official Gazette appoint in this behalf: *Provided that* nothing in this section shall be deemed to affect any standing orders which are finally certified under this Act and have come into operation under this, Act in respect of any industrial establishment before the date of coming into, force of the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957.
- (2) Notwithstanding anything contained in the proviso to sub-section (1), model standing orders made in respect of additional matters included in the Schedule after the coming into force of the Act referred to in that proviso (being additional matters relating probationers or *badlis* or temporary or casual workmen) shall unless such model standing orders are in the opinion of certifying officer less advantageous to them than the corresponding standing orders applicable to them, then under the said proviso also apply in relation to such workmen in the establishments referred to in the said proviso from such date as the State Government may by notification in the Official Gazette, appoint in this behalf.

#### 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, Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where 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 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) of the certified 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, workman, trade union or other prescribed representatives of any workman] 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 to 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 subsection (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 3[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 subsection (1) 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 subsection (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 officer and appellate authority 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 Secs. 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 13-A 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 for 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.

#### 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 Workmen 2[or a trade union or other representative body of the workmen may refer the question to any one of the labour Courts constituted under the Industrial Disputes Act, 1947 (14 of 1947), and specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette, and the Labour 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 Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defense Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that 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 classes of industrial establishment 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 of 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.

#### THE SCHEDULE

[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, or *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.

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## Appendix - II

### THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) CENTRAL RULES, 1946

In exercise of the powers conferred by section 15, read with clause (b) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), the Central Government is pleased to make the following rules, the same having been previously published as required by sub-section (1) of the said section 15, namely:

1. (1) These rules may be called the Industrial Employment (Standing Orders) Central Rules, 1946.  
(2) They extend to all Union territories, and shall also apply in any State (other than a Union territory) to industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oil field.
2. In these rules, unless there is anything repugnant in the subject or context:
  - (a) 'Act' means the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).
  - (b) 'Form' means a form set out in Schedule II appended to these Rules.
- 2A. In the Schedule to the Act, after item 10, the following additional matters shall be inserted, namely:-

“10A. Additional matters to be provided in Standing Orders relating to all industrial establishments in coal mines:

- (1) Medical aid in case of accident;
- (2) Railway travel facilities;
- (3) Method of filling vacancies;
- (4) Transfers;
- (5) Liability of manager of the establishment or mine;
- (6) Service certificates;
- (7) Exhibition and supply of standing orders.

“10B. Additional matters to be provided in the standing orders relating to all industrial establishments,-

- (1) Service Record-matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age;
- (2) Confirmation;
- (3) Age of retirement;
- (4) Transfer;
- (5) Medical aid in case of accidents;
- (6) Medical examination;
- (7) Secrecy;
- (8) Exclusive service.

3. (1) Save as otherwise provided in sub-rule (2), the Model Standing Orders for the purposes of the Act shall be those set out in Schedule I appended to these rules.  
(2) The Model Standing Orders for the purposes of the Act in respect of industrial establishments in coal mines shall be those set out in Schedule I - A appended to these rules.
4. An application for certification of standing orders shall be made in Form I.
5. The prescribed particulars of workmen for the purposes of sub-section (3) of section 3 of the Act shall be:
  - (1) Total number employed;
  - (2) Number of permanent workmen;
  - (3) Number of temporary workmen;
  - (3A) Number of casual workmen;
  - (4) Number of *badlis* or substitutes;
  - (5) Number of probationers;
  - (6) Number of apprentices;
  - (7) Name of the trade union or trade unions, if any, to which the workmen belong;
  - (8) Remarks.
6. As soon as may be after he receives an application under rule 4 in respect of an industrial establishment, the Certifying Officer shall:
  - (a) where there is a trade union of the workmen, forward a copy of the draft standing orders to the trade union together with a notice in Form II.
  - (b) where there is no such trade union, call a meeting of the workmen to elect three representatives, to whom he shall, upon their election, forward a Copy of the draft standing orders together with a notice in Form II.
7. Standing orders certified in pursuance of sub-section (3) of section 5 or subsection (2) of section 6 of the Act shall be authenticated by the signature and seal of office of the Certifying Officer or the appellate authority as the case may be and shall be forwarded by such officer or authority within a week of authentication by registered letter post to the employer and to the trade union, or, as the case may be, the representatives of the workmen elected in pursuance of rule 6.
- 7 A. (1) Any person desiring to prefer an appeal in pursuance of sub-section (1) of section 6 of the Act shall draw up a memorandum of appeal setting out the grounds of appeal and forward it in quintuplicate to the appellate authority accompanied by a certified copy of the standing orders, amendments or modifications, as the case maybe. The memorandum of appeal shall be in Form IV-A set out in Schedule II to these rules.  
(2) The appellate authority shall, after giving the appellant an opportunity of being heard, confirm the standing orders, amendments or modifications as certified by the Certifying Officer *unless* it considers that there are reasons for giving the other parties to the proceedings a hearing before a final decision is made in the appeal.  
(3) Where the appellate authority does *not* confirm the standing orders, amendments or modifications, it shall fix a date for the hearing of the appeal and direct notice thereof to be given —
  - (a) where the appeal is filed by the employer or a workman, to trade unions of the workmen of the industrial establishments, and where there are no such trade unions to the representatives of workmen elected under clause (b) of rule 6, or as the case may be, to the employer;
  - (b) where the appeal is filed by a trade union, to the employer and all other trade unions of the workmen of the industrial establishment;

- (c) where the appeal is filed by the representatives of the workmen, to the employer and any other workman whom the appellate authority joins as a party to the appeal
- (4) The appellant shall furnish each of the respondents with a copy of the memorandum of appeal.
- (5) The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal.
- (6) On the date fixed under sub-rule (3) for the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or consider to be relevant.

8. The register required to be maintained by section 8 of the Act shall be in Form III and shall be properly bound and the Certifying Officer shall furnish a copy of standing orders approved for an industrial establishment to any person applying therefor on payment of a fee calculated at the following rates per copy:
- (i) for the first two hundred words or less, seventy-five paise;
  - (ii) for every additional one hundred words or fraction thereof, thirty-seven paise;
- Provided that*, where the said standing order exceeds five pages, the approximate number of words per page shall be taken as the basis for calculating the total number of words to the nearest hundred for the purpose of assessing the copying fee.

## SCHEDULE I

### MODEL STANDING ORDERS IN RESPECT OF INDUSTRIAL ESTABLISHMENT NOT BEING INDUSTRIAL ESTABLISHMENTS IN COAL MINES

1. These orders shall come into force on

2. Classification of workmen. —

- (a) Workman shall be classified as-

- (1) Permanent
- (2) probationers
- (3) *badli*s
- (4) temporary
- (5) casual
- (6) apprentices

?

- (b) A 'permanent' workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment including breaks due to sickness, accident, leave, lockout, strike (not being an illegal strike) or involuntary closure of the establishment.

- (c) A 'probationer' is a workman who is provisionally employed to fill a permanent vacancy in a post and has *not* completed three months service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his old permanent post.

- (d) A '*badli*' is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.

- (e) A 'temporary' workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.

- (f) A 'casual' workman is a workman whose employment is of a casual nature.
- (g) An 'apprentice' is a learner who is paid an allowance during the period of his training.

### 3. Tickets

- (1) Every workman shall be given a permanent ticket unless he is a probationer, *badli*, temporary worker or apprentice.
  - (2) Every permanent workman shall be provided with a departmental ticket showing his number, and shall, on being required to do so, show it to any person authorised by the manager to inspect it.
  - (3) Every *badli* shall be provided with a *badli card*, on which shall be entered the days on which he has worked in the establishment, and which shall be surrendered if he obtains permanent employment.
  - (4) Every temporary workman shall be provided with a 'temporary' ticket which he shall surrender on his discharge.
  - (5) Every casual worker shall be provided with a 'casual' card, on which shall be entered the days on which he has worked in the establishment.
  - (6) Every apprentice shall be provided with an 'apprentice' card, which shall be surrendered if he obtains permanent employment.
4. Publication of working time: The periods and hours of work for all classes of workers in each shift shall be exhibited in English and in the principal languages of workmen employed in the establishment on notice boards maintained at or near the main entrance of the establishment and at time-keeper's office, if any.
5. Publication of holidays and pay days: Notices specifying (a) the days observed by the establishment as holidays, and (b) pay days shall be posted on the said notice boards.
6. Publication of wage rates: Notice specifying the rates of wages payable to all classes of workmen and for all classes of work shall be displayed on the said notice boards.
7. Shift working: More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, the workmen shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance, provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workmen affected. If as a result of the discontinuance of the shift working, any workmen are to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Disputes Act, 1947 (14 of 1947), and the rules made thereunder. If shift working is restarted, the workmen shall be given notice and re-employed in accordance with the provisions of the said Act and the said rules.

7A. Notice of change in shift working : Any notice of discontinuance or of restarting of a shift working required by standing order 7 shall be in the Form IV-A and shall be served in the following manner, namely:

The notice shall be displayed conspicuously by the employer on a notice board at the main entrance to the establishment.

*Provided that* where any registered trade union of workmen exists, a copy of the notice shall also be served by registered post to the secretary of such union.

8. Attendance and late coming: A workman shall be at work at the establishment at the times fixed and notified under paragraph 4. Workmen attending late will be liable to the deductions provided for in the Payment of Wages Act, 1936.

9. Leave:

- (1) Holidays with pay will be allowed as provided for in Chapter VIII of the Factories Act, 1948 and other holidays in accordance with law, contract, custom and usage.
- (2) A workman who desires to obtain leave of absence shall apply to the employer or any other officer of the industrial establishment specified in this behalf by the employer who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose, and if the workers so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof he shall apply to employer or the office specified in this behalf by the employer who shall send a written reply either granting or refusing extension of leave to the workman if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.
- (3) If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a) returns within 8 days of the expiry of the leave, and (b) explains to the satisfaction of the employer or the officer specified in this behalf by the employer his inability to return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be kept on the *badli* list.

10. Casual leave: A workman may be granted casual leave of absence with or without pay *not* exceeding 10 days in the aggregate in a calendar year. Such leave shall *not* be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which *cannot* be foreseen. Ordinarily, the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but when this is *not* possible, the head of the department shall, as soon as may be practicable, be informed in writing of the absence from and of the probable duration of such absence.

11. Payment of wages

- (1) Any wages, due to the workman but *not* paid on the usual pay day on account of their being unclaimed, shall be paid by the employer on an unclaimed wage pay day in each week, which shall be notified on the notice boards as aforesaid.
- (2) All workmen will be paid wages on a working day before the expiry of the seventh or the tenth day after the last day of the wage period in respect of which the wages are payable, according as the total number of workmen employed in the establishment does *not* or does exceed one thousand.

12. Stoppage of work

- (1) The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery or stoppage of power supply, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the establishment, wholly or partially for any period or periods without notice.
- (2) In the event of such stoppage during working hours, the workmen affected shall be notified by notices put upon the notice board in the departments concerned and at the office of the employer and at the time-keeper's office, if any as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The workmen it shall *not* ordinarily be required to remain for more

than two hours after the commencement of the stoppage. If the period of detention does *not* exceed one hour the workmen so detained shall *not* be paid for the period of detention. If the period of detention exceeds one hour, the workmen so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the stoppage. In the case of piece-rate workers, the average daily earning for the previous month shall be taken to be the daily wage. No other compensation will be admissible in case of such stoppages. Wherever practicable, reasonable notice shall be given of resumption of normal work.

- (3) In cases where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be. When, however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof.
- (4) The employer may, in the event of a strike affecting either wholly or partially any section or department of the establishment, close down either wholly or partially such section or department and any other section or department affected by such closing down. The fact of such closure shall be notified by notices put on the notice board in the section or department concerned and in the time-keeper's office, if any, as soon as practicable. The workmen concerned shall also be notified by a general notice, prior to resumption of work, as to when work will be resumed.

### 13. Termination of employment

- (1) For terminating employment of a permanent workman, notice in writing shall be given either by the employer or the workmen, one month's notice in the case of monthly-rated workmen and two weeks' notice in the case of other workmen; one month's or two weeks' pay, as the case may be, may be paid in lieu of notice.
- (2) No temporary workman whether monthly-rated, weekly rated or piece-rated and no probationer or *badli* shall be entitled to any notice or pay in lieu thereof if his services are terminated, but the services of a temporary workman shall *not* be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct, alleged against him in the manner prescribed in paragraph 14.
- (3) Where the employment of any workman is terminated, the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

### 14. Disciplinary action for misconduct

- (1) A workman may be fined up to two per cent of his wages in a month for any of the following acts and omissions, namely:—

Note : Specify the acts and omissions which the employer may notify with the previous approval of the.... Government or of the prescribed authority in pursuance of section 8 of the Payment of Wages Act, 1936.

- (2) A workman may be suspended for a period *not exceeding four days at a time* or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

- (3) The following acts and omissions shall be treated as misconduct:

- (a) wilful in-subordination or dis-obedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;
- (b) theft, fraud, or dishonesty in connection with the employers' business or property;
- (c) wilful damage to or loss of employers' goods or property;
- (d) taking or giving bribes or any illegal gratification;

- (e) habitual absence without leave or absence without leave for more than 10 days;
  - (f) habitual late attendance;
  - (g) habitual breach of any law applicable to the establishment;
  - (h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;
  - (i) habitual negligence or neglect of work;
  - (j) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month;
  - (k) striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.
  - (l) Sexual harassment which includes such unwelcome sexual determined behaviour (whether directly or by implication) as -
    - (i) physical contact and advances; or
    - (ii) demand or request for sexual favours; or
    - (iii) sexually coloured remarks; or
    - (iv) showing pornography; or
    - (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- (4) (a) Where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are under, investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing, suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from the date of suspension.
- (b) A workman who is placed under suspension shall be paid subsistence allowance in accordance with the provisions of section 10A of the Act.
- (ba) In the inquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a member.
- (bb) The proceedings of the inquiry shall be recorded in Hindi or in English or the language of the State where the industrial establishment is located, whichever is preferred by the workman.
- (be) The proceedings of the inquiry shall be completed within a period of three months; *Provided that* the period of three months may, for reasons to be recorded in writing, be extended for such further period as may be deemed necessary by the inquiry officer.
- (c) If on the conclusion of the inquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly.
- Provided that* when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period and the subsistence allowance already paid to him shall *not* be recovered.
- Provided further that* where the period between the date on which the workman was suspended from duty pending the inquiry or investigation or trial and the date on which an order of suspension was passed under this clause exceeds four days, the workman shall be deemed to have been suspended only for four days or for such shorter period as is specified in the said order of suspension and for the remaining period he shall be

entitled to the same wages as he would have received if he had *not* been placed under suspension, after deducting the subsistence allowance paid to him for such period.

*Provided also that* where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the workman 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 placed under suspension after deducting the subsistence allowance paid to him for such period.

*Provided also that* in the case of a workman to whom the provisions of clause (2) of Article 311 of the Constitution apply, the provisions of that article shall be complied with.

- (d) If on the conclusion of the inquiry, or as the case may, of the criminal proceedings, the workman has been found to be *not* guilty of any of the charges framed against him, 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 placed under suspension, after deducting the subsistence allowance paid to him for such period.
- (e) The payment of subsistence allowance under this standing order shall be subject to the workman concerned *not* taking up any employment during the period of suspension/ punishment.
- (5) In awarding punishment under this standing order, the authority imposing the punishment shall take into account the gravity of the misconduct, the previous record, if any, of the workmen and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the authority imposing the punishment shall be supplied to the workman concerned.
- (6) (a) A workman aggrieved by an order imposing punishment, may within twenty-one days from the date of receipt of the order, appeal to the appellate authority.
- (b) The employer shall, for the purposes of clause (a), specify the appellate authority.
- (c) The appellate authority, after giving an opportunity to the workman of being heard, shall pass such order as he thinks proper on the appeal within fifteen days of its receipt and communicate the same to the workman in writing.

15. Complaints : All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to | the manager or other persons specified in this behalf with the right of appeal to the employer

16. Certificate on termination of service: Every permanent workman shall be entitled to a service certificate at the time of his dismissable, discharge or retirement from service.

17. Liability of employer: The employer of the establishment shall personally be held responsible for the proper and faithful observance of the standing orders.

17 A. (1) Any person desiring to prefer an appeal in pursuance of sub-section (1) of section 6 of the Act shall draw up a memorandum of appeal setting out the ground of appeal and forward it in quintuplicate to the appellate authority accompanied by a certified copy of the standing orders, amendments or modifications, as the case may be.

(2) The appellate authority shall, after giving the appellant an opportunity of being heard, confirm the standing orders, amendments or modifications as certified by the Certifying Officer unless it considers that there are reasons for giving the other parties to the proceedings a hearing before a final decision is made in the appeal.

(3) Where the appellate authority does *not* confirm the standing orders, amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given —

(a) where the appeal is filed by the employer or a workman to trade unions of the workmen of the industrial establishments, and where there are no such trade unions,

- to the representatives of the workmen elected under clause (b) of rule 6, or as the case may be, to the employer;
- (b) where the appeal is filed by a trade union, to the employer and all other trade unions of the workmen of the industrial establishment;
  - (c) where the appeal is filed by the representatives of the workmen, to the employer and any other workman whom the appellate authority joins as a party to the appeal.
  - (4) The appellant shall furnish each of the respondents with a copy of the memorandum of appeal.
  - (5) The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal.
  - (6) On the date fixed, under sub-rule (3) of the hearing of the appeal, the appellate authority ' shall take such evidence as it may have called for or consider to be relevant.
18. Exhibition of standing orders: A copy of these orders in English and in local language shall be posted and on a notice board maintained at or near the main entrance to the establishment and shall be kept in a legible condition. . , , , ,

## SCHEDULE I-B

### MODEL STANDING ORDERS ON ADDITIONAL ITEMS APPLICABLE TO ALL INDUSTRIES

#### 1. Service Record

Matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age:

(i) Service card: Every industrial establishment shall maintain a service card in respect of each workman in the form appended to these orders, wherein particulars of that workman shall be recorded with the knowledge of that workman and duly attested by an officer authorised in this behalf together with date.

(ii) Certification of service:

(a) Every workman shall be entitled to a service certificate, specifying the nature of work (designation) and the period of employment (indicating the days, months, years) at the time of discharge, termination, retirement or resignation from service.

(b) The existing entries in para. 16 of Schedule I and para 20 of Schedule I-A shall be omitted.

(iii) Residential address of workman: A workman shall notify the employer immediately on engagement the details of his residential address and thereafter promptly communicate to his employer any change of his residential address. In case the workman has *not* communicated to his employer the change in his residential address, his last known address shall be treated by the employer as his residential address for sending any communication.

(iv) Record of age:

(a) Every workman shall indicate his exact date of birth to the employer or the officer authorised by him in this behalf, at the time of entering service of the establishment.

The employer or the officer authorised by him in this behalf may before the date of birth of a workman is entered in his service card, require him to supply:

- (i) his matriculation or school leaving certificate granted by the Board of Secondary Education or similar educational authority;
- (ii) a certified copy of his date of birth as recorded in the registers of a municipality, local authority or Panchayat or Registrar of Births;

- (iii) in the absence of either of the aforesaid two categories of certificates, the employer or the officer authorised by him in this behalf may require the workman to supply, a certificate from a Government Medical Officer *not* below the rank of an Assistant Surgeon, indicating the probable age of the workman provided the cost of obtaining such certificate is borne by the employer;
- (iv) where it is *not* practicable to obtain a certificate from a Government Medical Officer, an affidavit sworn, either by the workman or his parents, or by a near relative, who is in a position to know about the workman's actual or approximate date of birth, before a First Class Magistrate or Oath Commissioner, as evidence in support of the date of birth given by him.
- (b) The date of birth of a workman, once entered in the service card of the establishment shall be the sole evidence of his age in relation to all matters pertaining to his service including fixation of the date of his retirement from the service of the establishment. All formalities regarding recording of the date of birth shall be finalised within three months of the appointment of a workman.
- (c) Cases where 'date of birth of any workman had already been decided on the date these rules come into force shall *not* be re-opened under these provisions.  
[Note: Where the exact date of birth is *not* available and the year of birth is only established, then the 1st July of the said year shall be taken as the date of birth. ]

## 2. Confirmation

The employer shall in accordance with the terms and conditions stipulated in the letter of appointment, confirm the eligible workman and issue a letter of confirmation to him. Whenever a workman is confirmed, an entry with regard to the confirmation shall also be made in his service card within a period of thirty days from the date of such confirmation.

## 3. Age of Retirement

The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of years of age by the workman.

## 4. Transfer

A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer.

*Provided that* the wages, grade, continuity of service and other conditions of service of the workman are *not* adversely affected by such transfer.

*Provided further that* a workman is transferred from one job to another, which he is capable of doing, and provided also that where the transfer involves moving from one State to another such transfer shall take place, either with the consent of the workman or where there is a specific is given to such workman, and (ii) reasonable joining time is allowed in case of transfers from one ' station to another. The workman concerned shall be paid travelling allowance including the transport charges, and fifty per cent thereof to meet incidental charges.

## 5. Medical Aid in Case of Accidents

Where a workman meets with an accident in the course of or arising out of his employment, the employer shall, at the employer's expense make satisfactory arrangements for immediate and necessary medical aid to the injured workman and shall arrange for his further treatment, if considered necessary by the doctor attending on him. Wherever the workman is entitled for treatment and benefits under the Employees' State Insurance Act, 1948, or the Workmen's Compensation Act, 1923, the

employer shall arrange for the treatment and compensation accordingly.

#### 6. Medical Examination

Wherever the recruitment rules specify medical examination of a workman on his first appointment, the employer shall, at the employer's expense, make arrangements for the medical examination by a registered medical practitioner.

#### 7. Secrecy

No workman shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property of an industrial establishment out of the work premises except with the written permission of his immediate superior, not shall he in any way pass or cause to be passed or disclose or cause to be disclosed any information or matter concerning the manufacturing process, trade secrets and confidential documents of the establishment to any unauthorised person, company or corporation without the written permission of the employer.

#### 8. Exclusive Service

A workman shall *not* at any time work against the interest of the industrial establishment in which he is employed and shall *not* take any employment in addition to his job in the establishment, which may adversely affect the interest of his employer.

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