

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

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This paper examines standing order 1946 and it also REQUIRES employers in industrial establishments to define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It is applicable to every industrial establishment wherein hundred (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed. The Central Government is the appropriate Government in respect of establishments under the control of Central Government, Railway Administration, port, mine and oil field. Under the Industrial Employment (Standing Orders) Act, 1946, all RLCs(C) have been declared Certifying Officers to certify the standing orders in respect of the establishments falling in the Central Sphere. CLC(C) and all Dy. CLCs(C) have been declared Appellate Authorities under the Act.

INDEX TERMS- Appropriate Government, Appellate authority, Certifying Officer etc.

I. INTRODUCTION

The purpose of The Industrial Employment (Standing Orders) Act, 1946 this legislation was to formally standardize certain terms and conditions of industrial employment so as to make them transparent across a wide range of establishments including factories, mines, plantations, railways, oil-fields, tramway, docks, ports, organizations, workshops, etc. The law requires employers to submit conditions of employment for certification and after certification to display them in the industrial establishment. What employers find problematic is the difficulty in modifying these notified conditions because the modification proposal can go to conciliation and become an industrial dispute and take years before any changes become effective. Model Standing Orders (last modified in 1971) helpfully distinguished between casual and temporary workmen. The scope for disciplinary action against misconduct was also specified in detail together with procedural requirements. In practice, employers have cited "serious general misconduct" to take action for unlisted misconducts and have successfully defended such actions in courts. A reading of the Fourth Schedule of the ID Act reveals the expansive scope of matters requiring notice of change some of which are covered by the IE (SO) Act, 1946. The Fourth Schedule List includes:

- 1 Wages, including the period and mode of payment
- 2 Contribution paid or payable for the benefit of the workmen under any law
- 3 Compensatory and other allowances
- 4 Leave with wages and holidays
- 5 Starting alteration or discontinuance of shift working otherwise than in accordance with standing orders.
- 6 Job Classification by grades
- 7 Hours of Work and Rest Intervals
- 8 Withdrawal of any customary concession or privilege or change in usage
- 9 Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders
- 10 Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen

The government proposes to make modifications to standing orders possible within a year of the first set and notifying the Labour Department without consulting workmen leaving open the possibility of dialogue or negotiation in a tripartite forum. This would be a progressive welcome step because 21 st century competitive business conditions require a pace of change that this archaic law may delay.

The usual practice of the management, prior to the enactment of the Industrial Employment Act, was to enter into personal contract with the worker with regard to his term/condition of employment. *In several cases, the working or service conditions were not well defined and there was ambiguity in the conditions laid down in the contract and these were hardly known to the workmen.* This resulted in lack of uniformity or confusion in the agreement. The employer changed the conditions of the contract arbitrarily without any information. This confused the laborer because they couldn't understand as to what was expected of them and what was to be followed. The employers as well as the workmen found themselves victims of the caprice practices. Therefore, the situation led to the industrial unrest and created unsatisfactory climate for better relations between employee and employer. The modern law required that the terms and conditions of employment and rules regarding disciplines should be written and known to the workmen concerned and these should also be uniformed, just and reasonable. In several Industrial establishments, the conditions were not uniformed and not even reduced to writing except some large establishments. Although, such rules were one- sided and very elastic to suit the employers.

Therefore, there was discrimination between the employees in the same premises and for a similar work. This was not only detrimental to the employees but also against the interests of industry because there was unnecessary industrial unrest and conflict. This was also not inconformity with social justice because there was no statutory protection available to the employees. Experience shows that to minimize the friction between the labour-management in an industry, the conditions of employment, discharge, holidays, leave, disciplinary action should be well defined and written down. Therefore, to overcome such difficulties and

to achieve the harmony and peace, the government enacted the Industrial Employment (Standing Orders) Act, 1946 which required the management to define the rules and conditions very clearly.

2 ORIGIN STANDING ORDERS

The origin of the Standing Orders goes back to the year 1944 when the sixth Indian Labour Conference considered to frame of the standing orders with regard to the rules and regulations for workmen. The conference observed that there was urgent need to define the term and conditions of employment, discharge, benefits, allowances, holidays, leave and disciplinary action etc so that the clashes between the management and the workers in an industrial undertaking may be minimized. On the basis of the tripartite labour conference, the Central Government introduced a Bill providing for framing the rules containing the terms and conditions of employment in the industrial organization, was introduced in the legislative assembly on April 8, 1946 and was passed under the title The Industrial Employment (Standing Orders) Act, 1946. It came into force on April 23, 1946. This Act has been amended through several amendments in 1951, 1961 and 1963.

3 OBJECTIVES OF THE STANDING ACT

The objective of the Central Government was to introduce uniform Standing Orders and provide equal conditions of service to the workmen employed in industrial establishment before or after the Standing Orders came into force. After the enforcement of the Standing Orders, the conditions laid down therein, will be binding on all those presently in the employment of the concerned establishment and appointed thereafter. In the Preamble, it has been clearly stated that it will deal with the conditions of laborers or workmen in an industrial establishment. It provides similarity of terms and conditions in respect of all workmen engaged in the industry and belong to the same category. All these conditions will be reduced to writing and to get them implemented mandatory with a view to avoid any unnecessary industrial unrest. Standing order may be described as written 'Code of Conduct' for workmen, and the working against these orders will amount to act of indiscipline and will be described as an act of misconduct. The Objectives/ Characteristics may be given as below:

- I)** To regulate standards of conduct of the employers and employees
- II)** To maintain proper discipline, harmonious working conditions and achieves higher productivity by providing satisfactory employment.
- III)** To provide for redressal of grievances arising out of employment or relating to unfair treatment of wrongful exaction on the part of the employers against the employees.
- IV)** To specify the duty and responsibilities of both the employers and the employees.
- V)** To provide statutory sanctity and importance to the Standing Orders.
- VI)** Standing Orders cover all matters specified in the Schedule of the Act.
- VII)** These are approved by the proper authority and published 'in such a way that all the workers can be familiar with them.
- VIII)** All the principal terms and conditions of employment, except matters pertaining to wages and other forms of remuneration, are settled clearly under the Standing Orders.
- IX)** Most of the mutual rights and duties of workers and management are clearly defined.
- X)** The procedures are to be followed whenever there is any disagreement over these mutual rights and duties which are also specified therein.

4 NATURE & CONCEPT OF STANDING ORDERS

Under this Act, the employer has to make a draft of standing orders for submission to the certifying officers regarding the matters prescribed in the Schedule. The matters which are referred in the Schedule are as under:

- a. The categories of the workers should be clearly defined, i.e., whether they are regular or temporary on probation etc. The working hours, shift, rates of wages, holidays, pay-days should be intimated to the employees.
- b. It should be clearly mentioned regarding the rules of attendance and late coming.
- c. The authority which will sanction leave and holidays.
- d. The reopening and the closing of any section of the industry, temporary stoppage of work should also be specified. The notice regarding termination of employment should also be given by the employer.
- e. The rules regarding the omissions, suspension and dismissal for misconduct be given.
- f. The means of redressal for wrongful act or unfair treatment by the employer should also be specified in the Schedule. Any other matter which is deemed fit by the employer or employees. The termination in item eight does not cover each and every form of termination or cessation of employment. In view of this it held that it didn't cover superannuation or allowance which is automatic and did not require notice on the part of employer or workmen. The court agreed that if termination is to be read in a wider sense as meaning employment coming to an end, there was no necessity to have item nine because dismissal would then be covered by termination.
- g. The Supreme Court in *Rajasthan State Road Transport Corporation* laid down that: "The certified standing orders framed in accordance with the Industrial Employment Act, are statutorily imposed conditions of service and are binding both upon the employers and employees, though they don't amount to legal provision. Any violation of these standing orders entitles an employee to appropriate relief either before the forums or the civil court where recourse to civil court is open according to the principles indicated herein." with respect a special kind of contract; the Court, in the case of *Jabalpur Development Authority* held that "The certified standing orders symbolize the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as private contract embodying similar terms and conditions of service."

5 VALIDITY OF TERMINATION UNDER STANDING ORDERS ACT

The Supreme Court in the case of *D.K. Yadav* held that “the principles of natural justice are mandates of article 14, 21 of the Constitution of India. The principles of natural justice must be read wherever the Standing Orders provide for automatic termination of service for absence without leave.” In the case of *Hindustan Paper Corpn.*, the Court held that “where an employee remains absent from duty without prior sanction for about six months by sending application for leave on medical ground but doesn't support it with medical written document. Then it would be deemed that the employee has lost the lien on the job when he fails to avail the opportunity by replying in half-hearted way and not reporting for duty.” The hon'ble Court in *Punjab and Sind Bank v. Sakattar Singh*, laid down that the termination of a bank employee absents for 190 days without compliance an inquiry will not be violative of principles of justice.

6 COVERAGE OF THE INDUSTRIAL EMPLOYMENT ACT, 1946

The Bombay High Court has answered it negatively in the case of “*Balakrishnan Pillai*.” The Act has cleared the word ‘Industrial Establishment’ in section 2 (e) of the Act. It means an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, a factory as defined in clause (m) of Section 2 of the Factories Act, 1948, a railway as defined in clause (4) of Section 2 of the Indian Railway Act, 1890, the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.

The Workman as used in this Act is the same as is used in Section 2 (5) of the Industrial Disputes Act, and it includes any person including an apprentice employed in any industry to do any skilled or unskilled, manual, supervisory, technical, operational or clerical work for hire whether the terms of employment are expressed and includes any person who has been dismissed, retrenched in connection with an industrial dispute or where dismissal, discharge has led to the dispute, but doesn't include any such person: Who is subject to the Army Act, 1950 or the Air Force Act, 1950 or the Navy Act, Who is employed in the Police Service or as an officer of prison, Who is working mainly in a managerial or administrative capacity, Who being employed in supervisory capacity, draws wages exceeding 1100 rupees per month.

7 PLAN OF THE INDUSTRIAL ESTABLISHMENT EMPLOYMENT

There are entire 15 sections along with one Schedule in the Act. Section 1 of the Act mentions the applicability and the title of the Act. In section 2, the definitions of various terms such as Employer, appropriate government, Certifying Officers, etc. have been given. Section 3 defines the obligation of employer and the date of applicability of the Act to an organization. Section 4 provides that Standing Orders become applicable if found in conformity with the provisions of the Act. In section 5, defines procedures to be followed by the Certifying Officers The provision for any request against the orders of the Certifying Officer has been given in section 6. The date from which the Act is applicable is laid down in section seventh of the Act. Both the employer and the employee are bound to act with effect from the date of applicability. The up keeping of a Register which are finally certified are included in section 8 of the Act. Section 9 provides the language (English or local) of standing order The appellate authority or the certifying officers are given the powers of a Civil Court under section 11. No oral evidence is admissible in any court is specified in section 12.

The procedures and penalties by the Certifying Officers or Appellate Authorities are mentioned in section 13. The employer may specify the acts and omissions which may amount to misconduct and may invite disciplinary actions against the employee are included in section 14. The appropriate government is given the power to frame rules for implementation of the Act is mentioned in section 15. The government is sanctioned under clause 11 to make any addition to the Act as it thinks necessary.

8 DEFINITION OF KEY WORDS

(a) “Appellate authority” means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act.

(b) “Appropriate Government” means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major Port, mine or oil field, the Central Government, and in all other in all other cases the State Government.

(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.

d) “Employer” is the owner of an industrial establishment to which this Act for the time being applies, and includes- in a factory, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory in any industrial establishment under the power of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, HOD, In any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment, “Industrial establishment” means an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936(g) “Standing orders” means rules relating to matters set out in the Schedule.

9 THE REQUIREMENTS FOR CERTIFICATION OF STANDING ORDERS

Matters Covered Under Schedule - The draft order to be valid, should contain every matter specified in the Act, along with the additional matter prescribed by the government, applicable to the commercial establishment. Matters Not Set out under Schedule are Clauses 1 to 10 deal with several topics which deal with various topics with respect to Standing Orders and the provisions made therein. Clause 11 of the Schedule refers to any other matter which has not been included in the Schedule may be prescribed under this clause. These items do not cover various subjects nor are they exhaustive. The question arises whether the employers may be permitted to frame rules and regulations with regard to the matters which have not been provided in the Schedule. The courts have given a attention to this matter. In the case of *Hindu*, the High Court of Madras held that “although the schedule of the Act specified all the matters in respect of which it was compulsory to make provisions in the S.O., there was no bar to the Standing Orders making necessary provisions for other matters.” In this case, the Hindu had suggested the age of retirement as 58

years or continuous 30 years service whichever was earlier. But the High Court of Orissa in the case of *S.K. Ghosh v. State Electricity Board* held a contrary opinion. It speak up that such certification was not valid under, Section 4. It further specified that the certification cannot add enforceability to it merely on the ground that the workers did not objection such provisions before certifying officers. This opinion was also supported in the case of *Punjab Khadi Gramoudyogby Punjab and Haryana High Court* and in the case of *A.G. Mazdoor Sanghby Allahabad High Court*. The Supreme Court in the case of *Rohtak and Hissar Electric Supply Co.* held that- "Then in regard to the matter which may be covered by the standing orders, it is not possible to accept the argument that the draft standing orders can relate to matters outside the Schedule. For instance, the case of some of the draft standing orders which the appellants wanted to introduce; these had reference to the liability or duties of the employees for transfer from one branch to another and from one job to another at the discretion of the management. These two standing orders were enclosed in the draft of the appellants."

10 MODIFICATION IN STANDING ORDERS

A cheap remedy has been provided to the workmen by the IESOA to get their conditions of employment determined in the prescribed format. It has also provided a remedy to the employers and employees to get the certified standing orders modified. The Act has made provisions that the certified standing order act 1946 can be revised on agreement between the two parties that is employer and the employee before the expiry of six months from the date of operation or alteration of the standing orders. Hence, it is clear that there is no limitation on the right of employee or workmen to apply for modification except the time limit of six months. However, with an agreement between the parties, the change is permissible even before six months.

In the case of *The Management of M/s. Gem Properties Pvt. Ltd., the honorable High Court held* "Any Standing Orders finally certified under the Act shall not except on agreement between the employer and the workmen be liable to modification until the expiry of six months from the date on which the standing orders or last modification thereof came into operation." The goal of providing time limit was to give a just deal. Certain decided cases uncover that an application for alteration may be accepted where there is change of circumstances of the certified standing orders resulted in hardship, anomaly, inconvenience or it is felt by the applicant that the alteration will be more beneficial to the parties concerned.

The application request for modification in standing orders must be made to the certifying officer. In the Industrial Employment Act, 1946 only the employer was conferred upon the right to apply for modification. But after the amendment (1956), allowed both the employee as well as the employer to apply for modification of the standing orders. The term 'workman' in some cases led to doubt whether a trade union can also exercise this right. Therefore, to clarify this doubt, an amendment was made in 1982 which permitted not only the employer & the employees but also the representatives of the employees or the trade unions to apply for alteration of the standing orders. In case of a 'trade union' that must be registered under the Trade Unions Act.

11 INTERPRETATIONS AND CONCLUSION

There is a long procedure for getting the model standing orders certified from the certifying officer. The provision, for temporary application of standing orders in an industry for the period on which this Act became applicable and ending on the date when the 'standing orders' is finally certified, has been made under section 12-A of the Act. During this time period, the standing orders prescribed by the appropriate government shall be deemed to be adopted by the industry and the provisions pasted under section 9 and section 13-A will apply. However, these provisions will not apply to an establishment where an appropriate government controls it. In *Tata Chemicals Ltd.* the Court held that "Section 13-A provides that if any inquiry arises as to the application of Standing Orders certified under the Act, such question can be referred to a labour tribunal by an employer or workman or a trade union or other representative body of a workmen, and on such reference, the labour court constituted under the Industrial Dispute Act, 1947 after giving the parties an opportunity of being heard, decide the matter and such decision shall be final and binding on the parties." Although, the term "after giving the parties an opportunity of being heard" has been, interpreted by the Courts differently like in *Chipping and Painting Employers Association v. S. T. Zambre*, the Bombay High Court held that "hearing the parties would not include leading of evidences before the court for determination of facts". Whereas the Allahabad High Court in *Messrs Deoria Sugar Mills Ltd. v. Deputy Labour Commissioner* held that "it is permissible for the workmen to produce evidence as to his age, in favour of the entry in the Provident Fund (PF) record." Under Section 13 A, the right to move to labour court as to the interpretation of Standing Order is granted to workman and not to the trade unions. Therefore, any application filed by the trade union will be rejected by the court. In *NDMC v. Mohd. Shamim*, the Delhi High Court held that: "Section 13A of the Industrial Employment Act, 1946, only the labor court and not the industrial tribunal is empowered to entertain an application for interpretation of certified standing orders." In *Madhya Pradesh State Electricity Board v. S.K. Yadav*, the Court held that "non-compliance would not mean that employee has been given leave and he will be considered to be unauthorizedly absent. Non-compliance with that would not vitiate the ultimate order as the said provision must be held to be directory in the nature and not mandatory." In *M/s. Gem Properties Pvt. Ltd.*, the Court laid down: "Unless there are valid and persuasive reasons mentioned in Standing Orders for making a difference in the age of retirement of workmen and those employed in future, the future workmen should also have the benefit of the same, age of superannuation." That is to say that we conclude that Standing Orders are just a kind of written contract between labour and management or between employer and employee and these orders play vital role in maintaining harmonious labour-management relations in India. This chapter examines the origin of the standing orders in India. This chapter further points out the aim and objectives of the Standing orders Act, i.e., "Industrial Employment (Standing Orders) Act, 1946 such as definition, duties and standards of conduct of the employers and employees, maintenance of proper discipline, working conditions, redressal of grievances etc. This chapter explains the characteristics of the Act such as coverage of the Act, rights and duties of workers and management, certification procedure etc. Moreover, this chapter tells in what matters this Act is not applicable. Moreover, it expresses the consistency of model standing orders, system to certify and operation of standing orders. This chapter critically analyzes the procedure, consistency and certification of the Standing orders. It critically examines the judicial response regarding binding nature and effect of duly certified standing orders. In the last, it evaluates the general powers of government regarding formulation of rules and regulations of standing orders.

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