

**Lesson No: 1****Constitutional Perspectives on Wages****1.0. Objective:**

The objective of the lesson is to discuss the Constitutional perspectives on wages

**Structure**

- 1.1. Introduction**
- 1.2. Right to Living Wage**
- 1.3. Right to Live with Human Dignity**
- 1.4. Denial of Minimum Wages as Forced Labour**
- 1.5. Right to 'Equal Pay for Equal Work'**
- 1.6. Summary**
- 1.7. Technical Terms**
- 1.8. Self Assessment Questions**
- 1.9. Reference Books**

**1.1. Introduction**

At the beginning of industrialization the conditions of the working class were highly miserable. The number of working hours, wages and everything was highly exploitative. There was minimum Government control and maximum free enterprise as the States adhered to the 'Laissez faire' concept which was based on the principle of freedom of contract. As a result the working class was exploited by the employers. Concentration of wealth in the hands of a few, slums, unhealthy and dangerous conditions of work to a vast majority became the order of the day. They were paid very meager wages which was not sufficient to meet their basic needs like food, clothing and shelter. The conditions of work were highly miserable and as against these miserable conditions they waged bitter struggles to improve their living conditions. This

course of struggles paved the way for the evolution of the concept of 'minimum wage' and 'equal pay for equal work' etc.

At the global level in every branch of United Nations and International Labor Organisation the influence of the social changes in USSR contributed in developing the concept of 'minimum wage' and 'equal pay for equal work' and many international conventions recognizing the right to minimum wage and equal pay for equal work came to be adopted during the post-colonial period. ILO adopted Minimum Wage Fixing Machinery Convention in 1928 which provides to ensure a minimum wage and requires ratifying states to establish a minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates having the force of law.

ILO also adopted Equal Remuneration Convention, 1951, which lays down certain principles concerning equal remuneration for men and women workers for same work or work of a similar nature. It also adopted Discrimination (Employment and Occupation) Convention, 1958 to prohibit all kinds of discrimination in respect of employment and occupation. International Covenant on Economic, Social and Cultural Rights, 1966 ratified by India in 1976 also recognized the right to fair wage and equal pay for equal work as the human rights.

As India is a party to these Conventions incorporated the concept of living wage which is more than a minimum wage and equal pay for equal work in the Indian Constitution. Thus, the State is bound both by international and national obligations to incorporate and implement the concept of minimum wage and equal pay for equal work. In this background the Minimum Wages Act, 1948 was enacted imposing an obligation on the employers to pay at least a minimum wage to satisfy the basic necessities to the workman and his family. Equal Remuneration Act, 1976 was passed to ensure 'equal pay for equal work' to both men and women.

The Preamble of the Constitution guarantees social, economic and political justice to all the citizens. The framers of the Constitution consciously inserted the concept of 'Welfarism' imposing an obligation on the State to look after the welfare of the people from cradle to grave and to secure socio economic justice to all bringing an end to the 'Laissez faire' concept and 'hire and fire' policy. To give effect to these cherished ideals the framers of the Constitution incorporated the welfare ideals in the Fundamental Rights and Directive Principles of State Policy where as the former are made justiciable and the latter are non justiciable. The right to

living wage has been incorporated in the Directive Principles of State Policy as a Constitutional goal in Article 43 of the Constitution.

#### Right to Living Wage

Article 43 of the Constitution provides that the State shall endeavour to secure to all the workers a living wage to ensure a decent standard of life. This provision requires the state to try to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, a living wage ensuring a decent standard of life. Article 43 ensures a living wage but not a minimum wage. The concept of living wage includes not only the bare necessities of life, such as food, clothing and shelter but also provisions for education of children, health, insurance etc.

### 1.3. Right to Live with Human Dignity

Article 21 of the Constitution guarantees right to life and personal liberty which includes right to live with human dignity. In *Maneka Gandhi v. Union of India*, (AIR 1981 SC 746) the court gave a new dimension to this Article 21. It held that the 'right to live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

*Peoples Union for Democratic Rights v. Union of India*, (AIR 1982 SC 1473) which is also known as *Asiad Workers case* is a landmark case in the judicial history which came before the SC by way of PIL alleging violation of various labour welfare legislations like Minimum Wages Act, Equal Remuneration Act etc in the construction projects relating to *Asiad Games* by the Union of India and its agents. The SC for the first time in the judicial history by its dynamism read the labour laws into the fundamental rights and held that violation of labour welfare legislations amounts to violation of fundamental right. It was held that nonpayment of minimum

wages to the workers employed in various Asiad projects in Delhi was a denial of their right to live with human dignity and violative of Article 21 of the Constitution.

Bhagwati, J., speaking for the majority held that the rights and benefits conferred on the workmen employed by a contractor under various labour laws are clearly intended to ensure basic human dignity to workmen and if the workmen are deprived of any of these rights and benefits that would clearly be a violation of Article 21. It was also held that the non-implementation of the provisions of various labour laws by the private contractors and non-

enforcement by the State authorities amounts to violation of the fundamental right of workers to live with human dignity guaranteed under Article 21 of the Constitution.

This decision has heralded a new legal revolution. It has clothed millions of workers in factories, fields, mines and project sites with human dignity. Minimum wages, drinking water, crèches, medical aid and safety in the respective occupations covered by various labour welfare legislations are brought within the purview of fundamental rights.

#### **1.4. Denial of Minimum Wages as Forced Labour**

Article 23 of the Constitution deals with right against exploitation. This provision prohibits 'traffic in human beings' and 'begar' and other similar forms of forced labour and any contravention of this provision shall be punishable in accordance with law. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral and other purposes and slavery. The practice of forced labour is condemned in almost every international instrument dealing with human rights.

Article 23 also prohibits 'Begar' and 'other forms of forced labour'. 'Begar' means involuntary work without payment. What is prohibited by this clause is the making of a person to render service where he was lawfully entitled not to work or to receive remuneration of the services rendered by him. It means to compel a person to work against his will. That is, 'begar' is a form of forced labour under which a person is compelled to work without receiving any remuneration. This Article strikes at forced labour in whatever form it may manifest itself as it is violative of human dignity and contrary to basic human values.

Article 23 protects the individual not only against the State but also private individuals. It imposes a positive obligation on the State to take steps to abolish evils of 'Traffic in human beings' and begar and other similar forms of forced labour.

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In *Peoples Union for Democratic Rights v. Union of India*, (AIR 1982 SC 1473) the Supreme Court held that the scope of Article 23 is wide and unlimited and strikes at 'traffic in human beings' and 'begar and other forms of forced labour and the word 'force' was interpreted very widely. Bhagwati, J., said that the word 'force' must be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Thus, a person who provides labour or service to another for remuneration which is less than the minimum wage amounts to forced labour under Article 23 of the Constitution. In the instant case, it was held

that the deduction of of Re.1 per worker per day by the Jamadars from the wages payable to workers employed by contractor for Asiad Projects in Delhi as a result of which the workers did not get the minimum wage of Rs. 9.25 per day was violative of Article 23 of the Constitution. The Court directed the Government to take necessary steps for punishing the violation of fundamental rights of citizens guaranteed by Article 23 by private individuals.

In Sanjit Ray v. State of Rajasthan, (AIR 1983 SC 328) it has been held that the payment of wages lower than the minimum wages to the person employed on Famine Relief Work is violative of Article 23. Whenever any labour or service is taken by the State from any person who is affected by drought and scarcity condition the State cannot pay him less wage than the minimum wage on the ground that it is given them to help to meet famine situation and the State cannot take advantage of their helplessness.

In Deena v. Union of India,(AIR 1983 SC 1155) it was held that labour taken from prisoners without paying proper remuneration was 'forced labour' and violative of Article 23 of the Constitution.

In Bandhua Mukti Morcha v. Union of India,(AIR 1984 SC 802) the Supreme Court held that it is the constitutional obligation of the Government under Article 23 totake appropriate steps to eradicate bonded labour system. In 1976 the Parliament enacted the Bonded Labour System(Abolition) Act, 1976 providing for the abolition of bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the people.

### **1.5. Right to 'Equal Pay for Equal Work'**

The term 'equality' has been incorporated not only in the Preamble but gave effect in Article 14 of the Constitution as a fundamental right and the concept of equal pay for equal work for both men and women in Article 39(d) of the Constitution as an unenforceable right in the Directive Principle of State Policy. According to this provision the State shall ensure equal pay for equal work for both men and women without any kind of discrimination.

To give effect to this provision Equal Remuneration Act, 1976 was passed. The object of this Act is to provide for the payment of equal remuneration to men and women workers for the same kind of work or work of similar nature. It also prohibits discrimination on the ground of sex against

The concept of equal pay for equal work which is a Directive Principle remained as a constitutional slogan till 1982 was transformed into materialization by the Supreme Court through its interpretative techniques. The Supreme Court for the first time in Randhir Singh v. Union of India ((1982) ISCC 618) read the Directive Principles into Fundamental Rights and held that 'equal pay for equal work' is not an abstract doctrine but one of substance. The Court laid down the jurisprudential foundation for equal pay for equal work and held that 'where all relevant considerations are same persons holding identical posts may not be treated differently in the matter of their pay'. and brought this Directive Principle into the parameters of Article 14 of the Constitution.

Later, the Randhir Singh case was followed by the Supreme Court in a series of cases and thus, rendered justice to women workers and to the millions of casual labourers who were denied equal wages on par with regular employees and who are exploited by the employers, the major among them being the Central Government and State Governments

In *PUDR V. Union of India*, the Supreme Court held that if women workers are denied equal wages on par with men for same work it amounts to violation of Articles 14 and 39(d) of the Constitution.

In *Dhirendra Chamoli v. State of UP* ((1986) 1 SCC637) and in *Surinder Singh v. Engineer in Chief, CPWD* (AIR 1986 SC 534), the SC held that if the casual workers are denied equal wages on par with regular workers even though they are doing same work or work of similar nature it amounts to violation of Articles 14 and 39(d) of the Constitution.

The SC also observed that the Central Government and State Governments and likewise all public sector undertakings are expected to function like model and enlightened employers and pointed that raising familiar argument of the exploiting class that the casual workers took up the employment knowing fully well that they will be paid only daily wages and so cannot claim more lies ill in the mouth of the Government and a "welfare state" committed to a "socialist pattern of society" cannot be permitted to advance such an argument.

In *Daily Rated Casual Labour in P&T Department v. Union of India* (AIR 1987 SC 2343), the Supreme Court held that the denial of minimum pay in the pay scales of regularly employed workmen to casual workers amounts to exploitation of labour and violative of Articles 14 and 39(d) of the Constitution.

In *State of Haryana v. Rajpal Sharma* (AIR 1997SC 449) it has been held that the teachers employed in privately managed aided schools are entitled to the same salary and dearness allowance as is paid to teachers employed in Government schools.

In *State of UP V. J.P. Chaurasia*, (AIR 1989SC19) it was held that equal pay for equal work is not an abstract doctrine but is not capable of mechanical application in every case of similar work.

Thus, the judiciary by its dynamic interpretation transformed an unenforceable Directive Principle of 'equal pay for equal work' into an enforceable fundamental right.

## 1.6. Summary

The framers of the Constitution consciously inserted the concept of 'Welfarism' imposing an

obligation on the State to look after the welfare of the people from cradle to grave and to secure socio economic justice to all bringing an end to the 'Laissez faire' concept and 'hire and fire' policy. To give effect to these cherished ideals the right to living wage and equal pay for equal work has been incorporated in the Directive Principles of State Policy as the Constitutional goals and prohibited forced labour. But, the judiciary in *Randhir Singh's* case by its dynamic interpretation transformed the unenforceable Directive Principle of 'equal pay for equal work' into an enforceable fundamental right. In *Asiad workers case* it was also held that if minimum wage is denied to a worker it amounts to violation of Articles 21 and 23 of the Constitution.

## **1.7. Technical Terms**

1. Begar
2. Forced labour
3. Equal Pay for Equal Work
4. Living Wage

## **1.8. Self Assessment Questions**

1. Discuss the constitutional provisions prohibiting forced labour.
2. Explain the concept of 'equal pay for equal work'.

## **1.9. Reference Books**

1. Dr J N Pandey, "The Constitutional Law of India", Central Law Agency, Allahabad, 2011.
2. Prof K M Pillai, "Labour and Industrial Laws", Allahabad Law Agency, 2013.
3. S N Misra, "Labour and Industrial Laws", Central Law Publications, Allahabad, 2014.

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## Lesson-2

# Theories and Facets of Wages

## 2.1 Objective:

The objective of the lesson is to discuss the different theories and kinds of wages.

## Structure

### 2.1. Introduction

### 2.2. Theories of Wages

### 2.3. Wage Structure

#### 2.3.1. Minimum Wage

#### 2.3.2. Fair Wage

#### 2.3.3. Living Wage

### 2.4. Summary

### 2.5. Technical Terms

### 2.6. Self Assessment Questions

### 1.7. Reference Books

## 2.1 Introduction.

A nation to become wealthy needs healthy and strong working force. Health and strength of the workers can be assessed on the basis of their living standards and their working conditions. The workers and their families depend almost entirely on wages to provide themselves with food, clothing, housing and all other necessities of life. Hence, their standard of living depends on the wages paid to them. The economic well being of the worker, his efficiency and standard of living depend on the wages of the worker.

A WAGE is the remuneration paid by an employer to an employee in exchange for work done or services rendered by the employee. It may be calculated as a fixed task based amount, or at an hourly rate, or based on an easily measured quantity of work done. It is contrasted with salaried work, which is based on a fixed time period.

Generally, wages constitutes the only source of income and it is an important aspect in the life of a workman. One seeks employment so that one can attain a 'decent' or dignified standard of living. The wage or income that a worker obtains from his work is therefore, enables him to achieve a fair standard of living. A worker seeks a fair wage both to fulfill his basic needs and to feel reassured that he receives a fair portion of the wealth which has been generated by him for the society. But in reality a remarkable number of workers were denied the minimum wage which is the lowest wage legally payable to the workers.

## 2.2 Theories of Wages

How much and on which basis wages should be paid to the workers for services rendered by them has been a subject matter of great concern and debate among economic thinkers for a long time This has given birth to several wage theories, i.e. how wages has to be determined. Some of the important theories of wages are,

1. Wages Fund Theory
2. Subsistence Theory
3. The Surplus Value Theory of Wages
4. Residual Claimant Theory
5. Marginal Productivity Theory
6. The Bargaining Theory of Wages
7. Behavioural Theories of Wages.

### 1. Wages Fund Theory:

This theory was developed by Adam Smith (1723-1790). His theory was based on the basic assumption that workers are paid wages out of a pre-determined fund of wealth. This fund, he called, wages fund created as a result of savings. According to Adam Smith, the demand for labour and rate of wages depend on the size of the wages fund. Accordingly, if the wages fund is large, wages would be high and vice versa.

### 2. Subsistence Theory:

This theory was propounded by David Ricardo (1772-1823). According to this theory, "The labourers are paid to enable them to subsist and perpetuate the race without increase or diminution". This payment is also called as 'subsistence wages'. The basic assumption of this theory is that if workers are paid wages more than subsistence level, workers' number will increase and, as a result wages will come down to the subsistence level.

On the contrary, if workers are paid less than subsistence wages, the number of workers will decrease as a result of starvation death; malnutrition, disease etc. and many would not marry. Then, wage rates would again go up to subsistence level. Since wage rate tends to be at, subsistence level at all cases, that is why this theory is also known as 'Iron Law of Wages'. The subsistence wages refers to minimum wages.

### **3. The Surplus Value Theory of Wages:**

This theory was developed by Karl Marx (1849-1883). This theory is based on the basic assumption that like other articles, labour is also an article which could be purchased on payment of its price i.e. wages. This payment, according to Karl Marx, is at subsistence level which is less than in proportion to time labour takes to produce items. The surplus, according to him, goes to the owner. Karl Marx is well known for his advocacy in the favour of labour.

### **4. Residual Claimant Theory:**

This theory owes its development to Francis A. Walker (1840-1897). According to Walker, there are four factors of production or business activity, viz., land, labour, capital, and entrepreneurship. He views that once all other three factors are rewarded what remains left is paid as wages to workers. Thus, according to this theory, worker is the residual claimant.

### **5. Marginal Productivity Theory:**

This theory was propounded by Phillips Henry Wick-steed (England) and John Bates Clark of U.S.A. According to this theory, wages is determined based on the production contributed by the last worker, i.e. marginal worker. His/her production is called 'marginal production'.

### **6. The Bargaining Theory of Wages:**

John Davidson was the propounder of this theory. According to this theory, the fixation of wages depends on the bargaining power of workers/trade unions and of employers. If workers are stronger in bargaining process, then wages tends to be high. In case, employer plays a stronger role, then wages tends to be low.

### **7. Behavioural Theories of Wages:**

Based on research studies and action programmes conducted, some behavioural scientists have also developed theories of wages. Their theories are based on elements like employee's acceptance to a wage level, the prevalent internal wage structure, employee's consideration on money or wages and salaries as motivators.

## **2.3 Wage Structure**

In the early years of industrialization, wage rates were conditioned in India almost solely by the demand and supply principle and the employers exploited the workers by paying very meager wages. After independence the state has been converted from 'Laissez faire' state to a 'Welfare State' and the Constitution of India aims at securing socio economic justice to all the individuals. Our Constitution accepts the responsibility of the state to create an economic order in which every citizen finds employment and receives a 'living wage' as the Directive Principle of State Policy.

Broadly speaking the wage structure can be divided into three categories. The basic 'minimum wage' which provides bare subsistence and is at poverty line level, a little above is the 'fair wage' and finally the 'living wage' which comes at a comfort level.

### 2.3.1 Minimum Wage:

Minimum wage is one which can only provide for a bare subsistence. It is one which is sufficient to cover the bare physical needs of a worker and his family. In *Unichay v. State of Kerala*<sup>1</sup>, it was held that “the Minimum Wages Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing subsistence and maintenance of the worker and his family and preserving his efficiency as a worker”. That is, a minimum wage must provide not merely the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities. The concept of minimum wage does not mean a wage that enables the worker to cover his bare physical need and keep himself just above starvation. The capacity of the employer to pay is irrelevant in fixing minimum wage. Therefore, no addition shall be made to the components of minimum wage, which would take the minimum wage near the level of the fair wage.

#### Components of a Minimum Wage:

The Tripartite Committee of the Indian Labour Conference in 1957 accepted the following five norms for the fixing of minimum wage;

In calculating the MW the standard working class family should be taken to consist of 3 consumption units for one earner and the earnings of women, children and adolescents should be disregarded.

Minimum food requirement should be calculated on the basis of a net intake of calories as recommended by Dr Aykroyd for an average Indian adult of moderate activity.

Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average workers family of four, a total of 72 yards.

In respect of housing, the rent corresponding to the minimum area provided

AIR 1962 SC 12

for under Government Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.

Fuel, lighting and other ‘miscellaneous’ items of expenditure should constitute 20 percent of the total minimum wage.

In *Workmen of Reptakos Brett & Co. Ltd. vs. Management*<sup>2</sup>, the Supreme Court held that keeping in view the socio-economic aspects of the wage structure one more component to minimum wage should be added’ namely, children education, medical requirement, minimum recreation including festivals, ceremonies and provision for old age, marriages etc. should further constitute 25 percent of the total minimum wage.

It was further held that the wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to minimum wages at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.

In *Peoples Union for Democratic Rights v. Union of India*<sup>3</sup>, the Supreme Court allowed the writ petition filed by a social organization by way of public interest litigation and held that where MW are denied to workers who by reason of poverty or socially and economically in a disadvantageous position are unable to approach the court, legal redress may be sought on their behalf by any member of the public. In this case the Supreme Court by its dynamic interpretation brought the violation of Labour welfare legislations into the purview of Fundamental rights and held that violation of Minimum Wages Act amounts to violation of Articles 21 and 23 of the Constitution.

In India the Minimum Wages Act, 1948 was passed to ensure the right to minimum wage to the workmen in scheduled employments. This Act imposes an obligation on the employers to pay at least a minimum wage to those workmen working in the scheduled employments.

### 2.3.2 Fair Wage

Fair Wage stands in between the minimum wage and living wage. Fair wage is said to be a step towards the progressive realization of a living wage. A fair wage is settled above the minimum wage and goes through the process of approximating towards a living wage. While the lower limit to a fair wage must obviously be the minimum wage, the upper limit is set by the capacity of the industry to pay. That is, it depends on the present economic position as well as the future prospects of that industry. Factors like productivity of labour, the prevailing rates of payment in similar occupations in the same area and neighbouring localities, the level of national income and its distribution and the place of industry in the economy of the country are considered in fixing fair wages.

2. (1992) 1 LLJ 340(SC)

3. (1992) 2 LJ 545 (SC)

In *S.A.F.L. Works vs State Industrial Court, Nagpur*<sup>4</sup>, The Supreme Court observed that in fixing the paying capacity the Tribunal will have to fix the income as well as permitted deductions and allowances properly incurred. After properly determining the paying capacity of the industry the Tribunal will have to proceed to fix fair wages which would include the fitment, scale of wages and dearness allowance.

### 2.3.3 Living Wage:

Living wage is one which is appropriate for the normal needs of the average employee regarded as a human being living in a civilized community. It must provide not merely for absolute essentials such as food, shelter and clothing but for a condition of frugal comfort estimated by current human standard.

The Fair Wages Committee in its report published by Government of India, Ministry of Labour in 1949 defined 'living wage' as under:

“The living wage should enable a male wage earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comforts including education for children, protection against ill health, requirements of essential social needs and a measure of insurance against important misfortunes including old age”.

In the early years of industrialization, wage rates were conditioned in India almost solely by the demand and supply principle and the employers exploited the workers by paying very meager wages. After independence the state has been converted from 'Laissez faire' state to a 'Welfare State' and the Constitution of India aims at securing socio economic justice to all the individuals. Our Constitution accepts the responsibility of the state to create an economic order in which every citizen finds employment and receives a 'living wage' as the Directive Principle of State Policy. Article 43 of the Constitution provides that the State shall endeavour to secure to all workers living wages, conditions of ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Certain principles have been laid down by the Supreme Court in *Kamani Metals and Alloys v. Their Workmen*<sup>5</sup>. The first principle is that there is a minimum wage which in any event must be paid, irrespective of its profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which the wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care

1. AIR 1978 SC 1113

2. AIR 1967 SC 1175

and education of children appropriate for the workmen. A fair wage is related to the earning capacity and the workload. A living wage is a wage above fair wage which is sufficient to provide not only the essential above mentioned but a measure of frugal comforts with an ability to provide for old age and evil days. Fair wage lies between minimum wage, which must be paid in any event, and the living wage, which is the constitutional goal.

Thus, the 'living wage' remains as a constitutional goal, 'minimum wage' as a statutory obligation and in between lies the 'fair wage'.

## 2.4. Summary

A nation to become wealthy needs healthy and strong working force. Health and strength of the workers can be assessed on the basis of their living standards and their working conditions. As the economic well being of the worker, his efficiency and standard of living depend on the wages of the worker different theories have been formulated to determine the wages. Broadly speaking the wage structure is divided into three categories. They are minimum wage, fair wage and living wage. The 'living wage' remains as a constitutional goal, 'minimum wage' as a statutory obligation and in between lies the 'fair wage'.

## 2.5. Technical Terms

Minimum wage

Fair wage

Living wage

Subsistence wage

Laissez faire state

Welfare state.

## **2.6. Self Assessment Questions**

1. Discuss different theories of wages?
2. What are the different kinds of wages?
3. What are the components of a minimum wage?

## **2.7. Reference Books**

K.M.Pillai, "Labour and Industrial Laws", Allahabad Law Agency, 2012.

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Report of National Commission on Labour, 1969.

Report of National Commission on Labour, 2002.

<http://www.yourarticlelibrary.com/employee-management/wages/top-7-theories-of-wages-explained/35346/>.

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## Lesson-3

# Fixation and Revision of Wages

## 3.0. Objective

The objective of the lesson is to discuss the object of the Minimum Wages Act, 1948 and the provisions relating to fixation and revision of minimum rates of wages.

## Structure

### 3.1. Introduction

### 3.2. ILO Conventions

### 3.3. Principles of Wage Fixation-Industrial Adjudication

### 3.4. Wage Fixation under the Minimum Wages Act, 1948

### 3.5. Wage Boards and Fixation of Wages

### 3.6. Summary

### 3.7. Technical Terms

### 3.8. Self Assessment Questions

### 3.9. Reference Books

## 3.1. Introduction

The wages and wage policy is of great concern to labour, management and Government. Of all the problems that face the workers, wages is the most pressing and persistent.

After industrial revolution there was minimum government control and maximum free enterprise as the States adhered to the 'Laissez Faire' concept and 'hire and fire' policy which was based on the principle of freedom of contract. Due to absolute freedom of contract the employers dictated arbitrary and exploitative terms and conditions profitable for them in disregard of the welfare and well being of workers working for them.

The 'Laissez Faire' concept adopted by the states resulted in the exploitation of the working classes and concentration of wealth in the hands of a few, poverty, slums, unhealthy and dangerous conditions of work to a vast majority became the order of the day. They were paid very meager wages which was not sufficient to meet their basic needs and the conditions of work were highly miserable. As against these inhuman conditions they waged bitter struggles to improve their wages and working conditions. The working class achieved certain rights and privileges through Labour Laws like Minimum Wages Act, 1948, Payment of Wages Act etc after prolonged struggles and sacrifices.

### 3.2. ILO Conventions

The Minimum Wages Fixing Machinery Convention was adopted by ILO in 1928. This Convention emphasized the need of statutory minimum wages to protect the workers against the exploitation by the employers. The question of minimum wage in the light of ILO Conventions was studied in depth in the Indian context by the Whitley Commission. Many committees considered the question of minimum wages subsequently and finally the Minimum Wages Act was passed in 1948.

The Minimum Wages Act, 1948 is landmark legislation in the history of labour legislations in India. The object of the Act is to prevent the exploitation of labour by ensuring a minimum wage. The Act recognized that wage cannot be left to be determined entirely by the market forces. The Act imposes an obligation on the employer to pay the minimum wages fixed under law and he is prohibited to plead his inability to pay such minimum wages to the workmen. The Act empowers the Central and State Governments to fix the minimum rates of wages for different employments listed in the Schedule to the Act. The Act also provides for a review of rates fixed at intervals not exceeding five years.

### 3.3. Principles of Wage Fixation- Industrial Adjudication

After independence a conscious effort has been made to convert the state to 'welfare state' imposing an obligation on the state to look after the welfare of the people from cradle to grave thus, bringing an end to Laissez Faire concept and hire and fire policy. The Constitution which is the rule of law in India incorporated the concept of socialist and welfare State in the Preamble of the Constitution and these ideals have been enshrined in the Directive Principles of State Policy. The Directive Principles of State Policy contained in part IV of the Constitution set out the aims and objectives to be taken up by the states in the governance of the country. They are the ideals which the Union and State Governments must keep in mind while they formulate policy or pass a law. They impose certain obligations on the state to take positive action in order to promote the welfare of the people.

Article 38 of the Constitution provides that the state shall strive to promote the welfare of the people by securing and protecting social, economic and political justice to all the citizens. This provision also provides that the State shall in particular, strive to minimize inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39 is a comprehensive provision specifically requiring the State to direct its policy to ensure that the economic system should not result in concentration of wealth and means of production to the common detriment and to secure the well being of workers in general and women and children in particular. Since then a number of labour welfare legislations were passed to protect the interest of working classes by providing better wages and social security measures. As proclaimed in the preamble of the Constitution and given contents by the Directive Principles chapter, the industrial jurisprudence of the country is founded on the basic idea of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities.

Article 43 of the Constitution provides that the state shall endeavour to secure to all workers living wages, conditions of ensuring a decent standard of life and full enjoyment of leisure and

social and cultural opportunities. Thus payment of living wage is a constitutional goal and minimum wage is a statutory right and in-between lies the fair wage.

### **Industrial Adjudication**

Social and economic justice is the ultimate ideal of industrial adjudication and the basis lies in the guiding principles of social welfare, common good and the Directive Principles of State Policy enshrined in the Constitution. The essential function of industrial adjudication is to assist the State by helping a solution of industrial disputes. Therefore, it has broadly to go by the social and economic policy followed by the State.

The twin objectives of industrial adjudication are industrial peace and economic justice. The former implies restoration of industrial peace and good will in industry so as to establish harmony between labour and capital. Industrial harmony helps in boosting production which would help in general economic progress of the community and strengthen the national economy. The latter implies that restoration of industrial peace and good will should be on a fair and just basis. Injustice, social or economic is bound to result in exploitation of labour, inequality of incomes, concentration of wealth in a few hands and class conflict.

The theory of hire and fire as well as the supply and demand which were allowed free scope under the Laissez faire doctrine, are no longer in practice now. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progress and as the growing strength of trade union movement collective bargaining enters the field, industrial issues cease to be purely arithmetical problems.

The following are some of the guiding principles of Industrial adjudication:

1. Public interest
2. Industrial harmony and goodwill
3. Development if industrial justice
4. Expert assistance
5. Socio- economic effects
6. Reference to facts and circumstances of each case
7. Tribunals to act in a judicial manner
8. Acceptability of decisions.
9. Expediency is no consideration
10. Principles of Natural Justice.

### **3.4. Wage Fixation under Minimum Wages Act, 1948**

The Minimum Wages Act, 1948 has been enacted to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments. The object of the Act is to prevent the exploitation of workers and for this purpose, it aims at fixation of minimum wages which the employer must pay and the Act extends to the entire country.

In *Hydro (Engineers) Pvt, Ltd v. Workmen* (AIR 1969 SC 182) it was held that the Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve the efficiency as a workman. It should, therefore, provide not merely for the bare subsistence of life but the preservation of the workers and so must provide for some measure of educational, medical requirements and amenities.

**Fixation of Minimum Rate of Wages:** Section 3 of the Act empowered the appropriate Government to fix the minimum rate of wages in the manner prescribed under the provisions of the Act. It shall fix the minimum rates of wages payable to employees employed in an employment specified in Part I and Part II of the Schedule of the Act. The Act provides for the fixation of minimum time rate of wages, a minimum piece rate, a guaranteed time rate and an overtime rate for different occupations, localities or classes of work and for adults, adolescents, children and apprentices.

The minimum rate of wages may be fixed by one or more of the following wage periods,

- i. By the hour
- ii. By the day
- iii. By the month, or
- iv. Such other longer wage period as may be prescribed.

The appropriate Government shall review and revise the minimum rates of wages at such intervals it may think fit and the interval shall not exceed five years. That is the minimum rates of wages shall be revised at least once in every five years, however there is a provision to increase dearness allowance every two years. The norms in fixing and revision of minimum wages were first recommended by ILC, 1957.

Revision of minimum wage rates is based on a 'cost of living index' and wages can be fixed for an entire state, part of the state, class or classes and employments pertaining to these categories. The fixation of wages is based on the norms mentioned.

**Minimum rates of Wages:** Section 4 of the Act provides that the minimum rates of wages fixed or revised by the appropriate government in respect of scheduled employment may consist of,

- i. basic rate of wages and cost of living allowance or
- ii. basic rate of wages with or without cost of living allowance and the cash value of the concessions in respect of essential commodities supplied at concessional rates, where so authorized, or
- iii. an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash of the concessions, if any.

Minimum rates of wages must be paid irrespective of the extent of profits, the financial condition of the establishment or the availability of the workmen, on lower wages (*Kamani Metals and Alloys Ltd. v. Workmen*, AIR 1967 SC 1175).. The minimum wages is independent of the kind of industry and applies to all alike, big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity.

However in fixing fair wages the financial capacity of the employer and the wages scale prevailing in the comparable industries in the region are some of the relevant considerations (Hydro Engineers Pvt. Ltd. v. Workmen, AIR 1969 SC 182).

### 3.5. Wage Boards and Fixation of Wages

**Procedure for Fixing and Revising Minimum Wages:** According to Section 5 of the Minimum Wages Act, 1948, the minimum wages shall be fixed or revised by the appropriate government by two methods, either by Committee method or by Notification method.

1. **Committee Method:** The appropriate government shall appoint as many Committees and Sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision of wages.
2. **Notification Method:** The government shall publish its proposals in the Official Gazette for the information of persons likely to be affected and shall specify a date not less than two months from the date of notification, on which the proposals will be taken into consideration.

After considering the advice of the committees appointed, and all representations received by it before the date specified in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment, which shall come into force after the expiry of 3 months unless otherwise provided in the notification.

Where the appropriate government proposes to revise the minimum rates of wages by notification method, the revision shall be made after consultation with the Advisory Board also. If the Advisory Board approves the notification regarding the revision of wages without discussing the objections raised, the action of the Board would be arbitrary as it amounts to non application of mind in granting approval

Section 7 of the Act provides for the constitution of the Advisory Board for the purpose of

- i. coordinating the work of committees and sub committees appointed under Section 5 and
- ii. advising the appropriate government in the matter of fixing and revising minimum rates of wages.

The Advisory Board also may devise the procedure to be adopted for discharging its functions under Section 5 of the Act.

Section 8 of the Act makes it obligatory upon the Central Government to appoint a Central Advisory Board for the following purposes:

- i. advising the Central and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Act and
- ii. for coordinating the work of the Advisory Boards

The Central Advisory Board shall consist of,

- i. persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number, and
- ii. independent persons not exceeding one third of the total number of members.

The chairman of the Central Board shall be one of the independent persons and shall be appointed by the Central Government.

Section 9 of the Act provides that the committees and sub committees of the Advisory Board shall consist of the representatives of employers and employees in the scheduled employments in equal proportion to be nominated by the appropriate government. Independent persons not exceeding one third of the total number of members in such bodies shall also be appointed and one of such independent persons shall be appointed as the chairman by the appropriate government.

According to Section 11 of the Minimum Wages Act the wages shall be paid in cash. If there is a custom to pay wages wholly or partly in kind, the appropriate government by notification in the Official Gazette authorizes the payment of minimum wages either wholly or partly in kind. If the appropriate government is of the opinion that provisions should be made for the supply of essential commodities at concessional rates, it may by notification in the Official Gazette, authorize the provision of such supplies at concessional rates.

Section 12 of the Act imposes an obligation on the employer to pay the minimum rates of wages fixed by the appropriate government to every employee engaged in a scheduled employment.

Section 13 of the Act provides that, in regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act the appropriate government may,

- i. fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals.
- ii. Provide for day of rest in every period of seven days with remuneration
- iii. Provide for payment for work on a day of at a rest not less than the overtime rate.

If an employee is involved in work that categorizes his service in two or more scheduled employments, the employee's wage will include respective wage rate of all work for the number of hours dedicated at each task.

It is mandatory for the employer to maintain records of all employee's work, wages and receipts. The Act authorized the appropriate governments to define and assign the task of inspection and appoint inspectors for the same by notification in the Official Gazette.

Claims: Section 20 of the Act also authorizes the appropriate government to appoint by notification in the Official Gazette, an Authority to hear and decide

- i. any claims arising out of payment of less than the minimum rates of wages, or
- ii. any claim in respect of the payment of remuneration for days of rest, or
- iii. any claim in respect of payment of remuneration for work done on the days of rest, or
- iv. any claim of wages for the overtime work.

Where an employee has any claim the following may apply to the Authority,

- i. the employee himself
- ii. any legal practitioner authorized in writing to act on his behalf, or
- iii. any official of a registered Trade Union authorized in writing to act on behalf of the employee, or
- iv. any inspector, or

- v. any person acting with the permission of the Authority.

The application for any claim shall be presented within 6 months from the date on which the minimum wages or other amount become payable and the delay may be condoned if sufficient cause is shown. The Authority shall follow the principles of Natural Justice while deciding the claims.

### 3.6. Summary

The Minimum Wages Act, 1948 is landmark legislation in the history of labour legislations in India. The object of the Act is to prevent the exploitation of labour by ensuring a minimum wage. The Act recognized that wage cannot be left to be determined entirely by the market forces. The Act imposes an obligation on the employer to pay the minimum wages fixed under law and he is prohibited to plead his inability to pay such minimum wages to the workmen. The Act empowers the Appropriate Government to fix the minimum rates of wages for different employments listed in the Schedule to the Act. The Act also provides for a review of rates fixed at intervals not exceeding five years. The Act provides for the fixation of minimum time rate of wages, a minimum piece rate, a guaranteed time rate and an overtime rate for different occupations, localities or classes of work and for adults, adolescents, children and apprentices. According to Section 5 of the Minimum Wages Act, 1948, the minimum wages shall be fixed or revised by the appropriate government by two methods, either by Committee method or by Notification method. The wages shall be paid in cash and the appropriate government may fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals, provide for day of rest in every period of seven days with remuneration and provide for payment for work on a day of at a rest not less than the overtime rate.

### 3.7. Technical Terms

1. Minimum rates of Wages
2. Industrial Adjudication
3. Advisory Board

### 3.8. Self Assessment Questions

1. What are the important features of the Minimum Wages Act, 1948?
2. Discuss the ILO Convention relating to minimum wages
3. Discuss the procedure for fixation of minimum wages

### 3.9. Reference Books

1. Dr J N Pandey, "The Constitutional Law of India", Central Law Agency, Allahabad, 2011.
2. Prof K M Pillai, "Labour and Industrial Laws", Allahabad Law Agency, 2013.
3. S N Misra, "Labour and Industrial Laws", Central Law Publications, Allahabad, 2014.

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## Lesson- 4

# Protection of Wages

## 4.0. Objective

The objective of the lesson is to discuss the problems relating to payment of wages and the provisions relating deductions under the Payment of Wages Act, 1936.

## Structure

- 4.1. Introduction
- 4.2. Problems relating to Payment of Wages
- 4.3. Royal Commission and Payment of Wages
- 4.4. Deductions and Payment of Wages Act, 1936
- 4.5. Summary
- 4.6. Technical Terms
- 4.7. Self Assessment Questions
- 4.8. Reference Books

## 4.1. Introduction

In the early stages of industrialization the conditions of employment were governed by contracts either express or implied between the employer and workmen in industrial establishments. The employers who were in a dominant position exploited the workmen by dictating arbitrary terms and conditions. They were paid very meager wages and there was no protection even to those wages. Wages were not paid at regular intervals and non-payment of wages was very common. To protect the wages earned by workmen Protection of Wages Convention, 1949 was adopted by ILO and it lays down that the wages shall be paid at regular intervals, in cases where partial payment of wages is in kind, the value of such allowances should be fair and reasonable. Workers shall be free to dispose of their wages as they choose. In cases of employer insolvency, wages shall enjoy a priority in the distribution of liquidated assets.

## 4.2. Problems relating to Payment of Wages

There was no protection to the wages earned by the workmen before enactment of the Payment of Wages Act, 1936. There was no law to regulate the payment of wages. Wages were not paid at regular intervals and the workmen and their families were forced to starve due non-payment of wages. Delays in payment of wages, non-payment of wages, deductions made from wages on account of fines imposed by the employer were very common during that period. Imposition of fines by employers on workers and deduction of even double the amount of wages for absence from duty by way of fine was very much customary in those days.

As against that exploitation when the trade unions raised their voice the need to protect the wages earned by the workers had been felt and a Private Bill called the "Weekly Payment Bill" was for the first time introduced in 1925 in the Legislative Assembly. The Bill was however, withdrawn on the assurance of the Government that the matter was under consideration of the Government to regulate the payment of wages. The desirability of regulating the extent of fines

and other deductions, through legislation was felt by the Government and appointed the Royal Commission on Labour.

The Royal Commission on Labour examined the entire problem in detail and recommended that the legislation regarding deductions from wages and imposition of fines in certain cases was necessary and desirable.

### **4.3. Royal Commission and Payment of Wages**

The Royal Commission on Labour made some valuable recommendations and the Commission was of the opinion that a legislation regarding deductions from wages and fines was essential and the following are some of the important recommendations,

- i. Children should be exempted from fines
- ii. The payment of fine should not be spread over more than one month from the date on which it was imposed.
- iii. The minimum amount which could be deducted by way of fine should not exceed an amount equal to three percent of the wages payable to him in respect of that wage period.
- iv. The sum realized as fine should be utilized for some purpose beneficial to the employees as a class and should be approved by some recognized authority.
- v. A notice specifying the acts and omissions in respect of which fines may be imposed
- vi. should be posted and any other fine should be deemed to be illegal.
- vii. Any deduction made for goods having been damaged should not exceed the wholesale price of the goods damaged.
- viii. Deductions may be made on account of provision for housing accommodation and of tools and raw materials.
- ix. Imposition of any fine and deduction made which is not permitted by law should be made punishable.

On the basis of the recommendations of the Royal Commission on Labour, the Payment of Wages Act was passed in 1936 and it came into force on 21<sup>st</sup> March, 1937.

### **4.4. Deductions and Payment of Wages Act, 1936**

The object of the Payment of Wages Act, 1936 is to regulate the payment of wages to certain classes of employed persons. That is, the Act aims to provide the wages at regular intervals to the employed persons, to prevent delay in the payment of wages and to prevent unauthorized deductions from the wages of employed persons. This Act applies to persons employed in any factory, railway and industrial or other establishments.

**Responsibility for Payment of Wages**

According to Section 3 of the Act every employer shall be responsible for the payment of all wages required to be paid to persons employed by him.

**Fixation of Wage Period**

Section 4 of the Act provides that the person responsible for payment of wages under Section 3 shall fix wage periods in respect of which wages shall be payable. Such wage period shall not in any case exceed one month.

**Time of Payment of Wages**

According to Section 5 of the Act if the number of persons employed upon in railway, factory, or industrial or other establishment is less than one thousand persons, wages shall be paid before the expiry seventh day after the last day of the wage period. The wages of every person employed upon a railway, factory or other industrial establishment shall be paid before the expiry of tenth day of the last day of the wage period in respect of which the wage is payable.

In case of the termination of employment of an employee, the wages earned by him shall be paid before the expiry of the second working day from the day on which the employment is terminated. If the employment of a person in an establishment is terminated due to closure of the establishment, the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated. All payments of wages shall be made on a working day.

**Wages to be paid in current Coins or Currency Notes**

According to Section 6 of the Act, all wages shall be paid in current coins or currency notes or in both. But the Payment of Wages (Amendment) Act, 1976 provides that the employer can after obtaining the written authorization of the employed person pay him the wages either by cheque or by crediting the wages in his bank account. Under an agreement wages also can be paid in kind or partly in kind and partly in cash.

**Deductions which may be made from Wages**

Section 7(1) of the Payment of Wages Act lays down a general prohibition against any deduction from the wages of an employed person. That is, wages for employed person shall be paid to him without deductions of any kind except those authorized by or under the provisions of this Act.

**What is Deduction?**

Explanation No. 1 to Section 7(1) says that every payment made by the employed person to the employer or his agent shall be deemed to be a deduction from wages for the purposes of this Act.

Explanation No.2 lays down that any loss of wages resulting from the imposition of the following penalties upon a person shall not be deemed to be a deduction from wages,

- i. The withholding of increment or promotion including the stoppage of increment at any efficiency bar, or
- ii. The reduction to a lower post or time scale or to a lower stage in a scale, or
- iii. Suspension.

#### **Permissible Deductions or Authorized Deductions**

According to Section 7(2) deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act. The following are the permissible or authorized deductions under the Act.

**(a) Fines:** The fines can be imposed only for acts and omissions which have been approved by the State Government and have been notified at or near the main entrance to the factory or industrial establishment. The chief inspector of factories has been recognized as an authority to approve the list of acts and omissions for which fines can be imposed. The fines can be imposed either by the employer or by a person whose appointment in that respect has been intimated to the chief inspector of factories. Further no fine can be imposed unless the person concerned is given an opportunity of showing cause why a fine should not be imposed.

According to Section 8 of the Act the total amount of fine which can be imposed on an employee in any wage period should not exceed an amount equal to three percent of the wages payable to him in respect of that wage period. No fine can be imposed on an employee who is under fifteen years of age. A fine cannot be recovered in installments or after the expiry of 90 days from the day on which it was imposed.

All the amounts realized as fines have to be recorded in the register to be maintained for this purpose. Further, all the amounts realized have to be applied only to such purposes which are beneficial to the workers employed in the factory or establishment as are approved by the prescribed authority.

**(b) Deduction for absence from duty:** The Act authorizes the employer to make deduction from the wages of employed person for absence from duty. Section 9 of the Act lays down that any such deduction may be made on account of the absence of employed person from the place or places where, by the terms of the employment, he is required to work. It is further provided that such absence may be for the whole or any part of the period during which he is so required to work. The amount of such deduction must bear to his wages the same proportion as his absence bears to the total within the wage period during which he was by the terms of his employment required to work.

**(c) Deduction for damage or loss of goods:** Deduction for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his negligence or default. According to Section 10 of the Act the deductions on above accounts cannot exceed the amount of loss or damage suffered by the employer. That is, the employer is not permitted to make profit out of such deductions. Such deductions can be made only after giving the workman concerned an opportunity to show cause against the proposed deductions. The State Government is authorized to lay down the procedure for such deductions. All deductions and realizations are to be recorded in a register to be maintained for this purpose.

**(d) Deduction for House Accommodation:** The Act authorizes the employer to make deduction for house accommodation supplied by the employer or by Government or any Housing Board set up under the law or any other specified authority so specified under notification issued by the State Government.

**(e) Deduction for amenities rendered:** Deductions may be made for such amenities and services supplied by the employer as the State Government or any authorized person in this behalf authorizes the employer to provide the amenities and services. The word 'services' does not include the supply of tools and raw materials required for the purpose of employment.

According to Section 11 of the Act, any such deductions for house accommodation, amenities and services shall not be made from the wages of employed person, unless he has accepted the facilities provided by the employer as a term of his employment. The amount of deduction shall not exceed an amount equivalent to the value of house accommodation, amenities and services supplied and any deduction shall further be subject to such conditions as the State Government may impose.

**(f) Deduction for recovery of advances:** The Act authorizes the employer to make deductions for the recovery of advances made by him and the interest due in respect thereof, or for an adjustment of overpayments of wages. The recovery of such advances shall be subject to any rule made by the State Government regulating the extent to which such advances may be granted and the rate of interest payable thereon.

**(ff) Deduction for recovery of loans:** The employer may make deductions for the recovery of loans and the interest thereon from any fund constituted for the welfare of labour in accordance with the rule approved by the State Government.

**(fff) Deduction for recovery of loans for House Building:** Deductions may be made for recovery of loans and the interest due thereon, granted for house building or other purposes approved by the State Government.

**(g) Deduction for payment of income tax:** The amount of income tax payable by the employed person may be deducted from his wages. The amount of income tax payable can be recovered in twelve monthly installments.

**(h) Deductions by order of court:** The deductions required to be made by order of the court or other competent authority can be made from the wages of employed person.

**(i) Deduction for subscriptions to and for payment of advances from any provident fund:** Deduction may be made from the wages of the employed persons for subscriptions to and for payment of advances from the provident fund.

**(ii) Deduction for Contribution to National Defence Fund etc.:** Deductions for contribution to National Defence Fund or to any Defence Savings Scheme approved by the State Government may be made from the wages of the employed persons. But any such deduction may be made with the written authorization of the employed person.

**(j) Deductions for payment to co operative societies:** Deductions for payment to co operative societies approved by State Government or any officer specified by it in this behalf or

to a scheme of insurance maintained by the Indian Post Office may be made from the wages of an employed person.

**(k) Deductions for payment of any premium:** Deductions may be made with the written authorization of the employed person for payment of any premium on his life insurance policy to the Life Insurance Corporation of India or for the purchase of securities of the Government of India or any State Government or for being deposited in any Post Office Savings Bank in furtherance of any saving scheme of any Government.

**(kk) Deduction for payment of contribution to any fund:** Deduction may be made with the written authorization of the employed person for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families or both and approved by the State Government or any officer specified by it in this behalf during the continuance of such approval.

**(kkk) Deduction may be made for payment of the membership fees:** Deduction may be made for payment of the membership fees of any registered trade union with the written authorization of the employed person.

**(l)** Deduction may be made for payment of insurance premium on Fidelity guarantee bonds.

**(m), (n), (o) - Deduction for recovery of losses sustained by Railway Administration:**

**(m)** Deduction for recovery of losses sustained by a railway administration may be made from the wages of the employed person on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes.

**(n)** Deduction for recovery of losses sustained by railway administration may be made from the wages of the employed persons on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carriage or in respect of sale of commodities in grain shops or otherwise.

**(o)** Deduction for recovery of losses sustained by railway administration may be made from the wages of the employed persons on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default. But no such deduction under clauses (m), (n) or (o) shall be made without giving the employed person an opportunity of showing cause against the deduction and any such deduction shall be made in accordance with such procedure as may be prescribed.

**(p) Deduction may be made for contribution to the Prime Ministers National Relief Fund:** Deduction may be made for contribution to the Prime Ministers National Relief Fund or such other fund as the Central Government may by notification in the Official Gazette specify with the written authorization of the employed person.

**(q) Deduction may be made for contributions to any insurance scheme:** Deduction may be made for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

**Permissible Total Deductions:**

Section 7(3) of the Act lays down that the total amount of deduction which may be made under sub-section (2) of Section 7 in any wage period from the wages of any employed person shall not exceed,

- (i) in cases where such deductions are wholly or partly made for payment to co-operative societies under Section 7(2)(j), seventy five percent of such wages and
- (ii) in any other case fifty percent of such wages.

If the total deductions authorized under Section 7(2) under various heads exceed the limits of seventy five or fifty percent of the wages as the case may be, the excess may be recovered in such manner as may be prescribed.

Section 7(4) lays down that an employer is not precluded from recovering from the wages of the employed person any amount which the employed person is liable to pay under any law for the time being in force other than the Railways Act, 1989

**Duties of Employer Regarding Maintenance of Registers:**

The employer is required to maintain separate registers for fines, deductions for damages or loss caused through neglect or default and advances made to the employed person. In addition the employer has to maintain register of wages which shall contain the following particulars,

- (i) particulars of persons employed
- (ii) the work performed by the persons employed
- (iii) the wages paid to the persons employed
- (iv) the deductions made from the wages of the persons employed
- (v) receipt given by the person employed and
- (vi) such other particulars as the rules may prescribe.

According to Section 13-A the employer has to preserve the above records for a period of three years after the date of the last entry made and make them available to the inspector for inspection when required to do so.

**Authorities under the Act**

Section 14 of the Payment of Wages Act, 1936 makes provision for the appointment of inspectors by the State Government for the purpose of enforcing compliance with the provisions of the Act. An Inspector of Factories appointed under the Factories Act shall be an inspector for the purposes of this Act in respect of all factories within the local limits assigned to him. The State Government is also authorized to appoint inspectors under the Act in respect of railways and industrial or other establishments.

Every employer is required to afford all reasonable to the inspector for making any entry, inspection, supervision, examination or inquiry under this Act.

### **Authority to hear Claims**

Section 15 of the Act also empowers the Appropriate Government by issuing a notification in the Official Gazette to appoint an authority to hear and decide all claims arising out of deductions from wages or delay in payment of wages of employed persons including all other matters incidental to such claims.

### **Appeal**

According to Section 17 of the Act there can be an appeal against the decision of the Authority within thirty days of the date on which the order or direction was made in Presidency town before the court of Small Causes or before the District Court within whose jurisdiction the industrial establishment is situated

**Penalty for Offences under the Act:** Section 20 of the Act deals with penalties for contravention of the provisions of the Act.

## **4.5. Summary**

There was no protection to the wages earned by the workmen before enactment of the Payment of Wages Act, 1936. Wages were not paid at regular intervals and the workmen and their families were forced to starve due non- payment of wages. Delays in payment of wages, non- payment of wages, deductions made from wages by the employer were very common during that period. Imposition of fines by employers on workers and deduction of even double the amount of wages for absence from duty by way of fine was very much customary in those days. On the basis of the recommendations of the Royal Commission on Labour, the Payment of Wages Act was passed in 1936. The object of the Act is to regulate the payment of wages to certain classes of employed persons. That is, the Act aims to provide the wages at regular intervals to the employed persons, to prevent delay in the payment of wages and to prevent unauthorized deductions from the wages of employed persons.

Section 7(1) of the Payment of Wages Act imposed a general prohibition against any deduction from the wages of an employed person. That is, wages for employed person shall be paid to him without deductions of any kind except those authorized by or under the provisions of this Act. Section 7(2) of the Act laid down permissible or authorized deductions from the wages of employed person and any such deduction from the wages of the employed person can be made only in accordance with the provisions of Payment of Wages Act, 1936. Whereas Section 7(3) of the Act imposed a limitation on the total permissible deductions from the wages of the employed person in any wage period.

The Act makes provision for the appointment of inspectors for the purpose of enforcing compliance with the provisions of the Act. The Appropriate Government is empowered to appoint an authority to hear and decide all claims arising out of deductions from wages or delay in payment of wages of employed persons including all other matters incidental to such claims and there can be an appeal against the decision of the Authority within thirty days of the date on which the order or direction was made. The Act also laid down penalties for contravention of the provisions of the Act.

#### **4.6. Technical Terms**

1. Deductions
2. Permissible deductions
3. Wage period
4. Unauthorized deductions.

#### **4.7. Self Assessment Questions**

1. Discuss the problems relating to payment of wages.
2. What are the recommendations of Royal Commission on
3. What is the object of Payment of Wages Act, 1936?
4. What is deduction and what are the permissible deductions under the Payment of Wages Act, 1936?

#### **4.8. Reference Books**

1. Prof K M Pillai, "Labour and Industrial Laws", Allahabad Law Agency, 2013.
2. S.K. Puri, "Labour and Industrial Law", Allahabad Law Agency, 2015.
3. S N Misra, "Labour and Industrial Laws", Central Law Publications, Allahabad, 2014.

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## Lesson- 5

### Payment of Bonus Act, 1965

#### 5.0. Objective of the Lesson

The objective of the lesson is to discuss the importance of bonus, full bench formula and the provisions relating to the Payment of Bonus Act, 1965.

#### Structure

##### 5.1. Introduction

##### 5.2. Full Bench Formula

##### 5.3. Bonus under Payment of Bonus Act, 1965

##### 5.4. Summary

##### 5.5. Technical Terms

##### 5.6. Self Assessment Questions

##### 5.7. Reference Books

#### 5.1. Introduction

Bonus is a cash payment made to employees in addition to wages. In our country bonus was for the first time granted to the employees in textile industry in July, 1917 which was known as "war bonus" because an increase in wages was allowed owing to war conditions. That is, after the First world war there was a demand from the workers to increase the wages as there was increase in the cost of living. So for the first time by way of deferred wages the bonus was given to workers. Later, it has been recognized as the right of the workers to get a share in the profits of the industry as they are contributing for the prosperity of the industry in the form of bonus apart from wages. Thus, bonus is not an ex-gratia payment but it is considered as the right of the workmen to share a part of the profits as they have contributed to the earnings of the industrial concerns. The question of payment of bonus had been one of the main causes of industrial disputes during post independence days.

#### 5.2. Full Bench Formula

After independence the Courts in India held that bonus is a legitimate to the workers. In *Mill Owners Association v. Rastriya Mill Mazdoor Sangh* ((1952) LAC 423), Full Bench of the Labour Appellate Tribunal observed that bonus could no longer be considered as an ex-gratia payment and laid down a formula known as "Full Bench Formula". According to this formula as both labour and capital contributed to the earnings of industrial concerns, it was only fair that labour should get some benefit if there was a surplus left after meeting prior and necessary charges. The formula provided that the following prior charges should be deducted from the gross profits of an enterprise,

1. Return on paid up capital generally at the rate of six percent.
2. Return on working capital varying from two to four percent.
3. Depreciation worked out on a notional basis.

4. Rehabilitation and
5. Income tax.

After deduction of these prior charges, if surplus was left the workmen would be entitled to a share in that surplus on an equitable basis. In the absence of any surplus, however there would be no question of payment of bonus on general notions of social justice.

The Supreme Court, while approving this principle in *Muir Mill Ltd. v. Suti Mill Mazdoor Union* ((1955) 1 LLJ. 1), laid down two conditions which had to be satisfied before a demand for bonus could be justified. They are,

1. The wages fell short of the living standard and
2. The industry makes huge profits part of which is due to the contribution made by workmen in increasing production.

The demand for bonus would become an industrial claim when either or both of these conditions were satisfied.

As the Government of India had been under a constant pressure to revise the bonus formula, a Tripartite Commission was set up in 1961. The Commission was asked to consider the question of payment of bonus based on profits to employees employed in establishments. On the basis of the recommendations of the Commission the Payment of Bonus Act, 1965 was passed. Under the provisions of the Act, the payment of bonus has become a statutory obligation imposed on the employers.

### **5.3. Bonus under the Payment of Bonus Act, 1965**

**Object of the Payment of Bonus Act, 1965:** The object of the Act is to provide for payment of bonus to persons employed in certain establishments.

Broadly speaking the scheme of the Act is four dimensional,

1. To impose statutory liability upon the employer of every establishment covered by the Act to pay bonus to employees in establishment.
2. To define the principle of payment of bonus according to the prescribed formula.
3. To provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of "set-on and set-off" and
4. To provide machinery for enforcement of the liability for payment of bonus.

**Scope and Application:** This Act applies to the whole of India. Section 1 of the Act provides that the Act applies to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year. The appropriate government may after giving not less than two months notice of its intention to do so apply the provisions of the Act to any establishment employing less than twenty persons but the number of persons so specified in no case be less than ten. The Act cannot have retrospective operation.

**Establishment:** Under Section 3 of the Act if an establishment consists of different departments, undertakings or has branches, whether situated in the same place or in

different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under the Act.

But in any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branches then such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus for that year, unless such department or undertaking or branch was immediately before the commencement of the Act of that accounting year treated as part of the establishment for the purpose of computation of bonus.

**Computation of gross profits:** Under Section 4 the gross profits derived by an employer from an establishment in respect of any accounting year shall,

- (a) In case of banking company be calculated in the manner specified in the First Schedule.
- (b) In any other case, be calculated in the manner specified in the Second Schedule.

**Computation of available surplus:** According to Section 5 of the Act, the available surplus in respect of any accounting year shall be the gross profit for that year after deducting the sums referred to in Section 6.

**Sums deductible from Gross Profits:** Under Section 6, the following sums shall be deducted from the gross profits as prior charges,

- (a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income Tax Act, or in accordance with the provisions of the Agricultural Income Tax Law, as the case may be.

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation.

- (b) any amount by way of employment rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act.

- (c) subject to the provision of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year.

- (d) such further sums as are specified in respect of the employer in the Third Schedule.

**Allocable Surplus:** According to Section 2(4) 'allocable surplus' means,

- (a) in relation to an employer, being a company other than a banking company, sixty seven percent of the available surplus in an accounting year.
- (b) In any other case, sixty percent of such available surplus.

**Eligibility of Bonus:** According to Section 8 of the Act every employee who has worked in the establishment for not less than 30 days in that year shall be entitled to bonus in an accounting year.

**Eligible Employees:** Section 12 of the Act provides that employees drawing wages up to Rs.10000/ per month or less are eligible for bonus. But the bonus payable to the employee under the provisions of the Act shall be calculated as if the salary or wage is Rs. 3500.

**Disqualification of Bonus:** According to Section 9 of the Act an employee shall be disqualified from receiving bonus if he is dismissed from service for,

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises of the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment.

**Payment of Minimum Bonus:** Section 10 of the Act imposes an obligation on the employer to pay a minimum bonus to every employee which shall be 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees which ever higher, whether or not the employer has any allocable surplus (profits) in that accounting year.

Thus, the minimum bonus under the Act is a right vested in an employee. It is a statutory right of an employee and imposed a statutory liability on the employers covered by the Act to pay a minimum bonus.

**Payment of Maximum Bonus:** According to Section 11 of the Act, in respect of any accounting year if the allocable surplus exceeds the amount of minimum bonus payable to the employees under Section 10, the employer shall in lieu of such minimum bonus be bound to pay bonus which shall be an amount in proportion to the salary or wage earned by the employee during that accounting year subject to a maximum of twenty percent of such salary or wage.

**Salary o Wage:** Under Section 2(21) salary or wage is defined as all remuneration capable of being expressed in terms of money, which would, if the terms of employment express or implied were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance, but does not include remuneration for overtime work, value of house accommodation or any other allowances, commissions or concessions. It also does not include any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee for the time being in force.

In computing the allocable surplus under this Section, the amount set on or the amount set off under Section 15 shall be taken into account.

**Proportionate Reduction of Bonus in certain cases:** Under Section 13 where an employee has not worked for all the working days in an accounting year, the bonus payable to him shall be proportionately reduced.

**Computation of number of Working Days:** According to Section 14 for the purposes of Section 13, an employee shall be deemed to have worked in an establishment in an accounting year on the days which the employee has been,

- (a) laid off,
- (b) on leave with salary or wage,
- (c) absent due to temporary disablement caused by accident arising out of and in the course of employment and
- (d) on maternity leave with salary or wage.

**Set on and Set off of allocable surplus:** In any accounting year, if the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11 then the excess amount, subject to a limit of twenty percent of the total wage or salary of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus, in the manner illustrated in the Fourth Schedule.

In any accounting year, if there is no allocable surplus or if the allocable surplus falls short of the minimum amount of bonus payable to the employees in the establishment under Section 10, and there is no amount or sufficient amount carried forward and set on under sub section (1) which could be utilized for the purpose of payment of minimum bonus, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner mentioned in the Fourth Schedule.

In any accounting year if any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on and set off carried forward from the earliest accounting year shall first be taken into account.

**Adjustment of Customary or Interim Bonus against Bonus Payable under the Act:** Under Section 17, in any accounting year, if an employer,

- (a) has paid puja bonus or other customary bonus to an employee or
- (b) has paid a part of the bonus payable under this Act to an employee before the date on which such bonus becomes payable,

then the employer can deduct the amount of bonus so paid from the amount of bonus payable by him to the employee in respect of that accounting year.

**Deduction of Bonus:** Under Section 18 of the Act, when an employee is found guilty of misconduct by causing financial loss to the employer, then the employer can deduct the amount of loss from the bonus payable to the employee in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

**Time Limit for Payment of Bonus:** Section 19 of the Act provides that the amount of bonus payable to an employee under the provisions of the Act shall be paid in cash by the employer within a period of eight months from the closing of accounting year. If the employer made an application by showing sufficient reasons, the appropriate government may extend the period but the total period so extended shall not in any case exceed two years.

Where there is a dispute regarding payment of bonus pending before any authority under Section 22, the employer shall pay within a month from the date on which the award becomes enforceable or the settlement comes into operation.

**Production Bonus:** Section 31-A deals with special provision relating to payment of bonus linked with production or productivity. Under this provision where an agreement or settlement has been entered into by the employees with their employer before the commencement of the Amendment Act, 1976 or after such commencement of the amendment for payment of annual bonus linked with production or productivity instead of

bonus based on profit, then such employees shall be entitled to receive bonus due to them under such agreement or settlement.

However, such agreement or settlement whereby the employees relinquish their right to receive minimum bonus under Section 10 shall be null and void in so far as it deprives them to such right. It is also provided that such employees shall not be entitled to be paid such bonus in excess of 20 percent of the salary or wage earned by them during the relevant accounting year. This provision does not speak about other kinds of bonus. Therefore, the provision does not affect customary or traditional bonus.

**Maintenance of Registers and Records etc.:** As per Section 26 of the Act, every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may be prescribed.

**Inspectors:** Section 27 authorized the appropriate government to appoint inspectors for the purposes of the Act by issuing a notification in the Official Gazette. The inspectors are given powers to

- (i) Require an employer to furnish necessary information.
- (ii) Enter any establishment or premises for inspection.
- (iii) Examine accounts registers, other documents relating to employment of persons or payment of salary, wage or bonus.
- (iv) Discovery of documents etc.

**Penalty:** According to Section 28 of the Act, if any person contravenes the provisions of the Act or the rules made there under he shall be punishable with imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs.1000 or with both.

**Non applicability of the Act:** This Act is not applicable to employees employed by certain establishments like Life Insurance Corporation, General Insurance, Dock Yards, Red Cross, Universities, Educational Institutions, Chambers of Commerce, and Social Welfare Institutions etc. as mentioned in Section 32 of the Act.

## 5.4. Summary

Bonus is a cash payment made to employees in addition to wages. It is not an ex- gratia payment and it is considered as the right of the workmen to share a part of the profits as they have contributed to the earnings of the industrial concerns. According to Full Bench formula laid down by the courts, as both labour and capital contributed to the earnings of industrial concerns, it was only fair that labour should get some benefit if there was a surplus left after meeting prior and necessary charges. On the basis of the recommendations of the Tripartite Commission appointed by the Government, the Payment of Bonus Act, 1965 was passed imposing a statutory obligation for the payment of bonus on the employers. Every employee who has worked in the establishment for not less than 30 days in that year shall be entitled to bonus in an accounting year. The Act provides for payment of minimum bonus of 8.33 percent subject to a maximum limit of bonus up to twenty percent of the wage or salary earned during that accounting year by linking the payment of bonus with the scheme of "set-on and set- off".

### **5.5. Technical Terms**

1. Minimum bonus
2. Maximum bonus
3. Set on
4. Set off
5. Available surplus
6. Allocable surplus.

### **5.6. Self Assessment Questions**

1. What is Full Bench Formula?
2. What are the provisions relating to minimum and maximum bonus?
3. What is set on and set off?
4. Discuss the provisions relating to Payment of Bonus Act, 1965.

### **5.7. Reference Books**

1. Prof K M Pillai, "Labour and Industrial Laws", Allahabad Law Agency, 2013.
2. S.K. Puri, "Labour and Industrial Law", Allahabad Law Agency, 2015.
3. S N Misra, "Labour and Industrial Laws", Central Law Publications, Allahabad, 2014.

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## Lesson 6

# Health, Safety and Welfare of Workers

### 6.0. Objective

The objective of the lesson is to discuss the concept of labour welfare and the health, safety and welfare provisions laid down under the Factories Act, 1948 for the welfare of workers.

### Structure

#### 6.1. Introduction

#### 6.2. Concept of labour welfare

#### 6.3. Health, Safety and Welfare Provisions under the Factories Act, 1948

##### 6.3.1. Health Provisions

##### 6.3.2. Safety Provisions

##### 6.3.3. Welfare Provisions

#### 6.4. Summary

#### 6.5. Technical Terms

#### 6.6. Self Assessment Questions

#### 6.7. Reference Books

### 6.1. Introduction

The 'Laissez Faire' concept adopted by the states in the early stages of industrialisation resulted in the exploitation of the working classes and concentration of wealth in the hands of a few, poverty, slums, unhealthy and dangerous conditions of work to a vast majority became the order of the day. The conditions of work were highly miserable in factories and were injurious to the health of the workers. Absence of safety measures in the factories resulted in frequent accidents and resulted in the death or disablement of workmen. There was no limitation on the working hours and the long hours of work and inhuman conditions of work badly affected the health of the workers, especially women and children.

As against these inhuman conditions, particularly women and children, for the first time some social reformers raised their voice and as a result of which the first Factories Act was passed in 1881 and this was the first labour legislation in India. But, this Act was found inadequate; hence the workers raised their voice and waged struggles to improve their working conditions. As a result of these struggles the Factories Act was amended in 1911 to secure one weekly holiday to all workers in factories and fixed 11 hours of work per day for women with one and a half hours rest. This 1911 Factories Act was also found inadequate and hence, replaced by the Factories Act, 1934. Later, the Factories Act, 1948 was passed, as the former was found inadequate to satisfy the growing needs of labour. This Act incorporated provisions for the safety, health and welfare of workers in factories.

## 6.2. Concept of Labour Welfare

After the establishment of International Labour Organisation in 1919 and the United Nations Organisation the concept of Labour welfare gained its importance by the codification of different provisions relating to welfare of labour. In India after independence a conscious effort has been made to convert the State from 'Laissez Faire' State to a 'Welfare State' by incorporating 'Welfarism' as the basic principle of the Indian Constitution. To give effect to this basic principle several provisions relating to labour welfare has been incorporated in the Directive Principles of State Policy. Article 42 of the Constitution lays down that the State shall strive to secure provisions for just and humane conditions of work and for maternity relief.

To give effect to the constitutional principles and to look after the welfare of labour the Factories Act, 1948 was passed. According to Section 2(m) of this Act "Factory" means any establishment employing 10 or more workers where power was used and 20 or more workers in all other cases. The main object of this Act is to provide for health, safety and welfare of workers in factories and requiring the employer to make necessary provisions for these purposes. Section 7-A imposed an obligation on the occupier to take all necessary steps to ensure the health, safety and welfare of all workers while they are at work in the factory.

## 6.3. Health, Safety and Welfare Provisions under the Factories Act, 1948

The Chapter III, IV and V of the Factories Act, 1948 deals with the health, safety and welfare of the workers. Most of the recommendations of the Royal Commission relating to health and welfare of the workers are given statutory effect by the various provisions under this Act. The Act has given much accent to maintain the physical fitness and welfare of the workers by requiring certain minimum standards of occupiers to keep the factories clean and free from effluvia arising from drain privy or refuse in and around the factory premises.

### 6.3.1. Health Provisions

Chapter III of the Factories Act, 1948 from Section 11 to 20 deals with Health provisions.

**Cleanliness:** Under section 11, every factory shall be kept clean, free from effluvia arising from drain privy or other nuisance. The accumulation of dirt and refuse shall be removed daily by sweeping or other effective method. The floor of every work room shall be cleaned at least once in a week, by washing with disinfectants or by other effective methods. The walls and all sleeves and staircases shall be repainted or re-varnished at least once in every period of five years. Where they are painted with washable water-paint, the repaint must be done at least once in every period of three years.

The walls must be whitewashed once in every 14 months. The doors and window frames must be kept painted or varnished once in 5 yrs. If the occupier finds it not comfortable to comply with the requirements due to any justifiable reasons, he must seek exemption from the state government specifying the alternative methods to keep the factory in a clean state.

**Disposal of Waste and Effluents:** Section 12 lays down that the occupier is required to make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on, so as to render them innocuous, and for their disposal.

**Ventilation and Temperature:** According to Section 13 it is the duty of the occupier to provide effective and suitable provisions in the factory to secure and maintain in every work room adequate ventilation by circulation of fresh air which will secure to the workers reasonable conditions of comfort and prevent injury to the health.

The walls and roofs shall be of the material as to maintain the temperature as low as possible. Where the nature of work involves the production of high temperatures, adequate measures shall be taken to protect workers from it by separating the process which produces such temperature from the work room, by insulating the hot parts or by other effective means. The standards and rules prescribed in this regard by the Government must be observed by the occupier.

**Dust and fumes:** Section 14 of the Act lays down that the dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers arising due to the manufacturing process must be diverted by effective measures so as to prevent dust inhalation and accumulation in any work room. An exhaust appliance or other safeguards must be used for this.

**Artificial humidification:** Section 15 lays down that all factories in which the humidity of air is artificially increased, the State Government may, by rules prescribe the standards of humidification, the regulating methods for artificially increasing the humidity of air and prescribing the methods for adequate ventilation and cooling of air in the work rooms. The provision also demands the purification and also empowers the Factory Inspector to have a close check in this regard.

**Overcrowding:** Section 16 prohibits the overcrowding of workers as to be injurious to their health. For every worker in the factory, the workroom in the existence on the date of the commencement of the Act must have at least 350sq.ft and a factory built after the commencement of the Act must have at least 500sq.ft as space. Only with the specific order of the Chief Inspector, the occupier can get exemption from this minimum space condition.

**Lighting:** Section 17 requires the maintenance of sufficient and suitable lighting whether natural or artificial or both. It also provides for the prevention of glare either directly from the source of light or by reflection or smooth surfaces or the formations of shadows so as to cause an eye strain or the risk of accident to any worker.

**Drinking water:** Section 18 of the Act demands effective arrangements in the factory to provide and maintain at suitable points, sufficient supply of pure drinking water to the workers. No such point shall be situated within 6 metres of any washing place, urinals, latrines, spittoon, and open drain carrying sullage or effluent or any other source of contamination, in the absence of approval by the Chief Inspector. In every factory where more than 250 workers are ordinarily employed, provisions have been made for cooling the drinking water during hot season.

**Latrine and Urinals:** Section 19 requires every factory to provide sufficient latrine and urinal accommodation conveniently situated and easily accessible to workers at all times while they are at the factory. A separate accommodation shall be adequately lighted and ventilated. All such accommodation shall be in clean and sanitary conditions at all times. The sweepers have to be employed with a primary duty to keep them clean. The latrines and urinals shall be washed and cleaned at least once in seven days with suitable detergents and disinfectants.

**Spittoons:** Section 20 provides that every factory shall provide spittoon facilities in convenient places in clean and hygienic conditions. The management may prohibit spitting in any other places except in spittoons by displaying the notice at suitable places. Any worker who contravenes this may be punished with a fine not exceeding Rs.5.

### 6.3.2. Safety Provisions

**Safety arrangements in the factory:** The Act has provided elaborate provisions to safeguard the health and life of the workers working with machines. The precautions regarding the installation of machinery, operation thereto, the quality of the machines and other mechanical device, etc., are dealt with detail under the Act. Sections 21 to 40 of the Factories Act, 1948 deals with the safety provisions.

**Fencing of machinery:** Section 21 of the Act provides that in every factory where parts of the machinery are in motion due to the work, proper fencing must be provided for every moving part of a

prime mover, every free wheel connected to the prime mover, every head race and tail race of every water wheel and turbines etc. Further, fencing is required for every part of electric generator, motor or rotary converter, every part of transmission machinery and every dangerous part of any other machine. The occupier or the manager will be liable if proper fencing is not effected to such moving or dangerous machines.

**Dangerous part of Machinery:** The law requires that every dangerous part of machinery must be securely fenced.

**Work on or near moving machinery:** Under Section 22, only a specially trained male adult worker wearing tight fitting clothes and whose name is entered in the prescribed register can be engaged to examine any part of the machinery referred to in Section 21 while it is motion. Such worker shall not handle a belt at a moving pulley unless the belt is less than 6 inches. The section prohibits the engaging of any woman or young person to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the women or young person to injury from any moving part either of that machinery or any adjacent machinery.

**Employment of Young Persons on Dangerous Machine:** Section 23 prohibits employment of a young person to work at any machine unless he is fully instructed as to the dangers arising there from and he is given sufficient training to work at such machine or he is under adequate supervision by a person who has thorough knowledge and experience of that machine.

**Provisions for striking gear and devices for cutting of power:** Section 24 of the Act provides that in every factory, suitable striking gear or other efficient mechanical appliance shall be provided and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery. Such gear or appliance shall be constructed, placed and maintained so as to prevent the belt from creeping back. Further devices for cutting power in emergency shall be provided and maintained in every room.

**Self Acting Machines:** Section 25 of the Act also secures the safety by requiring sufficient space for the workers to operate any self acting machinery. The employer who does not comply with these safety measures will be liable as it is a case of employment injury.

**Casing of new machinery:** Section 26 provides that all machinery driven by power shall be properly encased or otherwise effectively guarded so as to prevent any danger.

**Women and children prohibited from certain works:** Section 27 lays down that women or children shall not be employed in any factory for pressing cotton in which a cotton opener is at work.

**Hoists and Lifts:** Section 28 requires that every hoist and lift in the factory shall be in good mechanical condition and of sound material and adequate strength. They must be properly maintained and periodically examined every 6months by a competent person and register of every such examination shall be maintained. Every hoist way and lift shall be sufficiently protected by enclosures and the maximum safe working load shall be marked on every hoist and lift.

**Precautions relating to lifting machines, chains, ropes and lifting tackles:** Section 29 provides that in every factory, the lifting machines, chains, ropes and lifting tackles for the purpose of raising persons, goods and material shall be of good construction, sound material, and adequate strength and free from defects. They must be properly maintained and examined by a competent person once in every 12months. The safe loading weight must be marked and must not be allowed to exceed that mark. The effective measures shall be taken to ensure that the crane does not approach within 20feet of any worker working on or near the wheel track of a travelling crane.

**Revolving Machinery:** According to Section 30 certain safety measures shall be taken in rooms where revolving machines are installed and operated upon. The occupier must ensure that the safe working peripheral speed of every revolving machinery is not exceeded.

**Pressure Plant:** Section 31 lays down that if in any factory, any plant or machinery is operated at a pressure above the atmospheric pressure effective measures shall be taken to ensure that the safe working pressure of such plant or machinery is not exceeded.

**Maintenance of floors, staircase and motions of access:** Section 32 provides that the occupiers of the factory are obliged to take precautions in the construction and maintenance of all floors, staircase, passages, gangways so as to ensure safety of the life and limbs of the workers.

**Pits, sumps, opening in floors etc.:** Section 33 provides that in every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor may be a source of danger shall be either securely fenced or covered.

**Prohibition of Employment in certain jobs:** Section 34 lays down that no person shall be employed in a factory to lift, carry or move any load so heavy as to likely to cause him injury. The state government may prescribe by rules, the maximum weight that may be lifted carried or moved by adult women, adolescents, children employed in a factory or in any class of factories or in any specified processes. The state govt. May by rules require effective screens or suitable goggles for the protection of persons in or near the vicinity of any process which involves a risk of injury to the eyes from the particles or fragments thrown off in the process or which involves a risk of eye injury due to exposure to excessive light.

**Protection of Eyes:** Section 35 provides that effective screens or suitable goggles shall be provided for the persons employed on or in the vicinity of the process, provided such process involves risk of injury to the eyes from particles thrown off in the course of the process or risk to the eyes by reason of exposure to excessive light.

**Precautions against dangerous fumes, explosives or inflammable dust and gas:** Section 36 prohibits entry or permission to enter any chamber, tank, vat, pit, pipe, flue or any confined space in which dangerous fumes are likely to be present to such an extent as to involve risk of life, unless it is provided with a manhole of adequate size or any other means of egress.

**Precautions regarding the use of portable electric light:-** Section 36-A prohibits the use of portable electric light or any electrical appliance inside any chamber, tank, vat, pit, pipe, flue or any confined space, of voltage exceeding 24volts, unless adequate safety measures are provided.

**Explosive or inflammable dust, gas etc.:** Section 37 provides that all practicable measures shall be taken to prevent explosion due to the dust, gas, fumes or vapour produced during the manufacturing process by effective enclosure of the machinery or plant used in the process or removal or prevention of accumulation of such dust, gas, fume or vapour and by exclusion or effective enclosure of all possible sources of ignition.

**Precautions in case of fire:** Section 38 demands that all practicable measures shall be taken to prevent the outbreak of fire and its spread, both internally and externally. The section also provides certain precautions against fire to be taken by every occupier of a factory and there shall be provision of adequate means of escape in case of fire. It is the duty of the Factory Inspector to verify and implement the safety measures in every factory.

**Power to require specifications of Defective parts or test of liability:** Under Section 39 if it appears to the inspector, any building or part of the building or ways or machinery or plant in a factory is in such a condition that it is dangerous to human life or safety he may serve an order in writing on the occupier or manager or both of the factory requiring him before a specified date to furnish drawings, specifications and other particulars necessary to determine whether such building , ways or machinery or plant can be used with safety or to carry out such tests specified in the order and inform the inspector of the results thereof.

**Safety of Building and Machinery:** Under Section 40 if it appears to the inspector any building or part of the building or ways or machinery or plant in a factory is in such a condition that it is dangerous to human life or safety he may serve an order in writing on the occupier or manager or both of the factory specifying the measures to be taken or prohibiting its use until it has been properly repaired or altered.

**Maintenance of building:** Section 40-A lays down that the inspector, if it appears to him that any building or any part of the building is in state of disrepair which may lead to the conditions detrimental to the health and welfare of the workers, may serve an order on the manager or occupier specifying the measures required to be taken before any date mentioned therein.

**Appointment of safety officers:** Section 40-B provides that where in a factory 1000 or more workers are ordinarily employed or employed in a manufacturing process, which processes or operation involves any bodily risk, injury, poisoning or diseases or any health hazard, the State Government may by order specify the employment of safety officers as prescribed in the notification.

### 6.3.3. Welfare Provisions

Section 42 to 49 of Chapter V provides for certain uniform standards for welfare of industrial labour. The various facilities for washing, storing, drying clothes and first aid are made compulsory in all factories. Similarly, certain amenities like canteen, crèches, shelter rooms, appointment of welfare officers are made applicable for only factories employing over the specified number of workers. On the whole the provisions are intended to provide a congenial and homely atmosphere in place of work and the occupier is legally bound to provide all such welfare measures.

**Washing facilities:** Section 42 provides that every factory shall provide adequate and suitable facilities for washing purposes of the workers. It must be separate for males and females. Such facilities shall be conveniently placed and kept clean. The Government may by rules prescribe the standards of adequate and suitable washing facilities.

**Facilities for Storing and drying clothing:** Under Section 43 State government is empowered to make rules in respect of any factory or factories requiring the employer to provide suitable places for keeping clothing not worn during working hours and for drying of wet clothing..

**Sitting facilities:** Section 44 provides that in every factory suitable arrangements for sitting shall be provided and maintained for all workers who are obliged to work in a standing position to take rest, in the course of work.

**First aid appliances:** Section 45 provides that every factory shall provide and maintain during all working hours, first aid boxes or cupboards with prescribed contents and there shall be one such box for every 150 workers ordinarily employed at one time in the factory.

**Canteen facilities:** Under Section 46 where more than 250 workers are ordinarily employed in a factory, a canteen or canteens shall be provided and maintained by the occupier for the sake of workers.

**Shelters, Rest rooms and Lunch rooms:** Section 47 makes it obligatory for every occupier of a factory with more than 150 workers ordinarily employed, to provide adequate and suitable means of shelter rooms or rest rooms and lunch rooms with provision of drinking water where workers can eat their meals. Such rooms shall be properly lighted and ventilated and maintained in a cool and clean condition.

**Crèches:** Under Section 48 every factory with more than 30 women workers shall provide and maintain a suitable room or rooms for use of children below 6yrs of women workers.. The service of well trained women to take care of children and infants must be provided at such places.

**Welfare Officers:** Section 49 provides that the welfare officers with a duty to look after the welfare of the workers are required to be appointed by employer of every factory with 500 or more than 500 workers.

## 6.4. Summary

The 'Laissez Faire' concept adopted by the states in the early stages of industrialisation resulted in the exploitation of the working classes. The conditions of work were highly miserable in factories and were injurious to the health of the workers. Absence of safety measures in the factories resulted in frequent accidents and resulted in the death or disablement of workmen. There was no limitation on the working hours and the long hours of work and inhuman conditions of work badly affected the health of the workers, especially women and children. So to look after the welfare of labour the Factories Act, 1948 was passed and this Act incorporated provisions for the safety, health and welfare of workers in factories. The Chapter III, IV and V of the Factories Act, 1948 deals with the health, safety and welfare of the workers. Most of the recommendations of the Royal Commission relating to health and welfare of the workers are given statutory effect by the various provisions under this Act. The Act has given much accent to maintain the physical fitness and welfare of the workers by requiring certain minimum standards of occupiers to keep the factories clean and free from effluvia arising from drain privy or refuse in and around the factory premises.

## 6.5. Technical Terms

1. Health.
2. Safety.
3. Welfare.
4. Occupier.
5. Factory.

## 6.6. Self Assessment Questions

1. Discuss the Health provisions under the Factories Act, 1948.
2. Discuss the Safety provisions under the Factories Act, 1948.
3. Discuss the Welfare provisions under the Factories Act, 1948.

## 6.7. Reference Books

1. Prof K M Pillai, "Labour and Industrial Laws", Allahabad Law Agency, 2013.
2. S.K. Puri, "Labour and Industrial Law", Allahabad Law Agency, 2015.
3. S N Misra, "Labour and Industrial Laws", Central Law Publications, Allahabad, 2014.

## Lesson-7

# Dearness Allowance

### 7.0. Objective of the Lesson

The objective of the lesson is to discuss the concept of Dearness Allowance and fixation and revision of Dearness Allowance.

### Structure

- 7.1. Introduction
- 7.2. Basic wage and Dearness Allowance
- 7.3. Fixation and Revision of Dearness Allowance
- 7.4. Summary
- 7.5. Technical Terms
- 7.6. Self Assessment Questions
- 7.7. Reference Books

### 7.1. Introduction

In a labour surplus economy like India wages could not be left to be determined entirely by forces of demand and supply as it would lead to the fixation of wages at a very low level resulting in exploitation of the working class. Keeping this in view, the Government of India enacted the Minimum Wages Act, 1948. The purpose of the Act is to provide that no employer shall pay to workers in certain categories of employments wages at a rate less than the minimum wage prescribed by notification under the Act. The Act provides for fixation and revision of minimum wages in employments where the labour is vulnerable to exploitation. Under the Act, the appropriate Government, both Central and State Governments can fix and revise the minimum wages in such scheduled employments falling in their respective jurisdiction.

The minimum wage consists of a basic wage and an allowance linked to the cost of living index and is to be paid in cash. This cost of living allowance is known as the Dearness Allowance. Dearness Allowance (DA) is a compensatory payment to the employees for the erosion in the real value of their salaries, resulting from price increase. The Dearness Allowance was for the first time introduced following the Second World War, as there was increase in the cost of living index and was then known as the "Dear Food Allowance". Initially DA was given in response to demand of employees for wage revision, however later it was linked to Consumer Price Index.

### 7.2. Basic Wage and Dearness Allowance

The wages of an employee normally contains a basic wage, dearness allowance and house rent allowance.

**Basic Wage:** The concept of basic wage is contained in the report of the Fair Wages Committee. According to this Committee, the floor of the basic pay is the “minimum wage” which provides “not merely for the bare sustenance of life but for the preservation of the efficiency of the workers by providing some measure of education, medical requirements and amenities.” The basic wage has been the most stable and fixed as compared to dearness allowance which usually change with movements in the cost of living index and the performance of the industry.

**Dearness Allowance:** The Dearness Allowance (DA) is a cost of living adjustment allowance paid to employees in India. Dearness Allowance is calculated as a percentage of an employee's basic salary to mitigate the impact of inflation on people. Employees may receive a basic salary that is then supplemented by a dearness allowance or house rent allowance or both. The guidelines that govern the DA vary according to where the employee lives, that is, in rural or urban area. Pensioners and the family pensioners are also granted D.A. against the price rise.

In the context of a changing pattern of prices and consumption, real wages of the workmen are likely to fluctuate greatly. Ultimately, it is the goods and services that a worker buys with the help of wages that are an important consideration for him. The real wages of the workmen thus, require to be protected when there is a rise in prices and a consequent increase in the cost of living by suitable adjustments in these wages. In foreign countries, these adjustments in wages are effected automatically with the rise or fall in the cost of living.

### 7.3. Fixation and Revision of Dearness Allowance

According to Section 4 of the Minimum Wages Act, 1948 the minimum rate of wages fixed or revised by the Appropriate Government may consist of,

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to workers ( which is also known as cost of living allowance or dearness allowance) or
- (ii) a basic rate of wages with or without cost of living allowance and the cash value of concessions in respect of supplies of essential commodities at concessional rates; or
- (iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any.

According to Section 5 of the Minimum Wages Act, 1948, the minimum wages with basic wage and cost of living allowance shall be fixed or revised by the appropriate government by two methods, either by Committee method or by Notification method. The fixation of wage structure also includes within its compass a fixation of rates of dearness allowance.

The cost of living allowance and cash value of the concession in respect of supplies of essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such direction as may be specified by the appropriate Government.

This special allowance is a variable amount forming part of the wages, being linked with the cost of living index number. The minimum wage may consist of basic wages and a special

allowance to be adjusted with variations with increase or decrease in basic wages when question of neutralization of cost of living arises by payment of dearness allowance. The question of payment of dearness allowance would arise only if basic wages fixed falls short of the minimum wage which the State Government has to fix taking into consideration the needs of the workers family consisting of three consumption units.

In India, the system of dearness allowance is a special feature of the wage system for adjustment of the wages when there are frequent fluctuations in the cost of living. In our country, at present, there are several systems of paying dearness allowance to the employees to meet the changes in the cost of living. In practice, they differ from place to place and industry to industry. One of the methods of paying dearness allowance is by a flat rate, under which a fixed amount is paid to all categories of workers, irrespective of their wage scales. The second method is its linkage with consumer price index numbers published periodically by the government. It indicates the changes in the prices of a fixed basket of goods and services customarily bought by the families of workers. In other words, the index shows the rise or falls in the cost of living due to a rise or fall in consumer prices.

The Consumer Price Index (CPI) is a monthly index published by the Bureau of Labour Statistics. The CPI is compiled by price data collected throughout the country for a fixed set of goods, such as food, clothing, shelter, fuels, prescriptions, transportation fares, and medical fees. The CPI is important as a predictor of wage increases and of employees' need for greater income.

The third method of paying dearness allowance is on a graduated scale according to slabs. Under this method, workers are divided into groups according to the slabs of wage scales to whom fixed amounts of dearness allowance are paid on a graduated scale. After a limit, there will not be any increase in the amount of dearness allowance at all, however high the wage rate may be. This method is popular because it is convenient and also considered to be equitable.

**Variable Dearness Allowance:** It was recommended in the Labour Minister's Conference held in 1988 to evolve a mechanism to protect wages against inflation by linking it to rise in the consumer price index. This Variable Dearness Allowance came into being in 1991. This allowance has to be revised twice a year. DA rates for Government employees are to be announced half yearly which will be applicable from first January and First July.

DA rates are fixed on the basis of All India Consumer Price Index (AICPI) for industrial workers with Base year as 2001. Most Public Sector Companies, as well as Govt. Organizations and Departments use the following method for the calculation of DA.

DA = (Average of AICPI for past 12 Months – 115.76)

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X 100 = Percentage increase in prices (ignore decimals)

115.76

## 7.4. Summary

The minimum wage consists of a basic wage and an allowance linked to the cost of living index. This cost of living allowance is known as the Dearness Allowance. The Dearness Allowance (DA) is a cost of living adjustment allowance paid to employees in India. Dearness Allowance is calculated as a percentage of an employee's basic salary to mitigate the impact of inflation on people. Employees may receive a basic salary, supplemented by a dearness allowance or house rent allowance or both. The guidelines that govern the DA vary according to where the employee lives, that is, in rural or urban area. The minimum wages with basic wage and cost of living allowance shall be fixed or revised by the appropriate government at regular intervals. DA rates are fixed on the basis of All India Consumer Price Index (AICPI) for industrial workers.

## 7.5. Technical Terms

1. Basic wage
2. Dearness allowance
3. Cost of living index

## 7.6. Self Assessment Questions

1. What is basic wage and dearness allowance?
2. When the dearness allowance will be revised?

## 7.7. Reference Books

1. Prof K M Pillai, "Labour and Industrial Laws", Allahabad Law Agency, 2013.
2. S N Misra, "Labour and Industrial Laws", Central Law Publications, Allahabad, 2014.
3. <http://www.centralgovernmentnews.com>

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## Lesson 8

# Shops and Establishments

### 8.0. Objective

The objective of the lesson is to discuss the provisions relating to regulation of conditions of work and employment of persons employed in shops and establishments.

### Structure

#### 8.1. Introduction

#### 8.2. Andhra Pradesh Shops and Establishments Act, 1988

#### 8.3. Definition of Shop and Establishment

#### 8.4. Working Hours and Holidays in Shops and Establishments

#### 8.5. Employment of women, Children and Young Persons

#### 8.6. Health, Safety and Leaves

#### 8.7. Wages and Conditions of Employment

#### 8.8. Summary

#### 8.9. Technical Terms

#### 8.10. Self Assessment Questions

#### 8.11. Reference Books

### 8.1. Introduction

The Shops and Establishments in India are regulated by the Shops and Establishments Act, enacted by the states and there is no central legislation to regulate the shops and establishments. All the shops and commercial establishments operating within each state are covered by the Shops & Establishments Act of the concerned State. Andhra Pradesh Shops and Establishments Act, 1988 was passed in Andhra Pradesh to regulate different aspects such as the payment of wages, hours of work, leave, holidays, terms of service and other work conditions of persons employed in shops and commercial establishments.

### 8.2. Andhra Pradesh Shops and Establishments Act, 1988

The object of the Act is to consolidate and amend the law relating to the regulation of conditions of work and employment in Shops, Commercial Establishments, Restaurants, Theatres and other establishments and for matters connected therewith. This Act regulates areas such as working hours, rest interval for employees, opening and closing hours, weekly holidays, national and religious holidays, overtime work, rules for employment of children and women, annual leave, maternity leave, sickness and casual leave, etc.

### 8.3. Definition of Shop and Establishment

**Shop:** According to Section 2(21) shop means any premises where any trade or business is carried on or where services are rendered to customers and includes a shop run by a co-operative society, an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise, used in connection with such trade or business and such other establishments as the Government may, by notification, declare to be a shop for the purposes of this Act, but does not include a commercial establishment.

**Establishment:** According to Section 2(10) establishment means a shop, restaurant, eating house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial establishment and such other establishment as the Government may, by notification, declare to be an establishment for the purpose of this Act.

However, factories are not covered by the Shops & Establishments Act and are regulated by the Factories Act, 1948.

### 8.4. Hours of Work and Holidays in Shops and Establishments

**8.4.1. Shops:** Chapter III of the Act deals with provisions relating to hours of work, opening and closing hours of shops, holidays, overtime work etc and the provisions of this Chapter are applicable only to shops.

**Section 7. Opening and closing hours of shops:** (1) No shop shall on any day be opened earlier or closed later than such hour as may, after previous publication, be fixed by the Government by a general or special order in that behalf.

(2) The Government may, for the purposes of this section, fix different hours for different classes of shops or for different areas or for different time of the year.

**Section 8. Selling outside prohibited before opening and after closing hours of shops:** No person shall carry on, in or adjacent to, a street or public place, the sale of any goods, before the opening and after the closing hours fixed under Section 7 for the shops dealing in any kind of goods in the locality in which such street or public place is situated. But, this section shall not apply to the sale of newspapers, flowers, pan, vegetables, fruits and such other goods as the Government may, by notification, specify from time to time.

**Section 9. Daily and weekly hours of work in shops:** (1) Subject to other provisions of this Act, no employee in any shop shall be required or allowed to work therein for more than eight hours in any day and forty eight hours in any week.

(2) Any employee may be required or allowed to work in a shop for any period in excess of the limit fixed under sub section (1), on payment of overtime wages, subject to a maximum period of six hours in a week.

(3) For the purpose of stock taking and preparation of accounts, an employer may, with the previous intimation to the Inspector, require or allow any employee to work in a shop for not more than any six days in a year in excess of the period fixed in sub section (1), on payment of

overtime wages; so however, that the excess period shall not in aggregate exceed twenty four hours.

**Section 10.Interval for rest:** No employee in any shop shall be required or allowed to work therein for more than five hours in any day unless he has had an interval for rest of at least one hour.

**Section 11.Spread over periods of work:** The periods of work of an employee in a shop shall be so arranged that along with his intervals for rest, they shall not be spread over for more than twelve hours in any day. Where an employee works on any day for the purpose of stock taking and preparation of accounts, the spread over shall not exceed fourteen hours in any such day on payment of overtime wages.

**Section 12.Closing of shops and grant of holidays:** (1) Every shop, whether with or without employees, shall remain closed on every Sunday which shall be a holiday for every employee in the shop. The Chief Inspector may, by notification, specify in respect of any shop or class of shops or in respect of shops or class of shops in any area any day in the week instead of Sunday on which day such shop or class of shops shall remain closed.

(2) (a) The Chief Inspector may, by notification, require in respect of any specified class of shops that they shall in addition to the weekly holiday mentioned in sub section (1), be closed for one half day in a week, as may be fixed by the Government;

(b) Every employee in any shop to which a notification under Clause (a) applies, shall be allowed in each week an additional holiday of one half day fixed for the closing of the shop under Clause (a).

(3) The Chief Inspector may, for the purposes of sub section (2), fix different hours for different classes of shops or for different areas or for different times of the year.

(4) The weekly day on which a shop is closed in pursuance of a requirement under sub section (2) shall be specified by the employer in a notice prominently exhibited in a conspicuous place in the shop.

(5) It shall not be lawful for the employer to call an employee at or for the employee to go to his shop or any place for any work in connection with the business of his shop on any day or part of the day on which it has remained closed.

(6) No deduction shall be made from the wages of any employee in a shop on account of any day or part of a day on which it has remained closed and if such employee is employed on the basis that he would not ordinarily receive wages for such day or part of a day he shall nonetheless be paid for such day or part of a day the wages he would have drawn had the shop not remained closed, or had the holiday not been allowed, on that day or part of a day.

**Section 13.Closing of shops in public interest during special occasions:** In addition to the holidays mentioned in Section 12, the Chief Inspector may, by notification, and with the previous approval of the Government, require in respect of any specified class of shops that they shall be closed on any specified day or days in the public interest.

**8.4.2. Establishments other than Shops:** Chapter IV of the Act deals with provisions relating to hours of work, opening and closing hours of establishments, holidays, overtime work etc and the provisions of this Chapter are applicable only to establishments.

**Section 14. Application of this Chapter to establishments other than shops:** The provisions of Chapter IV shall apply only to establishments other than shops.

**Section 15. Opening and closing hours:** (1) No establishment shall on any day be opened earlier, or closed later, than such hour as may, after previous publication, be fixed by the Government by general or special order in that behalf. In the case of a restaurant or eating house, any customer who was being served or was waiting to be served therein at the hour fixed for its closing may be served during the quarter of an hour immediately following such hour.

(2) The Government may, for the purpose of this section, fix different hours for different classes of establishments or for different areas or for different times of the year.

**Section 16. Daily and weekly hours of work:** (1) Subject to the provisions of this Act, no employee in any establishment shall be required or allowed to work therein for more than eight hours in any day and forty eight hours in any week.

(2) Any employee may be required or allowed to work in an establishment for any period in excess of the limit fixed under sub section (1), on payment of overtime wages, subject to a maximum period of six hours in any week.

(3) For the purposes of stock taking and preparation of accounts, an employer may, with the previous intimation to the Inspector, require or allow any employee to work in an establishment for not more than any six days in a year in excess of the period fixed in sub section (1) on payment of overtime wages, so however, that the excess period shall not, in the aggregate, exceed twenty four hours.

**Section 17. Interval for rest:** No employee in any establishment shall be required or allowed to work in such establishment for more than five hours in any day unless he has had an interval for rest of at least one hour. The Chief Inspector may, in the case of an establishment whose daily hours of work are less than eight hours, reduce interval for rest to half an hour on an application made by the employer, with the consent of the employees.

**Section 18. Spread over of periods of work:** The periods of work of an employee in an establishment shall be so arranged that, along with his interval for rest, they shall not spread over for more than twelve hours on any day. Where an employee works on any day for the purpose of stock taking and preparation of accounts the spread over shall not exceed fourteen hours on any such day on payment of over time wage.

**Section 19. Holidays:** (1) Every employee in any establishment shall be allowed in each week a holiday of one whole day.

(2) The Government may, by notification, require in respect of any specified class of establishments that every employee therein shall be allowed in each week an additional holiday of one half day commencing at such hour in the afternoon as may be fixed by the Government.

(3) The Government may, for the purposes of sub section (2) fix different hours for different classes of establishments or for different areas or for different times of the year.

(4) No deduction shall be made from the wages of any employee in an establishment on account of any day or part of a day on which a holiday has been allowed in accordance with this section and if such employee is employed on the basis that he would not ordinarily receive wages for such day or part of a day, he shall nonetheless be paid for such day or part of a day the wages he would have drawn, had the holiday not been allowed on that day or part of a day.

(5) It shall not be lawful for the employer to call an employee at or for the employee to go to, his establishment or any other place for any work in connection with the business of his establishment on any day or part of a day on which a holiday has been allowed in accordance with this section.

## 8.5. Employment of Women, Children and Young Persons

Chapter V of the Act deals with provisions relating to conditions of employment of women, children and young persons.

**Section 20.Children not to work in establishment:** No child shall be required or allowed to work in any establishment. Section 2(3) of the Act defines a 'child' as a person who has not completed fourteen years of age.

**Section 21.Special provision for young persons:** No young person shall be required or allowed to work in establishment before 6 a.m. and after 7 p.m. Section 2(25) defines 'young person' as a person who is not a child and has not completed eighteen years of age.

**Section 22.Daily and weekly hours of work for young persons:** No young person shall be required or allowed to work in any establishment for more than 7 hours in any day and forty two hours in any week nor shall such person be allowed to work overtime.

**Section 23.Special provision for women:** No Woman employee shall be required or allowed to work in any establishment before 6 00 a.m. and after 8 30 p.m.

**Section 24.Maternity leave:** The periods of absence from duty in respect of which a woman employee is entitled to maternity benefit under Section 25, shall be treated as authorised absence from duty, and the woman employee shall be entitled to maternity benefit, but not to any wages for any of those periods.

**Section 25.Maternity Benefit:** Every woman who has been for a period of not less than six months preceding the date of her delivery in continuous employment of the same employer whether in the same or different shops or commercial establishments, shall be entitled to receive maternity benefit from her employer for the period of

(a) six weeks immediately preceding the day of delivery; and

(b) six weeks following the day of delivery in such manner as may be prescribed:

But, no woman employee shall be entitled to receive such benefit for any day during any of the aforesaid periods, on which she attends work and receive wages therefor.

## **8.6. Health, Safety and Leaves**

### **8.6.1. Health and Safety Provisions**

Chapter VI of the Act deals with health and safety provisions.

**Section 26.Cleanliness:** The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed.

**Section 27.Ventilation:** The premises of every establishment shall be ventilated in accordance with the laws of the municipalities, Gram Panchayats or other local authorities for the time being in force.

**Section 28.Precautions for the safety of employees in establishments:** (1) In every establishment other than such establishment or class of establishments as the Governments may, by notification, specify, such precautions against fire shall be taken as may be prescribed.

(2) If power driven machinery is used, or any process which, in the opinion of the Government, is likely to expose any employee to a serious risk of bodily injury is carried on in any establishment, such precautions including the keeping of first aid box shall be taken by the employer for the safety of the employees as may be prescribed.

**Section 29.Maximum permissible load:** (1) No employee in any establishment shall be required or allowed to engage in the manual transport of a load, which by reason of its weight is likely to affect his health or safety. The term manual transport of a load means any transport in which the weight of the load is wholly borne by one employee, inclusive of the lifting and putting down of load.

(2) The Government may, for the purposes of this section prescribe different maximum limits of weight, for different classes of employees in any establishment.

### **8.6.2 Leave and Holidays with Wages and Insurance Scheme for Employees**

Chapter VII of the Act deals with the provisions relating to leaves and holidays with wages.

**Section 30.Leave:** (1) Every employee who has served for a period of two hundred and forty days or more during a continuous period of twelve months in any establishment shall be entitled during the subsequent period of twelve months, to leave with wages for a period of fifteen days, provided that such leave with wages may be accumulated upto a maximum period of sixty days. Every employee in any shop or establishment shall be entitled for encashment of the leave with wages for a period of eight days in every year.

(2) An employee may apply in writing to the employer, not less than seven full working days before the date of availing himself of his leave, to allow all the leave or any portion thereof, to which he is entitled under sub section (1).

The number of installments for taking leave shall not exceed three during a period of twelve months.

(3) An employee who has been allowed leave for not less than five days under sub section (2) shall, before his leave begins be paid the wages due for the period of the leave allowed if he makes a request there for.

(4) Every employee who has served for a period of not less than two hundred and forty days during a continuous period of twelve months in any establishment shall be entitled for encashment of eight days of leave with wages that has accrued to him under sub section (1) during the subsequent period of twelve months. The employer shall pay to the employee the wages for the leave so encashed by the employee within a week of receipt of the application for such encashment from the employee.

(5) Every employee in any establishment shall also be entitled during his first twelve months of continuous service and during every subsequent twelve months of service (a) to leave with wages for a period not exceeding twelve days on the ground of any sickness or accident and (b) to casual leave with wages for a period not exceeding twelve days on any reasonable ground.

(6) Every employee in an establishment after he has put in not less than two years of service under the same employer, shall also be entitled for special casual leave not exceeding six days only once during his entire service, if he has undergone vasectomy or tubectomy operation, subject to the production of a certificate therefor from an authorised medical practitioner under whom he has undergone the operation.

(7) If any employee entitled to any leave under sub section (1) is discharged by his employer before he has been allowed such leave, or if the leave applied for by such employee has been refused and if he quits his employment before he has been allowed the leave, the employer shall pay him the amount, payable under this Act, in respect of the period of leave.

(8) If an employee is lawfully discharged by his employer when he is sick or suffering from the result of an accident the employer shall pay him the amount payable under this Act in respect of the period of leave to which he was entitled at the time of his discharge in addition to the amount, if any, payable to him under sub section (3).

(9) An employee in a hostel attached to a school or college or in an establishment maintained in connection with the boarding and lodging of pupils and resident masters, shall be allowed the privileges referred to in sub sections (1) to (8), reduced however proportionately to the period for which he was employed continuously in the previous year or to the period for which he will be employed continuously in the current year, as the case may be; and all references to the periods of leave in sub sections (1) and (5) shall be construed accordingly, fractions of less than half a day being disregarded.

**Section 31. Other holidays:** (1) Every employee in any establishment shall also be entitled to nine holidays in a year with wages on the days to be specified by notification from time to time, by the Government which shall include the 26th January (Republic day), 1st May, (May Day),

15th August (Independence Day) 2nd October (Gandhi Jayanthi) and on every such holiday, all the establishments, either with or without employees, shall remain closed.

(2) The Chief Inspector may, having due regard to any emergency or special circumstances prevailing in the State or any part thereof, notify any other day or days as holidays with wages to employees or class of employees as he may deem fit. The holidays so notified shall be deemed to be additional holidays.

Any such employee in any residential hostel, restaurant, eating house, theatre, or any place of public amusement or entertainment may be required to work in such establishment on any such holiday declared under sub section (1) or sub section (2), subject to the condition that in lieu thereof, a compensatory holiday with wages shall be allowed to such person within thirty days from the date of such holiday. Such compensatory holidays shall not exceed seven in a year and where any such employee in any such establishment is required to work on any such compensatory holiday he shall be paid additional wages at the ordinary rate of wages in lieu of such holiday.

(3) Nothing in sub section (1) shall apply in respect of any establishment where the number of holidays with wages allowed by the employer is more than the holidays notified by the Government under that sub section. Every such employer shall send a list of holidays with wages allowed by him, which shall include the five holidays specified in sub section (1), to the Inspector and to the Chief Inspector and shall also display the list at a prominent place of the establishment.

**Section 32. Pay during leave and holidays:** Every employee shall, for the period of the leave allowed under sub sections (1) (5) of Section 30 or the holidays allowed under Section 31, be paid at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding month exclusive of any earning in respect of overtime.

**Section 33. Power to increase the period of leave allowable under Section 30:** Notwithstanding anything in Section 30, the Government may, by notification, increase the total number of days of leave allowable under sub section (1) of that section and the maximum number of days up to which such leave may be accumulated in respect of any establishment or class of establishments.

**Section 34. Compulsory enrolment of employees to Insurance cum savings scheme:**(1) Every employee who has served in an establishment for a period of not less than one year shall subscribe to the insurance scheme or Insurance cum Savings scheme as may be notified by the Government to be applicable to the establishment in which the employee is working, at the rates, stipulated by the Government in the notification either in lumpsum every year or in monthly installments as may be prescribed by the Government in the notification. For this purpose the employer shall make the payment to the authority notified by the Government on behalf of the employee on or before the stipulated date and recover the same from the wages payable to the employee.

(2) In addition to the subscription of the employee mentioned in sub section (1), every employer of the establishment to which the scheme of insurance or Insurance cum Savings is made applicable by the Government, shall also pay such percentage of annual wages of employee as may be notified by the Government, from time to time, to the authority notified for the purpose as employer's contribution on or before the specified date every year.

## 8.7. Wages, Conditions for Termination of Services, Appeals, Suspension and Terminal Benefits

Chapter VIII of the Act deals with provisions relating to wages, conditions for termination of services, terminal benefits etc.

**Section 35. Responsibility for payment of wages:** Every employer shall be responsible for the payment by him to employees of all wages and sums, required to be paid under this Act.

**Section 36. Fixation of wage period:** (1) Every employer shall fix wage periods in respect of which wages shall be payable. The wage period shall not exceed one month.

**Section 37. Wages for overtime work:** Where any employee in any establishment is required to work over time he shall be entitled to wages at twice the ordinary rate of wages, in respect of such overtime work.

**Section 38. Time of payment of wages:** (1) The wages of every employee shall be paid before the expiry of the fifth day after the last day of the wage period in respect of which the wages are payable.

(2) Where the service of any employee is terminated by or on behalf of the employer the wages earned by such employee shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) The Government may, by general or special order and for reasons stated therein exempt an employer from the operation of this section in respect of the wages of any employee or class of employees to such extent and subject to such conditions as may be specified in the order.

(4) All payments of wages shall be made on a working day.

**Section 39. Wages to be paid in current coin or currency notes:** All wages shall be paid in current coins or currency notes or in both.

**Section 40. Deductions which may be made from wages:** (1) The wages of an employee shall be paid to him without deduction of any kind except those authorised by or under this Act. Every payment made by an employee to the employer shall, for the purpose of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employee shall be made only in accordance with the provisions of this Act and may be for the following purposes only,

(a) Fines and other penalties lawfully imposed.

(b) Deductions for absence from duty.

(c) Deductions for damages to, or loss of goods expressly entrusted to the employee for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default.

- (d) Deductions for house accommodation provided by the employer.
- (e) Deductions for such amenities and services supplied by the employer as the Government may, by general or special order, authorize.
- (f) Deductions for recovery of advances or for adjustment of over payments of wages.
- (g) Deductions of income tax or profession tax payable by the employee.
- (h) Deductions required to be made by order of a Court or other authority competent to make such order;
- (i) Deductions for subscriptions to, and for repayment of advances from, any provident fund.
- (j) Deductions for payments to co-operative societies approved by the Government or any officer authorised by them or to a scheme of insurance maintained by the Indian Post Office or the Life Insurance Corporation of India.
- (k) Deductions made with the written authorisation of the employee in furtherance of any savings scheme approved by the Government or the purchase of securities of the Central or State Government.

**Section 41.Fines:** (1) No fine shall be imposed on any employee save in respect of such acts and omissions on his part as the employer, with previous approval of the Government or of the prescribed authority may have specified by notice. under sub section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on.

(3) No fine shall be imposed on any employee until he has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage period on any employee shall not exceed an amount equal to three paise in the rupee of the wages payable to him in respect of that wage period.

(5) No fine shall be imposed on any employee who has not completed the age of fifteen years.

(6) No fine imposed on any employee shall be recovered from him after the expiration of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations shall be recorded in a register to be kept by the employer in such form as may be prescribed and all such realisations shall be applied only to such purposes beneficial to the employees in the establishment as are approved by the prescribed authority.

**Section 42. Deductions for absence from duty:** (1) Deductions may be made only on account of the absence of an employee from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employee in respect of the wage period for which the deduction is made, a larger proportion than the period for which he was absent bears to the total period, within such wage period during which by the terms of his employment, he was required to work:

If ten or more employees acting in concert absent themselves without due notice, that is to say, without giving the notice which is required under the terms of their contract of employment and without reasonable cause, such deduction from any such employee may include such amount not exceeding his wages for four days as may by any such terms be due to the employer in lieu of due notice.

**Section 43. Deductions for damage or loss:** (1) The deduction shall not exceed in respect of the damage of goods, one half of the amount of such damage and in respect of loss of goods or money, the amount of such loss caused to the employer by negligence or default of the employee and shall not be made until the employee has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed.

**Section 44. Deductions for services rendered:** A deduction shall not be made from the wages of an employee, unless the house accommodation, amenity or service has been accepted by him as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and it shall be subject to such conditions, as the Government may impose.

**Section 45. Deductions for recovery of advances:** Deductions under Clause (f) of sub section (2) of Section 40 shall be subject to the following conditions,

(a) recovery of an advance of money given before employment shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advance given for travelling expenses.

(b) recovery of advances of wages not already earned shall be subject to any rules made by the Government regulating the extent to which such advances may be given and the installments by which they may be recovered.

**Section 46. Deductions for payments to Co operative Societies and Insurance Schemes, etc.:** Deductions under Clause (j) and Clause (k) of sub section (2) of Section 40 shall be subject to such conditions as the Government may impose.

**Section 47. Conditions for terminating the services of an employee, payment of service compensation for termination, retirement, resignation, disablement, etc., and payment of subsistence allowance for the period of suspension:** (1) No employer shall, without a

reasonable cause terminate the service of an employee who has been in his employment continuously for a period of not less than six months without giving such employee at least one month's notice in writing or wages in lieu thereof and in respect of an employee who has been in his employment continuously for a period of not less than one year, a service compensation amounting to fifteen days average wages for each year of continuous employment.

Every termination shall be made by the employer in writing and a copy of such termination order shall be furnished to the Inspector having jurisdiction over the area within three days of such termination.

(2) The services of an employee shall not be terminated by the employer when such employee made a complaint to the Inspector regarding the denial of any benefit accruing to him under any labour welfare enactment applicable to the establishment and during the pendency of such complaint before the Inspector. The services of an employee shall not also be terminated for misconduct except for such acts or omission and in such manner as may be prescribed.

(3) Every employee who has put in a continuous service of not less than one year shall be eligible for service compensation amounting to fifteen days average wages for each year of continuous employment, (i) on voluntary cessation of his work after completion of 60 years of age, (ii) on his resignation, or (iii) on physical or mental infirmity duly certified by Registered Medical Practitioner, or (iv) on his death or disablement due to accident or disease.

But, completion of continuous service of one year shall not be necessary where the termination of the employment of an employee is due to death or disablement. In case of death of an employee service compensation payable to him shall be paid to his nominee or if no nomination has to be made to his legal heir.

(4) Where a service compensation is payable under this section to an employee, he shall be entitled to receive his wages from the date of termination or cessation of his services until the date on which the service compensation so payable is actually paid.

(5) The payment of service compensation under this section shall not apply in cases where the employee is entitled to gratuity under the Payment of Gratuity Act, 1972 and gratuity has been paid accordingly consequent on the termination or cessation of service.

(6) Where an employee is placed under suspension pending enquiry into grave misconduct the employer shall pay a subsistence allowance equivalent to fifty per cent of the last drawn wage for the first six months and at seventy five per cent of the last drawn wage beyond six months during the period of suspension. The total period of suspension shall not however exceed one year in any case. If the misconduct is not established or the total period of suspension exceeds one year, the employee shall be entitled to full wages during suspension period and the period of suspension shall be treated as on duty.

For the purpose of this section,

(a) the term employee shall include part time employee also.

(b) the expression average wages means the daily average of wages for the days an employee actually worked during the thirty days immediately preceding the date of termination or cessation of service.

(c) the expression wages does not include overtime wages.

(d) an employee in an establishment shall be deemed to have been in continuous employment for a period of not less than six months if he has worked for not less than one hundred and twenty days in that establishment within a period of six months immediately preceding the date of termination or cessation of the service of that employee.

(e) where the total continuous employment is for a fraction of a year or extends over a fraction of a year in addition to one or more completed years of continuous employment, such fraction, if it is not less than a half year shall be counted as a year of continuous employment in calculating the total number of years for which the service compensation is to be given.

(f) The service compensation of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss caused.

(g) Disablement means such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

An employee who has completed the age of sixty years or who is physically or mentally unfit having been so declared by a Registered Medical Practitioner or who wants to retire on medical grounds or to resign his service may give up his employment after giving to his employer notice of atleast fifteen days and where no such notice is given, the service compensation payable to him shall be forfeited to the extent of fifteen days in lieu of the notice.

**Section 48. Appointment of authority to hear and decide appeals arising out of termination of services:** The Chief Inspector may, by notification, appoint for any area as may be specified therein, any authority to hear and decide appeals arising out of the termination of service of employees under Section 47. Any employee whose services have been terminated may, appeal to the authority concerned within such time and in such manner as may be prescribed.

The appellate authority may, after inquiry in the prescribed manner, dismiss the appeal or direct the reinstatement of the employee with or without wages for period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case. The authority shall without delay, hear such appeal and pass such orders within a period of three months from the date of receipt of such appeal.

Against any decision of the authority, a second appeal shall lie to such authority as may be notified by the Government within thirty days from the date of communication of the decision and the decision of such authority on such appeal shall be final and binding on both the employer and the employee and shall be given effect to within such time as may be specified in the order of that authority.

The second appeal shall not be entertained unless the employer deposits the entire amount of back wages as ordered by the appellate authority or the amount of compensation ordered as the case may be. If the second appeal is against the order of reinstatement given by the appellate authority, the employee shall be entitled to wages last drawn by him during the pendency of the proceedings before appellate authority.

Where in any case, an appellate authority by its award directs reinstatement of any employee and the employer challenges such award in any Court of Law, the employer shall be liable to pay such employee during the pendency of such proceedings, full wages last drawn by him, if the employee had not been employed in any establishment during such period and an affidavit by such employee had been filed to that effect in such Court:

**49. Notice and payment of service compensation to employees in the case of transfer of establishment:** Where the ownership or management of an establishment is transferred, whether by agreement or by operation of law, from the employer in relation to that establishment to a new employer every employee who has been in continuous employment for not less than six months in that establishment immediately before such transfer shall be entitled to the notice and the service compensation in accordance with the provisions of sub section (1) of Section 47.

Nothing in this section shall apply to an employee in any case where there has been a change of employers by reason of the transfer, if

- (a) the employment of the employee has been interrupted by such transfer.
- (b) the terms and conditions of employment applicable to the employee after such transfer are not in any way less favourable to the employee than those applicable to him immediately before such transfer and
- (c) the new employer is under the terms of such transfer or otherwise, legally liable to pay to the employee in the event of termination of his services, service compensation on the basis that his employment has been continued and has not been interrupted by the transfer.

## 8.8. Summary

The Shops and Establishments in India are regulated by the Shops and Establishments Act, enacted by the states and there is no central legislation to regulate the shops and establishments. All the shops and commercial establishments operating within each state are covered by the Shops & Establishments Act of the concerned State. Andhra Pradesh Shops and Establishments Act, 1988 was passed in Andhra Pradesh to regulate different aspects such as the payment of wages, hours of work, leave, holidays, terms of service and other conditions of work of persons employed in shops and commercial establishments.

## 8.9. Technical Terms

1. Shop.
2. Establishment.

### **8.10. Self Assessment Questions**

1. Define shop and establishment.
2. Discuss the provisions relating to health and safety of persons employed in shops and establishments under the AP Shops and Establishments Act.
3. Discuss the provisions relating to leaves and holidays of persons employed in shops and establishments under the AP Shops and Establishments Act.
4. Discuss the provisions relating to payment of wages to persons employed in shops and establishments under the AP Shops and Establishments Act.
5. Discuss the provisions relating to from wages of employed persons under the AP Shops and Establishments Act.
6. Discuss the provisions relating to employment of children, women and young persons in shops and establishments under the AP Shops and Establishments Act.

### **8.11. Reference Books**

1. Andhra Pradesh Shops and Establishments Act, 1988.
2. S N Misra, "Labour and Industrial Laws", Central Law Publications, Allahabad, 2014.

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