

THE PAYMENT OF WAGES ACT, 1936

[Act No. 4 of 1936]

An Act to regulate the payment of wages to certain classes of employed persons]¹

Whereas it is expedient to regulate the payment of wages to certain classes of persons employed in industry;

It is hereby enacted as follows:

STATEMENT OF OBJECTS AND REASONS

(i) In 1926 the Government of India addressed Local Governments with a view to ascertain the position with regard to the delays which occurred in the payment of wages to persons employed in industry, and the practice of imposing fines upon them. The investigations revealed the existence of abuses in both directions' and the material collected was placed before the Royal Commission on Labour which was appointed in 1929. The commission collected further evidence on the subject..... The government of India Re-examined the subject in the light of the commission's report and in February 1933 a Bill embodying the conclusions then reached of the Bill to a select committee was tabled during the Delhi Session of 1933-34, but was not reached, and the Bill lapsed. The present Bill is based upon the same principles as the original but has been revised throughout in the light of criticisms received when the original Bill was circulated. Published in Gazette of India, 1935, part V. page 20.

(ii) **Amending Act XXII of 1937.**- Section 9 of the payment of wages Act although relieving the employer from payment to workers who are not present for work appears to render him liable to pay wages to persons who although present decline to work. The explanation is intended to remedy the defect.-See Gaz of India. 1937. Pt.V.p.121.

(iii) **Amending Act 68 of 1957.**- By the enactment in 1936 for the payment of wages Act, it was intended to ensure that-

(i) Wages actually disburseable to workers covered by the Act are disbursed within the prescribed wage-period; and

(ii) employees get their full wages without any deductions which are not specially authorised by the law.

1. Subs. by Act No. 38 of 1982, vide sec 2, w.e.f. 15-10-1982.

The working of the Act has shown that the Act requires to be amended in certain respects. It is also considered desirable to extend the benefit of the Act to a larger category of persons. The important proposals relate to raising the wage limit from Rs. 200 a month to Rs. 400, Extension of the Act to construction industry and revision of the definition of the term wages'.....-published in Gazette of India, 1957. Extra, Pt. II, Sec. 2, page 910.

(iv) Amending Act 53 of 1964.- The Payment of Wages Act, 1936, was enacted with a view to ensuring that wages actually disburseable to workers covered by the Act are disbursed within the prescribed time-limit and that employees get their full wages without any deductions not authorised by law. Though the Act has been amended from time to time and certain major amendments were effected in 1957, the experience of the working of the Act has revealed certain other difficulties. With a view to removing these difficulties, it is now proposed.

- (a) To widen the coverage of the Act so as to make it applicable to all factories to which provisions of the Factories Act, 1948, have been extended by the state Governments;
- (b) To include in the definition of 'industrial establishment' air transport services other than allitary, naval and air forces and motor transport services.
- (c) To permit deductions from wages of employees on account of grant of advances for various purposes such-as purchase of cycles or grant of loans for house-building purposes and ions from labour welfare fund, travelling allowance, etc.;
- (d) To provide, as recommended by public Accounts Committee, for the recovery of losses of the railways due to act of omission or commission on the part of the employees.
- (e) To provide for the fixation of an outer limit for deductions from wages.
- (f) To enlarge the powers of Inspectors so as to ensure proper inspection and better. enforcement of the provisions of the Act, and
- (g) to clarify that the jurisdiction of the authorities appointed to hear claim applications empowers them to decide incidental matters.

These are broadly the main features of the amending Bill. Opportunity has also been taken to make certain other amendments of a minor character.

The notes on clauses explain the various changes proposed to be made- published in Gaz. of Ind., 1964, Pt. II. Sec. 2. Extra. P. 393.

(v) **Amending Act 29 of 1976.**- The payment of wages act 1936 requires the employers of make timely payment of wages to the persons employed by them. It also protects the employed person against arbitrary fines being imposed and unauthorised deductions being made from their wages by the employers.

2. An ordinance to amend the payment of Wages Act. 1936 was promulgated by the president on the 12th November, 1975 to provide for (i) raising of the wage limit from Rupees 400 to Rs. 1000 a month, having regard to the present wage levels. (ii).the payment of wages by cheques subject to the consent of the employed person, and (iii) deductions from wages to be made with the written authorisation of the employed person for contribution to the Prime Minister's National Relief Fund or any other similar fund that may be specified by the Central Government in the Official Gazette.

3. The Bill seeks to replace the said ordinance- Published in Gaz. of India. 8-1-1976. Pt. II, S.-2, Ext. P. 201.

(vi) **Amending Act 19 of 1977-** The payment of Wages Act, 1936. Regulates the Payment of Wages of certain classes of persons employed in industry. Subsection (2) of section 7 of the Act provides for certain deductions specified in the subsection from the wages of an employed person, in accordance with the provisions of the Act.

To promote the welfare of its employees, the Central Government has devised an insurance scheme to which contributions will be made by the employees concerned. In order to permit deductions for contributions to that scheme from the wages of the employees covered by the Payment of Wages Act. 1936. It is proposed to amend sub-Section (2) of section 7 of the Act suitably.

The bill seeks to achieve the object-Published in Gaz. of India, 20-6-1977. Pt. II, S.2, Ext., P. 296.

(vii) **Amending Act. 38 of 1982 -** The Payment of Wages Act. 1936 regulates the payment of wages to certain classes of employed in industry. It was enacted to ensure that the wages payable to employees covered by the Act are disbursed by the employers within the prescribed time limit and that no deductions other than those authorised by law are made by the employers. The Act applies proprio vigour to the payment of wages to persons

employed in any factory or to persons employed in a railway by a railway by a railway administration either directly or through subcontractor. Further, the State Governments are empowered to extend the provisions of the Act to cover persons employed in any industrial establishment or any class or group of industrial establishments as defined in the Act. The wage limit for the applicability of the Act is Rs. 1,000 per mansion. It is proposed to amend the Act with a view to extending its protection to a larger number of persons and making the provision of the Act more effective the beneficial.

2. With the aforementioned objects in view. The Bill seeks to make the following amendments in the Act :-

- (i) The provisions of the Act are being made applicable automatically and without any notification by the State Government of persons employed in the various categories' of industrial, establishment falling within the preview of the existing definition of the industrial establishment in the Act (clause 3 (a) of the Bill).
- (ii) The existing definition of "industrial establishment" is being covered as a definition of "industrial or other establishment" and a residuary clause is being provided to enable the Central Government and the State Governments to bring within the preview of the definition, by notification in the official Gazette, other establishments. It is also being provided that the State Governments may extend the provisions of the Act to other establishment which are so brought within the preview of definition, subject to the prior concurrence of the Central Government in the case of any such industrial establishment which is owned by the Central Government (Clause 3 (b) and Clause 4 of the bill.)

1. Short title, extent, commencement and application.- (1) This Act may be called the payment of Wages Act, 1936.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Gazette, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any ¹[factor, to persons] employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a subcontractors, by a person fulfilling a contract with a railway administrations ²[and to person employed in an industrial or other establishment specified in sub-clauses (a) to (g) clause (ii) of section 2].

(5) The State Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of this Act or any of them to the payment of wages to any class of persons employed in ³[any establishment or class of establishments specified by the Central Government or a State Government under sub-clause (h) of clause 2 (ii) of section 2].

⁴[**Provided** that in relation to any such establishment owned by the Central Government, no such notification shall be issued except with the concurrence of that Government].

(6) Nothing in the Act shall apply to wages payable in respect of a wage period which, over such wage-period, average ⁵[one thousand six hundred rupees] a month or more.

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

(i) "employed person" includes the legal representative of a deceased employed person;

(i-a) "employer" includes the legal representative of a deceased employer:

(i-b) "Factory" means a factory as defined includes (m) of section 2 of the Factories Act, 1948 (63 of 1948), and includes any place to which the provisions of that Act have been applied under subsection (1) of Section 85 thereof;

⁶[(ii) "Industrial or other establishment" means any-

1- Subs. by Act. No. 38 of 1982, Vide sec. 3 (i), w.e. f. 15-10-1982.

2- Ins. by *ibid*, vide sec. 3, w.e. f. 15-10-1982.

3- The words in brackets subs. by *ibid*, vide sec. 3 (b), w.e. f. 15-10-1982.

4- The Proviso to sub-sec. (5) Subs. by *ibid*, vide Sec. 3 (b), w.e. f. 15-10-1982.

5- Subs. by *ibid*. vide sec. 3 (c), w.e. f. 15-10-1982.

6- Subs. by *ibid*. w.e. f. 15-10-1982.

- (a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- (aa) Air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India];
- (b) dock, wharf or jetty.
- (c) inland vessel, mechanically propelled;
- (d) mine, quay of oilfield;
- (e) Plantation;
- (f) Workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale:
- (g) Establishment in which any work relating to the construction, development or maintenance of buildings, roads bridges or canals or relating to operations connected with navigation, irrigation or to the supply or of water, relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;
- ¹[(h) Any other establishment or class of establishment which the Central Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the official Gazette];
- (ii-a) “mines” has the meaning assigned to it in clause (j) of subsection (1) of Section 2 of the Mines Act, 1952 (35 of 1952).
- (iii) “Plantation” has the meaning assigned to it in clause (f) of Section 2 of the plantations Labour Act, 1951 (69 of 1951);
- (iv) “Prescribed” means prescribed by rules made under this Act;
- (v) “Railway administration” has the meaning assigned to it in clause (6) of Section 3 of the Indian Railways Act, 1890 (9 of 1890)² ; and
- (vi) “wages” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable

1. Sub-clause (h) Ins. by Act No. 38 of 1982, w.e. f. 15-10-1982.
 2. Now Act of 1989.

to a person employed in respect of his employment or of work done in such employment, and includes-

- (a) any remuneration payable under any award or settlement between the parties or order of a Court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include-

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued there on;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

NOTES

Scope of.- (i) An application for recovery of loan was not maintainable as loan did not fall within the definition of wages under section 2 (vi) of the Payment of Wages Act, 1936

nor the amount claimant could be said to be a deduction as provided under section 7 of the Act. [*K. L Garg v. New India Assurance Co. and others*, (1992) 1 Lab LJ 190 (P&H).]

'Wages'-(ii) The word 'wages' in the context of labour laws means wages payable in lieu of unavailed leave also. [*Testile Labour Association v. Official Liquidator*, 1993 (66) F.L.R. 168 (Guj).]

Authorities have no jurisdiction to give a direction for the payment of bonus claimed which is not an additional remuneration payable under terms of employment as it could not be treated as claim for wages. [*Hari Fertilizers, Varanasi V. IV Addl. Distt. judge, Varanasi* (1995) 70 F.L.R. 168 (All).]

3. Responsibility for payment of wages.- Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided That, in the case of persons employed (otherwise than by a contractor)-

(a) in factories, if a person has been named as the manager of the factory under clause (f) of subsection (1) of Section 7 of the Factories Act, 1948 (63 of 1948);

¹(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishment];

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer, or the person so named, as the case may be, [shall also be responsible] for such payment.

4. Fixation of wage-periods.- (1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

5. Time of payment of wages.- (1) The wages of every person employed upon or in-

1. Clause (b) Subs. by Act No. 38 of 1982, vide w.e. f. 15-10-1982.

2. The words in brackets subs. by ibid, vide Sec. 6, w.e. f. 15-10-1982.

(a) any railway, factory or ²[industrial or other establishment] upon or in which less than one thousand persons are employed. Shall be paid before the expiry of the seventh day,

(b) any other railway, factory or ¹[industrial or other establishment]. Shall be paid before the expiry of the tenth day.

After the last day of the wage-period in respect of which the wages are payable;

Provided that in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the space may be, shall be paid before the expiry of the seventh day from the day of such completion.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated;

Provided that where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday, 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.

(3) The State Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) or to persons employed as daily-rated workers in the Public Work Department of the Central Government or the State Government from the operation of this section in respect of the wages of any such persons or class of such persons;

1. The words in brackets subs. by Act No. 38 of 1982, vide Sec. 6, w.e. f. 15-10-1982.
2. Now Act 1989.

[**Provided** that in the case of persons employed as daily-rated workers as aforesaid, no such order shall be made except in consultation with the Central Government].

(4) [Save as otherwise provided in subsection (2), all payments] of wages shall be made on a working day.

6. Wages to be paid in current coin or currency notes.-All wages shall be paid in current coin or currency notes or in both:

Provided that the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

7. Deduction which may be made from wages.- (1) Notwithstanding the provisions of subsection (2) of section 47 of the Indian Railways Act, 1890 (9 of 1890)², the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation I -Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

Explanation II - Any loss of wages resulting from the imposition, for good and sufficient cause, upon a person employed of any of the following penalties, namely:-

- (i) the withholding of increment of promotion (including the stoppage of increment at an efficiency bar);
- (ii) the reduction to a lower post or time-scale or to a lower stage in a time-scale;
- or
- (iii) suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements, if any, which may be specified in this behalf by the State Government by notification in the Official Gazette.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely;

- (a) fines;
- (b) deductions for absence from duty;

(c)deductions 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 supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidising in the business of subsidising house-accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;

(e)deductions for such amenities and services supplied by employer as the State Government or any officer specified by it in behalf may by general or special order, authorise;

Explanation -The word “services” in this clause does not include the supply of tools and raw materials required for the purposes of employment.

(f) deduction for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance). and the interest due in respect thereof , or for adjustment of overpayment of wages;

(ff)deduction for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;

(fff) deduction for recovery of loans granted for house building or other purposes approved by the State Government, and the interest due in respect thereof;

(g)deductions of income-tax payable by the employed person;

(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 repayment of advances from any provident fund to which the provident funds Act, 1925 (19 of 1925), applies or any recognised provident fund as defined in section 58A of the India Income Tax Act, 1922 (11 of 1922), or any provident fund approved in this behalf by the State Government, during the continuance of such approval;

(j) Deductions for payment to cooperative societies approved by the State Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office;

(k) deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such Government.

¹[(kk) deductions made, with written authorisation of the employed person, for the payment of his contribution to any fund constituted by the employer of a trade union registered under the Trade Unions Act, 1926 (16 of 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;

¹[(kkk) deduction made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926 (16 of 1926);]

(l) deductions for payment of insurance premia on fidelity Guarantee Bonds;

(m) deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;

(n) deductions for recovery of losses sustained by a railway administration 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 carnage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;

1. Clause (kk) Ins. by Act No. 38 of 1982, vide sec. 7, w.e.f. 15-10-1982.
2. Causes (kkk) Ins. by ibid, sec. 7, w.e.f. 15-10-1982.

(o)deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;

³[(p) deductions, made, with the written authorisation of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;]

⁴[(q) deductions for contribution to any insurance scheme framed by the Central Government of the benefit of its employees.

(3)Notwithstanding anything contained in this Act, the total amount of deduction which may be made under subsection (2) in any wage-period from the wages of any employed person shall not exceed-

(i) in cases where such deduction are wholly or partly made for payments to cooperative societies under clause (j) of subsection (2), seventy-five percent of such wages, and

(ii) in any other case, fifty percent of such wages:

Provided that where the total deductions authorised under subsection (2) exceed seventy-five percent or, as the case may be, fifty percent of the wages, the excess may be recovered in such manner as may be prescribed.

(4)Nothing contained in this section shall be construed as precluding the employer from revering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force being in force other than the India Railways Act, 1890 (9 of 1890)].

1. Ins. by Act No. 29 of 1976, w.e.f. 12-11-1975.
2. Inserted by Act No. 19 of 1977, w.e.f. 30-6-1977.

8. Fines.- (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the State Government or of the prescribed authority, may have specified by notice under subsection (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 or in the case of person employed upon railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person 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 employed person shall not exceed an amount equal to ¹[three per cent] of the wages payable to him in respect of that wage-period.

(5) No fine imposed on any employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days 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 thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under Section 3 in such form as may be prescribed and all such realisation shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation-When the persons employed upon or in any railway, factory or ²[industrial or other establishment] are part only of staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purpose as are approved by the prescribed authority.

1. Subs. by Act No. 38 of 1982, vide Sec 8, w.e.f. 15-10-1982.

2. Subs. by ibid, vide Sec 8 ,w.e.f. 15-10-1982.

9. Deductions for absence from duty.- (1) Deductions may be made under clause (b) of subsection (2) of Section 7 only on account of the absence of an employed person 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 employed person in respect of the wage period for which the deduction is made in a larger proportion than the period for which he was absent bears to the made in 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:

Provided that, subject to any rules made in this behalf by the State Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may be any such terms be due to the employer in lieu of due notice.

Explanation-For the purposes of this section, an employed person shall be deemed to be from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

NOTE

Scope of-Validity of deduction of wages of employees who were prevented from attending duty on account of Andhar Bandh.-It was held that if the Tribunal finds that an employee was not responsible for absence from duty or he prevented from attending duty. The Management is not entitled to deduct wages. The Tribunal is also empowered to go into the reasons and record a finding in that regard. In the present case the workman were prevented from attending duty by the organisers of the bandh. Therefore, the Tribunal has jurisdiction to go into this question. [*Kothari (Madras) Ltd.V.Second A.J.Cum Appellate Authority & others*, (1991) II Lab. LJ 604 (A.P).]

10. Deductions for damage or loss.- (1) A deduction under clause (c) or clause (o) of subsection (2) of Section 7 until the employed person 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.

(1-A) A deduction shall not be made under clause (c) or clause (m) or clause (n) or clause (o) of subsection (2) of Section 7 until the employed person 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 person responsible for the payment of wages under section 3 in such form as may be prescribed.

11. Deductions for services rendered.-A deduction under clause (d) or clause (e) of subsection (2) of Section 7 shall not be made from the wages of an employed person, 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, in the case of a deduction under the said clause (e), shall be subject to such conditions as the State Government may impose.

12. Deductions for recovery of advances.-Deductions under clause (f) of subsection (2) of Section 7 shall be subject to the following conditions, namely:-

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

(aa) recovery of an advance of money given after employment began shall be subject to such conditions as the State Government may impose; and

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

12-A. Deduction for recovery of loans.-Deduction for recovery of loans granted under clause (fff) of sub-Section (2) of Section 7 shall be subject to nay rules made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable there on.

13. Deduction for payment to cooperative societies and insurance schemes.- Deduction under clause (j) and clause (k) of substation (2) of Section 7 shall be subject to such conditions as the State Government may impose.

13-A. Maintenance of registers and records.- (1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.

14. Inspectors.- An Inspector of Factories appointed under substation (1) of Section 8 of the Factories Act, 1948 (63 of 1948), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The State Government may appoint Inspectors for the purposes of this Act in respect to of all persons employed upon a Railway (otherwise than in a factory) to whom this Act applies.

(3) The State Government may, by notification in the Official Gazett, appoint such other persons as it thinks to be inspectors for the purpose of this Act, and may define the local limits within which and the class of factories and [industrial or other establishment] in respect of which they shall exercise their functions.

(4) An Inspector may, -

- (a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or rules made thereunder the are being observed;
- (b) With such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory of ²[industrial or other establishment] at any reasonable time for the purpose of carrying out the objects of this Act;

1- Subs. by Act. No.; 38 of 1982, vide sec. 9 w.e.f. 15-10-1982

2- Subs. by ibid. sec. 9, w.e.f. 15-10-1982.

- (c) supervise the payment of wages to person employed upon any railway or in any factory or ³[industrial or other establishment];
- (d) required by a written order the production at such place, as may be prescribed, of any register or record maintained in pursuance of this Act and take on the spot or otherwise statement of any persons which he may consider necessary for carrying out the purpose of this Act;
- (e) Seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer;
- (f) exercise such other powers as may be prescribed;

Provided that no person shall be compelled under this substation to answer any question or make any statement tending to insemminate himself.

(4-A) The provisions of the ¹[Code of Criminal procedure, 1973 (2 of 1974) shall so far as may be, apply to any search or seizure under this substation as they apply to any search or seizure made under the authority of a warrant issued under ²[Section 94] of the said Code.

(5) Every inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

14-A. Facilities to be afforded to Inspectors- Every employer shall afford an inspector all reasonable facilities for making any entry, inspection, supervision examination or inquiry under this Act.

15- Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims - (1) The State Government may, by notification in the Official Gazett, appoint a presiding officer of any Labour Court of Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any commissioner for workmen's Compensation or other officer with experience as a judge of a civil court of as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages,

3- Subs. by *ibid.* w.e.f. 15-10-1982

1- Subs. by Act. No.; 38 of 1982, w.e.f. 15-10-1982

2- Subs. by *ibid.* w.e.f. 15-10-1982

or delay in payment of the wages, of persons employed or paid in that area, including all matter incidental to such claims:

Provided That where the State Government considers it necessary so to do. It may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this act.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official or a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under substation (1), may apply to such authority for a direction under substation (3):

Provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made, or from the date of which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under substation (2) is entertained, the authority shall hear the applicant and the employer or other persons responsible for the payment of wages under Section 3, or give them an opportunity of being heard, and, after such further inquiry (if any), as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty-five Rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application direct the payment of such compensation, as the authority may think fit, not exceeding twenty-five rupees:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-

- (a) A bona fide error or bona fide dispute as to the amount payable to the employed person, or

- (b) The occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt, payment, or.
- (c) The failure of the employed person to apply for or accept payment;
- (4) If the authority hearing an application under this section is satisfied-
 - (a) That the application was either malicious, or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or
 - (b) That in any case in which compensation is directed to be paid under substation (3), the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty on exceeding fifty rupees be paid to the state Government by the employer or other person responsible for the payment of wages.

(4-A) Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final.

(4-B) Any Inquiry under this section shall be deemed to be a judicial proceeding within the meaning of section 193, 219 and 228 of the Indian Penal Code (45 of 1860).

- (5) Any amount directed to be paid under this section may be recovered-
 - (a) If the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and
 - (b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in his behalf, as if it were a fine imposed by such Magistrate.

16. Single application in respect of claims from unpaid group - (1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if deductions have been made from their wages in contravention of this Act for the same cause and during the same wage-period or periods or if their wages for same wage-period or periods have remained unpaid after the day fixed by Section 5.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case

every person on whose behalf such application is presented may be awarded maximum compensation to the extent specified in subsection (3) of section 15.

(3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under subsection (2) of this section, and the provisions of that subsection shall apply accordingly.

17. Appeal - (1) An appeal against an order dismissing either wholly or in part an application made under subsection (2) of section 15, or against a direction made under subsection (3) or subsection (4) of that section may be preferred within thirty day of the date on which the order of direction was made, in a presidency-town before the Court of Small Courses and elsewhere before the District Court-

- (a) By the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or such direction has the effect of imposing on the employer, or the other person a financial liability exceeding one thousand rupees, or
- (b) By an employed person, or any legal petitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under subsection (2) of section 15, if the total amount of wages claimed to have been withheld from the employed persons exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or
- (c) By any person directed to pay a penalty under subsection (4) of section 15.

(1-A) No appeal under clause (a) of subsection (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the Authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

(2) Save as provided in subsection (1), any order dismissing, either wholly or in part an application made under subsection (2) of section 15 or a direction made under subsection (3) or subsection (4) of that section shall be final.

(3) Where an employer prefers an appeal under this section, the authority against whose decision the appeal has been preferred may, and if so directed by the court referred

to in substation (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) The Court referred to in substation (1) may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision.

NOTE

Where the petitioner was aggrieved by an expert order he should have filed an appeal under section 17 of the Act. Hence the writ petition filed by the petitioner was held to be not maintainable on merits before High Court (Luxmi Industrial Corp. V.K.K. Tiwari, (1995) 70 FLR 707 (Raj.)).

17-A. Conditional attachment of property of employer or other person responsible for payment of wages- (1) Where at any time after an application has been made under substation (2) of section 15 the authority, or where at any time after an appeal has been filed under section 17 by an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person permitted by the authority to make an application under subsection (2) of Section 15 the Court referred to in that section , is satisfied that the employer or other persons responsible for the payment of wages under section 3 is likely to evade payment of any amount that may be directed to be paid under Section 15 or section 17, the authority or the Court, as the case may be, except in cases where the authority or Court is of opinion that the ends of justice would be defeated by the delay, after giving the employer or other person an opportunity of being heard, may direct the attachment of so much of the property of the employer or other person responsible for the payment of wages as is, in the opinion of the authority or Court, sufficient to satisfy the amount which may be payable under the direction.

(2) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to attachment before judgment under that Code shall, so far as may be, apply to any order for attachment under subsections (1).

18. Powers of authorities appointed under section 15.-Every authority appointed under subsections (1) of Section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and of 1[Chapter XXVI of the code of Criminal Procedure, 1973 (2 of 1974)].

NOTE

“Authority” under the Payment of Wages Act, 1936, being a “persona designate”, has no power to recall the earlier order passed by another authority and has no expressed power. Therefore, the imputed order restoring the claim application filed by not the original applicant, is liable to be set aside. [Ramala Sahkari Chini Mills Ltd. Meerut v. The Payment of Wages Act Authority-cum-Conciliation Officer, Meerut, (1995) 70 FLR 58 (All).]

19. Power to recover from employer in certain cases.-repealed.]

20. Penalty for offences under the Act.- (1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of following sections, namely, Section 5 except subsections (4) thereof, Section 7, Section 8 except subsections (8) thereof, Section 9 Section 10, except subsection (2) thereof, and Section 11 to 13, both inclusive, shall be punishable with fine, ²[with shall not be less than two hundred rupees but which may extend to one thousand rupees].

(2) Whoever contravenes the provisions of Section 4, subsection (4) of Section 5, section 6, subsection (8) of Section 8 subsection (2) of Section 10 or section 25 shall be punishable with fine which may extend to [five hundred rupees].³

(3) Whoever being rewired under this Act to maintain any records or registers or to furnish any information or return-

(a) fails to maintain such register or record; or

(b) wilfully refuses or without lawful excuse neglects to furnish such information or return; or

- (c) wilfully furnishes or causes to be furnished any information or return which he knows to be false; or
- (d) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information require to be famished under this Act;

shall, for each such offence, be punishable with fine ⁴[which shall not be less than two hundred rupees, but which may extend to one thousand rupees].

(4) Whoever-

- (a) Wilfully obstructs an Inspector in the discharge of his duties under this Act; or
- (b) refuses or wilfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision or inquiry authorised by or under this Act in relation to any railway, factory or [industrial or other establishment]¹; or
- (c) wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or
- (d) prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act.

Shall be punishable with fine ²[which shall not be less than two hundred rupees but which may extend to one thousand rupees.]

(5) If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with may extend to six months and with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees]:

Provided that for the purpose of this subsection, no cognizance shall be taken of any conviction made more than two years before the date on which the commission of the offence which is being punished came to the knowledge of the Inspector.

(6) If any person fails or wilfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any

1- Subs. by Act. No.; 38 of 1982, vide sec. 10, w.e.f. 15-10-1982.

2- Subs. by ibid, vide sec. 11, w.e.f. 15-10-1982.

3- Subs. by ibid, vide sec. 11, w.e.f. 15-10-1982.

4- subs. by Act No. 38 of 1982, vide sec. 11, w.e.f. 15-10-1982.

other action that may be taken against him, be punishable with an additional fine which may extend to ⁴[one hundred rupees] for each day for which such failure or neglect continues.

21. Procedure in rail of offences.- (1) No Court shall take cognizance of a complaint against any person for an offence under subsection (1) of Section 20 unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the Appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under subsection (1) of section 20, the authority empowered under section 15 or the Appellate court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or court that his default was due to-

- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or
- (b) The occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) The failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(3-A) No Court shall take cognizance of any offence punishable under subsection (3) or subsection (4) of section 20 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under subsection (1) of Section 20 the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

1- Subs. by *ibid*, vide sec. 11(i), w.e.f. 15-10-1982.

2- Subs. by *ibid*, vide sec. 11(d) (ii), w.e.f. 15-10-1982.

3- Subs. by *ibid*, vide sec. 11(e), w.e.f. 15-10-1982.

4- Subs. by *ibid*, vide sec. 11(f), w.e.f. 15-10-1982.

22. Bar of suits.- No court shall entertain any suit for the recovery of wage or of any deduction from wages insofar as the sum so claimed-

- (a) forms the subject of an application under Section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17 ; or
- (b) has formed the subject of a direction under section 15 in favour of the plaintiff ; or
- (c) has been adjusted, in any proceeding under section 15, not to be owed to the plaintiff; or
- (d) could have been recovered by an application under section 15.

NOTE

Scope of - Section 22 of the Payment of Wages Act excludes the Jurisdiction of the Court to entertain a suit in respect of the matter entrusted to the jurisdiction of the Authority constituted under section 15 of the payment of wages Act. The Labour Court cannot be regarded as a court of general jurisdiction section 22 bars institution of a suit. It does not bar the institution of an application of recovery of wages under section 33-C (2) Of the Industrial Disputers Act. The Labour Court is not a Civil Court. As such its Jurisdiction to entertain an application under section 33-C (2) of the industrial Disputes Act for payment of wages to a workman is not barred by virtue of the provisions of section 22 of the Payment of Wages Act. (Jaipur Development Authority V. Labour Court and others, (1991) II Lab. LJ 133 (Raj).]

22-A. Protection of action taken in good faith. - No Suit, prosecution or other legal proceeding shall lie against the Government or any Officer of the Government for anything which is in good faith done or intended to be done under this Act.

23. Contracting out - Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes and right conferred by this Act shall be null and void insofar as it purports to deprive him of such right.

24. Application of Act or railway air transport services, mines and oilfields - The powers by this Act conferred upon the State Government shall, in relation to railway, air transport services, mines and oil- field be powers of the Central Government.

25. Display by notice of abstracts of the Act. - The person responsible for the payment of wages to persons employed in a factory [or an industrial or other establishment]' shall cause to be [display in such factory or industrial or other

establishment]² a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed ³[in the factory or industrial or other establishment] as may be prescribed.

4[25-A. Payment of undisturbed wages in case of death of employed person - (1) Subject to the other provisions of the Act, all amounts payable to an employed person as wages shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known-

- (a) be paid to the person nominated by him in his behalf in accordance with the rules made under this Act; or
- (b) Where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

(2) Where, in accordance with the provision of subsection (1), all amounts payable to an employed person as wages -

- (a) are paid by the employer to the person nominated by the employed person; or
- (b) are deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to be those wages].

26. Rule-making power - (1) The State Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in Section 15 and 17.

(2) The State Government may, by notification in the Official Gazett, make rules for the purpose of carrying into effect the provision of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made subsection (2) may-

- (a) require the maintenance of such records, registers, return and notices as are necessary for the enforcement of the Act, prescribe the form thereof and the particulars to be entered in such registers, or records;

1- Subs. by Act No. 38 of 1982, vide sec. 12 (a), w.e.f. 15-10-1982.

2- Subs. by ibid, vide sec. 12(b), w.e.f. 15-10-1982.

3- Subs. by ibid, vide sec. 12 (c), w.e.f. 15-10-1982.

4- Sec. 25-A Ins. by ibid. (w.e.f. 1-3-1994) vide G.S.R. 237 (E) dated 1-3-1994.

- (b) require the display in conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;
- (c) Provided for the regular inspection of the weights, measures and weighting machines used by employees in checking or ascertaining the wages of persons employed by them;
- (d) Prescribe the manner of giving notice of the days on which wages will be paid;
- (e) prescribe the authority competent to approve under subsection (1) of section 8 acts and omission in respect of which fines may be imposed;
- (f) prescribe the procedure for the imposition of fines under Section 8 and for the making of the deductions referred to in Section 10;
- (g) prescribe the conditions subject to which deductions may be made under the proviso to subsection (2) of Section 9;
- (h) prescribe the authority competent to approve the purpose on which the proceeds of fines shall be expended;
- (i) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (b) of Section 12;
- (i-a) prescribe the extent to which loans may be granted and the rate interest payable thereon with reference to Section 12-A;
- (i-b) Prescribe the powers of Inspectors for the purposes of this Act;
- (j) regulate the Scales of costs which may be allowed in proceeding under the Act;

- (k) prescribe the amount of court fees payable in respect of any proceedings under this Act;
- (l) prescribed the abstract to be contained in the notices required by Section 25[***]¹.
- (l-a) prescribe the form and manner in which nominations may be made for the purpose of subsection (1) of section 25-A, the cancellation or variation of any such nomination, or the making of any fresh nomination in the event of the nominee predeceasing the persons making nomination; and others matters connected with such nominations;
- (l-b) Specify the authority with whom amounts required to be deposited under clause (b) of subsection (1) of Section 25-A shall be deposited, and the manner in which such authority shall deal with the amounts deposited with it under the clause;
- (m) Provide for any other matter which is to be or may be prescribed.

(4) In making any rule under this section the State Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date of be specified under clause (3) of Section 23 of the General Clauses Act, 1897 (10 of 1897), shall not be less than three months from the date on which the draft of the proposed rules was published.

1- The word 'and omittey by Act No. 38 of 1982, vide sec. 14 (a), w.e.f. 15-10-1982.

(6) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session of a total period of thirty days which may be comprised in one session or in [two or more successive sessions]² and if, before the expiry of the session ³[immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

1- Clauses (1a), (1b) Ins. by *ibid.* vide Sec. 14 (a), w.e.f. 15-10-1982.

2- Subs. by *ibid.* w.e.f. 15-10-1982.