

Chapter 30

Plantation legislation

Varghese Iype

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1. INTRODUCTION

Plantation is defined as 'any agricultural undertaking, regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned

with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, *etc.* It does not include family or small-scale holdings, producing for local consumption and not employing hired labour' (ILO, 1958). Agricultural operations in plantations being predominantly a labour activity, can be carried on in a systematic and integrated manner only by the cooperation between employer and workmen. As such, labour legislation which regulates the service conditions and acts as arbiter of conflicting interests, plays a significant role in the day to day management of activities in plantations.

2. HISTORY

Attempts to frame legislation to regulate the relations between planters and plantation workers started in 1892. In March 1892, a petition dealing with the planters' labour problems signed by the Chairmen and Secretaries of the various District Planters' Associations was submitted to the Government of India. In March 1896, the Viceroy appointed the South of India Planters' Enquiry Committee to enquire into the difficulties experienced by the planters. Based on the enquiry report, the Madras Planters' Labour Bill, the first labour legislation, was passed in early 1903. This Bill went a considerable way towards solving the planters' difficulties.

The first comprehensive survey of conditions of labour in various industries including plantations in India on a countrywide basis was conducted by the Royal Commission of Labour in 1929-31. Its report and findings formed the basis of various ameliorative measures. With the advent of labour unions in 1940, the workers initiated demands for protection of their rights. Institution of permanent labour force also necessitated comprehensive legislations regulating the condition of labour in the industry. In 1944, the Government of India appointed a committee, the Labour Investigation Committee, to inquire into the condition of labour in all important industries. At the time of its investigation there was no law in the country for regulating the conditions of work of plantation labour and labourers' conditions varied enormously from place to place. On the basis of the recommendations of the Committee, the Plantation Labour Act which covered not only conditions of employment but other aspects as well was passed in 1951.

Industrial relations and general terms of employment in plantations are also governed by common labour legislation as are applicable to other industries since agricultural activity carried on in large plantations with the cooperation of workers falls within the concept of industry as defined in labour laws. The Union (Central) and State Governments have enacted a number of legislation to suit local conditions and peculiar nature of industries, since labour is a subject coming concurrently within their legislative power. As such, subjects relating to management of labour in plantation lay scattered in various statutes and rules.

3. PLANTATION AND THE WORKER

According to the Plantation Labour Act, a plantation includes tea, coffee, rubber, cinchona or cardamom plantations of 5 ha or more in extent and in which 15 or more persons are employed or were employed on any day of the preceding 12 months (The

Act, 1951; Suresh, 1986). Plantation also includes offices, hospitals, dispensaries, schools and any other premises used for any purpose connected with such plantation. Under the Plantation Labour Act, a worker has been defined as to include a person employed in a plantation for hire or reward whether directly or through any agency to do any work skilled, unskilled, manual or clerical. But the definition will not include (1) a medical officer, (2) any person whose monthly wages exceed Rs. 750, (3) a person who has been employed primarily in a managerial capacity, notwithstanding his monthly wages and (4) a person employed temporarily for construction, development or maintenance of buildings, roads, bridges, drains or canals in the plantation (The Act, 1951).

3.1 Registration of plantation

Every employer of a plantation shall register his plantation under The Plantation Labour Act. Application for registration shall be submitted to the registering officer within a period of 60 days of coming into existence of such plantation. Application forms for registration/renewal are prescribed by the State Government under the plantation labour rules.

3.2 Conditions of employment

The conditions of employment or the terms of employment of workmen in plantations refer to all matters covered by the contract of employment either expressly or impliedly. Conditions of labour include wage rates, dearness and other allowances, bonus, hours of work, overtime, leave, holidays with pay, residential accommodation, superannuation benefits like gratuity, provident fund and pension, grading, promotion, dismissal, retirement and procedures for strike, lockout, lay-off, etc. The general conditions of employment in plantations are discernible from the provisions of various labour legislation.

The most important legislation regulating the conditions of work in plantations and providing for the welfare of labourers is the Plantation Labour Act, 1951. There are provisions in the Act for assuring the workers reasonable amenities like supply of drinking water, suitable medical and educational facilities, canteen, creches and sufficient latrines and urinals separately for males and females. Housing accommodation is also to be provided for every worker in the plantation. The Act regulates the working hours and leave with wages of workers employed in plantations (The Act, 1951).

The Industrial Employment (Standing Orders) Act, 1946 which is a Central Act, also requires the employer to define conditions of employment and to make the conditions as uniform as possible. For the purpose, standing orders are to be framed in all industrial establishments including plantations having 100 or more employees. Draft standing orders are to be submitted to the certifying officer appointed by the State Government who is empowered to modify them so as to render the orders certifiable under the Act. Such certified standing orders are subject to purview of an appellate authority appointed by the State Government in case of dispute. The draft standing order must be in conformity with the model standing order prescribed under the Act. The standing orders framed under the Act after certification have the force of law.

The Factories Act, 1948 also contains provisions relating to health, safety, welfare, working hours, leave with wages *etc.* This Act, which applies to a factory using power and employing 10 or more workers or to a factory wherein 20 or more workers are employed without using power, will also apply to the factory workers in plantations if their number is as above.

3.3 Working hours

As per Section 19 of the Plantation Labour Act, no adult worker should be required to work in the plantation for more than 48 h a week and no adolescent or child for more than 27 h a week (The Act, 1951). If a worker works for more than 48 h, he will be entitled for overtime wages at the rate of twice the ordinary wages. The maximum working hours including overtime shall be limited to 9 h on any day or 54 h any week. For the work done on a closed holiday, a worker will be entitled to wages at the rate of twice his ordinary wages. The employer is required to give daily intervals of rest so that the worker is not required to work for more than 5 h continuously. The Act also prescribes a daily interval of rest, of at least half an hour. The spread over time for an adult, inclusive of interval for rest should not exceed 12 h including the time spent in waiting for work. The employer is also required to give a day of rest in a week. Since the Minimum Wages Act also applies to plantations and that Act stipulates a maximum of 48 h per week, the provision in the Minimum Wages Act is followed in respect of maximum hours of work in the estates. The employer is required to place a notice of period of work. As per Section 24, children below the age of 12 should not be required or allowed to work in any plantation. Under section 25, children and women are prohibited from being employed for work during night. Young persons (above 12 years but below 18 years) employed in plantation are required to obtain certificate of physical fitness from competent authority specified under the Act and to carry a token giving reference to such certificate.

4. WAGES AND OTHER BENEFITS

4.1 Wages

The responsibility for payment of wages, wage period, time of payment, deduction, *etc.* are regulated by the Payment of Wages Act, 1936 (The Act, 1936). The Act applies to plantation defined under the Plantation Labour Act. Every person responsible for payment of wage shall fix wage periods for the establishment. No wage period shall exceed one month.

Deductions from the wage shall be made only in accordance with the provisions of the Act. Deduction is permissible in the case of fine, absence from duty, damage or loss of goods entrusted to the employee, recovery of advances, loan for house accommodation, income tax, amount required by the court, provident fund, subscription to insurance, *etc.* The total amount of deduction from wage shall not exceed 75 per cent in the case of payment made for cooperative societies and 50 per cent in any other case. Deduction can also be made on account of absence of the worker from the place of work (The Act, 1936).

4.1.1 Minimum wages

Minimum rate of wages in plantation is fixed under the provisions of the Minimum Wages Act, 1948 (The Act, 1948). The Act empowers the appropriate government to fix the minimum rate of wages payable to employments specified in the schedule of the Act. Employment in estates maintained for the purpose of growing rubber is specified in Part 1 of the schedule. The state governments have the power to fix minimum rate of wages in relation to rubber plantation in that state. The minimum rate of wages shall be reviewed and revised, if necessary, at such intervals not exceeding five years. If there are less than 1000 workers employed in an employment in any state, the Government may refrain from fixing minimum wage in such employment. Time-rated wages and piece-rate wages can be fixed for an employment. Time-rated wages can be fixed for different wage periods like hourly, daily or monthly.

The minimum wages shall consist of a basic rate of wages and dearness allowance fixed on the basis of the cost of living index. The Government may also fix an all inclusive rate allowing for basic rate, allowance based on cost of living index and cash value of concessions, if any. The Government shall appoint a committee to hold enquiries and advise in the fixation or revision of wages. The proposal for fixing minimum wages shall be published by notification in the official gazette. After considering the advice of the committee and representation received, the Government may publish by notification in the official gazette the minimum rate of wages for a scheduled employment. If a minimum rate of wage is fixed for any employment, the employer is bound to pay wages at a rate not less than the minimum rate of wages.

The Government may fix the number of working hours for the scheduled employment. A day of rest with wages in every seven days shall be allowed to all employees. The payment of wages shall be fixed as per rules prevalent in each state. If an employee works on a day of rest he is entitled to wages at a rate not less than the overtime rates (The Act, 1948).

4.1.2 Equal remuneration

The Equal Remuneration Act, 1976 is applicable to plantations also. As per the Act, it is the duty of the employer to pay equal remuneration to men and women workers for the same work or work of a similar nature. The employer shall not make any discrimination while recruiting men and women for the same work.

4.2 Bonus

Bonus is a cash payment made in addition to wages as a stimulus to extra work and efficiency by labour. It is no longer an ex gratia payment. Payment of bonus to persons employed in establishments like plantation is on the basis of profits, production or productivity and matters connected therewith are governed by the provisions of the Bonus Act, 1965. The Act applies to every establishment in which 20 or more persons are employed on any day during an accounting year. If an employee had worked in an establishment for not less than 30 working days in that year he is entitled to bonus. An employer is bound to pay a minimum bonus of 8.33 per cent of the wage earned by the employee during the accounting year or Rs.100, whichever is higher whether or

not the employer has any allocable surplus in the accounting year. If the allocable surplus of an establishment exceeds the amount of minimum bonus, the employer shall pay a higher bonus which shall be an amount in proportion to the wage, subject to a maximum of 20 per cent of wage. Computation of allocable surplus shall be made in accordance with the provisions of the Act. Bonus shall be paid within a period of eight months from the close of the accounting year. In the case of a newly set up establishment, bonus need be paid only if there is profit during the first five accounting years (Pai, 1962; Chopra, 1977; Srivastava, 1997).

4.3 Provident fund

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides for the institution of provident fund scheme. The Act applies to any establishment employing 20 or more employees and the Employees Provident Fund Scheme, 1952 instituted under the Act, applies to plantations. Every employee shall be entitled to become a member of the Fund set up under the Scheme from the date of joining the establishment. The contribution payable by the employer shall be at the rate of 10 per cent of the basic wage and dearness allowance, payable to the employee. In certain establishments specified by the Government of India, the rate of contribution shall be 12 per cent. The contribution payable by an employee shall be equal to the contribution payable by the employer. It is the responsibility of the employer to pay both contribution (payable by himself and also on behalf of the member of the fund). The employees' contribution shall be deducted from wages. Every employer shall obtain a declaration in Form 2 from an employee at the time of his joining and send to the Provident Fund Commissioner. The employer shall prepare a contribution card in respect of every employee in the form prescribed. Withdrawal from fund and grant of advance can be done as per the Scheme. A workman is entitled to withdraw full amount outstanding to his credit on his retirement from service.

4.4 Gratuity

Gratuity is essentially a retirement benefit earned by giving service. It is a reward for good, efficient and faithful service rendered for a considerable period. The Payment of Gratuity Act, 1972 provides for payment of gratuity to employees engaged in plantations. The Act applies to any person employed on wages in any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether or not such person is employed in a managerial or administrative capacity. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. The employee will be entitled to gratuity on his superannuation, retirement, resignation, death or disablement due to accident or disease. If the termination of employment is due to death or disablement, continuous service of five years is not necessary. In the case of death of an employee, gratuity shall be paid to his nominee. If no nomination is made, payment may be made to his legal heirs. If the nominee or heir is a minor, the amount may be deposited with the controlling authority. The controlling authority shall invest the amount in bank or other financial institution until the minor becomes major.

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned. The maximum gratuity shall not exceed Rs.100000. If any employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer, the provisions of this Act will not affect the right of the employee. The gratuity of an employee whose service has been terminated for any act, willful omission or negligence causing damage or loss to or destruction of property belonging to employer, can be forfeited to the extent of damage or loss caused. If the employee is terminated from service for riotous or disorderly conduct or for violence or moral turpitude, his gratuity can be partially or wholly forfeited.

4.5 Pension scheme

The Employees Pension Scheme which came into force on 1 April 1995 applies to all establishments to which the Employees Provident Fund and Miscellaneous Provision Act, 1952 applies. A pension fund is created from and out of contribution payable by the employer under Section 6 of the Employees Provident Fund Scheme. In the case of establishment exempted under the Provident Fund Scheme, a part of contribution of the employees shall be remitted by the employer to the Pension Fund. The Central Government shall contribute at the rate of 1.16 per cent of the pay of the members of the scheme to the Fund. The employer shall pay the contribution payable in respect of a person employed by him directly or through a contractor.

The pensionable service of the member shall be determined with reference to the contribution received on his behalf. An employee on superannuation is entitled to pension. A person retiring after rendering 20 years of service also will be entitled to pension. A person who has rendered eligible service of 10 years or more, but less than 20 years shall be entitled to short service pension. The monthly pension of a member shall be determined as provided in the scheme.

4.6 Leave with wages

A worker is eligible for leave with wages. This leave is exclusive of weekly holidays or festival holidays or other similar holidays and is regulated by any law or the terms of any award, agreement or contract of service. The Plantation Labour Act regulate the leave of a plantation worker and the provisions operate without prejudice to any award, agreement or contract of service which provides longer leave with wages than provided in the Act.

Every adult worker shall be allowed one day leave for every 20 days of work performed. Every young person employed in plantation is entitled to one day leave for every 15 days of work. For the purpose of calculating leave, any day on which half or more than half a day's work is performed shall be counted as one day. Any day on which no work or less than half a day's work is done shall not be counted. If a worker does not take in any one year the whole of the leave allowed to him, such leave shall be credited to his leave for the succeeding period. Only 30 days leave could be accumulated in this manner. The average daily wage is at the rate of average daily wage for the preceding 12 months.

4.7 Maternity benefits

According to the Maternity Benefits Act, 1961 which is a Central Act applicable also to labourers in plantations, a woman worker is eligible for maternity benefits for the six weeks immediately preceding the date of her delivery and six weeks after the delivery at the rate of average daily wages of the preceding three months. The Act also provides for benefits in case of miscarriage for a period of six weeks immediately following the day of miscarriage. In the event of illness arising out of pregnancy, delivery, premature birth of child or miscarriage, the woman worker shall be entitled to leave for a maximum period of one month over and above the maternity leave or miscarriage leave, as the case may be.

For eligibility of maternity benefits, the woman worker should have worked for 80 days inclusive of any periods of lay-off in the 12 months immediately preceding the date of her expected delivery. The maternity benefits for the period preceding the date of her expected delivery should be paid in advance on the production of appropriate proof and for the subsequent period within 48 h of production of proof of her delivery. The Act specifies that no employer should knowingly employ a woman during the six weeks immediately following the day of her delivery or miscarriage. If the estate is not providing prenatal confinement or post-natal care free of charge, the woman worker is entitled to a medical bonus (The Act, 1961).

5. WELFARE

5.1 Canteen

Subject to rules made by the State Government, in or near every plantation wherein 150 or more workers are ordinarily employed, the employer shall arrange directly or otherwise a canteen with facilities for sale of tea, coffee and snacks to workers. Prices shall be charged on a no-profit basis.

5.2 Creche

In every plantation where 50 or more women workers are employed or where the number of children of women workers is 20 or more, there shall be provided and maintained suitable rooms at conveniently accessible places, for use of children of such women workers. Suitable facilities like furniture and cradle shall be provided as per the standards specified by the State Government. The employer shall appoint a woman to be in charge of creche. There shall be suitable wash room in or adjoining the creche. Milk, refreshments, adequate supply of clothes, soap and oil should also be made available for each child, while in the creche.

5.3 Recreation

Every employer shall provide and maintain a recreation centre for workers with provisions for indoor games. Where sufficient open space is available, play ground shall be maintained for workers.

5.4 Education

If the number of workers' children between the age of 6 and 12 in a plantation exceeds 25, the employer shall provide and maintain a primary school or schools for

imparting primary education to the children. However, if there is school run by the Government or local body for imparting free education up to the primary or higher standard within a distance of 3 km, the employer may not provide school for imparting education to the children of workers.

5.5 Housing

It is the duty of the employer to provide and maintain necessary housing accommodation for every worker including his family according to the standards prescribed by the State Government. No rent shall be charged for such accommodation provided to workers and their families.

5.6 Weather protectives

Once in every 12 months the employer shall supply to every permanent worker a woollen blanket (cumbly) or an umbrella or a raincoat or a hat of suitable quality approved by the Chief Inspector of Plantations, free of cost. It is the discretion of the employer to choose the articles to be supplied.

In estates situated at an elevation of 760 m (2500 ft) or more above sea level, one extra blanket shall also be supplied to every permanent worker. In case of dispute regarding the elevation, it is the duty of the Chief Inspector of Plantations to arrange for the elevation being determined. In the case of temporary workers, the employer has the option of supplying a special type of cumbly which is returnable on termination of employment or alternatively an allowance of three paise per day's work.

5.7 Welfare officer

A plantation wherein 300 or more workers are ordinarily employed shall appoint a welfare officer. It shall be the responsibility of the welfare officer to ensure timely provision of all the welfare measures contained in the Plantation Labour Act.

6. HEALTH AND SAFETY

6.1 Health care

In every plantation, effective arrangements shall be made to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers. There shall be provided, separately for males and females, a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein. Employer shall provide and maintain medical facilities prescribed by the State Government in every plantation.

The Rules framed in Kerala provide for two types of hospitals, *viz.* garden hospital and group hospital. Garden hospitals are intended to deal with outpatients and inpatients, not requiring elaborate diagnosis and treatment. Group hospitals shall be capable of dealing effectively with all types of diseases normally encountered, but it is not to be used for routine treatment. Admission to a group hospital shall be on the recommendation of a garden hospital doctor, except in emergency. The employer has an option to have attachment to a nearby hospital with the approval of the Chief Inspector of Plantations

at the rate of 15 beds for 1000 workers. The Chief Inspector of Plantations who is appointed by the State Government can recover the cost of providing medical facilities from the defaulting employers.

6.2 Safety

The Factories Act, 1948 which deals mainly with the conditions of work in factories also contains provisions relating to safety of factory workers. The Act will apply to a factory using power and employing 10 or more workers or to a factory wherein 20 or more workers are employed without using power. The Act will apply to the factory workers in plantations if their number is according to the provisions of the Act.

7. COMPENSATION FOR INJURY BY ACCIDENT

The Workmen Compensation Act, 1923 provides for payment of compensation to workmen for injury by accident. With the increasing use of machinery and consequent danger to workers the workmen should be protected as far as possible from hardship arising out of such accidents. If personal injury is caused to a workman by accident arising out of and in the course of employment, his employer shall be liable to pay compensation in accordance with the provisions of the Act. Where death results from the injury, an amount equal to 50 per cent of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs. 50000, whichever is more shall be the compensation. Where permanent total disablement results from the injury, an amount equal to 60 per cent of the monthly wages of the injured workman multiplied by relevant factor or an amount of Rs. 60000, whichever is more shall be paid as compensation. Where partial disablement results from the injury, compensation shall be as specified in the schedule. The claims under the Act is heard and decided by the commissioner for workmen compensation (The Act, 1923).

8. INDUSTRIAL DISPUTES

8.1 Definition

Industrial dispute is any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen. An industrial dispute arises when there is a demand by workmen and refusal to grant it by the employer. The Industrial Disputes Act, 1947 seeks to achieve social justice on the basis of collective bargaining, conciliation, arbitration and failing that compulsory adjudication. The Act applies to all industries. Industry as defined in Section 2(j) of the Act means all systematic activity organized by cooperation between employer and employee for the production and distribution of goods and services to satisfy human wants and wishes. Absence of profit motives and gainful objectives are irrelevant, be the venture in the public, joint, private or otherwise. The functional and decisive test is the employer-employee relationship (The Act, 1947 a,b; Malhotra, 1985).

Industrial dispute contained in the Industrial Disputes Act, 1947 has been concluded by the Supreme Court to exclude individual dispute. Therefore, a dispute between an employer

and a single workman cannot be an industrial dispute. Under Section 2A, an industrial dispute connected with discharge, dismissal, retrenchment or termination of a single workman is deemed to be industrial dispute, notwithstanding that no other workman nor any union of workmen espouses such dispute. Hence a workman who has been discharged, dismissed or retrenched or whose service has been otherwise terminated can himself raise a dispute with respect to such discharge, dismissal, *etc.* There is nothing in the Act to require that the dispute should be raised by all the workmen or even by a majority of them in an establishment. It is enough if there is workmen in such a dispute.

8.2 Strike and lockout

Strike is cessation of work by a body of persons employed in any industry acting in combination or concerted refusal or refusal under common understanding to continue to work or to accept employment. Lockout means temporary closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ persons employed by him.

There is prohibition of strikes and lockouts in public utility service. A strike in public utility service without giving notice to the employer as provided in Section 22 of the Industrial Disputes Act is illegal. Similarly, a lockout by an employer carrying on any public utility service without giving notice is also illegal.

Strikes and lockouts are prohibited in other establishments in the circumstances mentioned in Section 23 of the Industrial Disputes Act. Strike is prohibited during the pendency of conciliation proceedings before the Board of Conciliation or seven days after the conclusion of such proceedings. Similarly strike is prohibited during the pendency of proceedings before Labour Court Tribunal, National Tribunal or Arbitrator and two months after the conclusion of such proceedings, for the same demands.

8.3 Lay-off

Lay-off is the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or accumulation of stocks or the breakdown of machinery or for any reason to give employment to a workman. Provisions relating to lay-off shall not apply to industrial establishments in which less than 50 workmen on an average per working day have been employed in the preceding calendar month and also industrial establishments of seasonal character. A workman who has completed not less than one year of continuous service under an employer is entitled for compensation equal to 50 per cent of the total of the basic wages and dearness allowance for all the days he was laid-off. If there is an agreement to that effect, maximum compensation payable during the period of 12 months can be limited to 45 days. If a workman refuses to accept any alternate employment in the same establishment or in any other establishment belonging to the same employer in the same town or village or within a radius of five miles, he will not be entitled to compensation. A workman who presents himself to work in an establishment at the appointed time during normal working hours at least once a day, will only be entitled to compensation.

8.4 Retrenchment

Retrenchment means termination of the service of workman by the employer for any reason, whatsoever, other than as a punishment inflicted by way of disciplinary action. Voluntary retirement, retirement on superannuation, termination on expiry of contract or continued ill-health will not be retrenchment. Conditions precedent to retrenchment of a workman who has been in continuous service of one year under an employer are given in Section 25F of the Industrial Disputes Act, 1947. The workman shall be given one month notice in writing indicating the reasons for retrenchment. In lieu of such notice a workman can be given wages for the period of notice. At the time of retrenchment, the workman shall be paid compensation which shall be equivalent to 15 day's average pay for every completed year of continuous service or part thereof in excess of six months. Employer should serve a notice, in the prescribed manner to the appropriate government stating clearly the reasons for the intended closure of the undertaking.

In the transfer of an undertaking also, the workmen are entitled to compensation and notice prescribed under Section 25F of the Industrial Disputes Act, 1947.

8.5 Closure

A workman is entitled to compensation on permanent closing down of an establishment. An employer who intends to close down an undertaking shall serve at least 60 days before the date of closure a notice to the appropriate government. Every workman who has been in continuous service for not less than one year in that establishment before closure shall be entitled to notice and compensation prescribed in Section 25F of the Industrial Disputes Act, 1947.

8.6 Settlement

The Industrial Disputes Act, 1947 provides for the investigation and settlement of industrial disputes. There are provisions to promote measures for securing and preserving unity and good relation between employers and workmen. The principal techniques of disputes settlement provided in the Act are method for collective bargaining, mediation and conciliation, investigation, arbitration and adjudication. The Act recognizes the method to settle dispute by bipartite settlement between the employer and workmen arrived otherwise than in the course of conciliation proceeding. The Act authorizes the Government to appoint conciliation officers for mediating and promoting the settlement of industrial disputes. The Government is authorized to constitute a board of conciliation for promoting settlement of industrial dispute. Constitution of a Court of Inquiry is to enquire into any matter appearing to be connected with or relevant to industrial disputes. This inquiry is in the nature of an investigation or fact finding. Arbitration is a judicial process under which an independent arbitrator renders a binding decision based on the merits of the dispute. Voluntary arbitration is initiated by consent of the parties which leads to a final and binding award. Adjudication is the method for a mandatory settlement of industrial dispute by labour courts or tribunals.

8.7 Trade union

The Trade Union Act, 1926 provides for the registration of trade unions and deals with the mode of registration and the provisions to be contained in the by-law of the trade union. There are provisions for appointment of a Registrar of Trade Union in each state. Every registered trade union shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract. It shall by the said name sue and be sued. The Act contains provisions relating to the rights and liabilities of registered trade union, provisions relating to immunity from civil suits in respect of certain acts in furtherance of trade disputes, *etc.*

9. DISCIPLINARY ACTION

9.1 Misconduct

The Standing Orders contain a list of acts and omissions which constitute misconduct. The right to take disciplinary action, vested in the employer, is not limited to the acts of misconduct enumerated in the Standing Orders. A misconduct does not cease to be one simply because it does not find a place in the list given in the Standing Orders. In the absence of Standing Orders, it would be very difficult to lay down any general rule in respect of the problem of considering what conduct can be properly treated as misconduct and the question will have to be dealt with reasonably and in accordance with common sense. Acts which are subversive of discipline amongst the employees would constitute misconduct. Conduct which is reasonably inconsistent with the faithfulness and trustworthiness expected of an employee would be misconduct. In short, what is misconduct will naturally depend upon the circumstances of each case.

9.2 Essential formalities in conducting an enquiry

A charge sheet detailing the misconduct, showing violation of the relevant misconduct provision in the Standing Orders is to be issued to the worker seeking his explanation. If his explanation is not satisfactory, an enquiry is to be ordered by appointing an enquiry officer. The charged worker will have the option to engage a worker as his defence assistant for defending in the enquiry. The formalities to be followed while conducting an enquiry are : (1) the accused should be allowed to be present throughout the enquiry, (2) the witnesses should be examined in the presence of the accused and he should be allowed to cross-examine the witnesses cited against him, (3) the accused should be allowed to examine witnesses on his side, (4) if he refuses to cross-examine any witness cited against him or to examine witnesses on his side, that fact should be recorded in the enquiry proceedings, (5) the accused should be examined only after the examination of the witnesses cited against him and of those produced on his side, (6) the accused and witnesses should sign on every page containing their statement or deposition, (7) it will be advantageous if the accused will sign at the foot of every page, (8) in case the accused or any witness refuses to sign the deposition that fact should be recorded in the proceedings, (9) it is always advisable to have a disinterested worker or staff to be present throughout the enquiry and his signature obtained at the foot of every page of the proceedings, and (10) in case the enquiry has to be adjourned, the date, time and place for proceeding with the enquiry may be recorded

at the end of the days proceedings and got signed by the accused. On completion of the enquiry, the inquiry authority should submit a report. The disciplinary authority may issue a show cause notice to the worker proposing penalty along with a copy of the enquiry report. Final orders may be issued after examining the contentions made by the accused in the explanation.

9.3 Punishment

A worker found guilty of misconduct may be awarded penalty according to the standing orders such as (1) suspension (2) discharge from service or (3) dismissal from service.

9.4 Suspension

An employer can suspend an employee, pending an enquiry into his misconduct and the only question that can arise in such suspension will relate to payment of subsistence allowance during the period of such suspension. If there is no statutory provision in any enactment or rule, the employee would be entitled to his full remuneration for the period of his interim suspension. On the other hand if there is a term in the contract or the relevant statute or rules providing for the scale of payment during the suspension, the payment will have to be made in accordance therewith. For Kerala state, the Kerala Payment of Subsistence Allowance Act is a relevant statute in this regard.

9.4.1 Types

The kinds of suspension known to law are : (1) suspension of an employee as a mode of punishment and (2) suspension during the pendency of an enquiry if the contract of service or the statutory provisions governing service provide for such suspension, or mere forbidding from discharging duties during the pendency of an enquiry against an employee.

9.4.1.1 Suspension as a punishment

Suspension as a punishment is meted out in those cases where the gravity of the misconduct does not warrant punishment by way of dismissal or discharge. In suspending a worker as punishment, care should be taken not to exceed the limit fixed in the Standing Orders for such suspension.

9.4.1.2 Suspension pending enquiry

A worker against whom disciplinary action is taken may also be suspended from work pending the enquiry. Suspension pending enquiry is not a punishment and is resorted to only as a precautionary measure so as to prevent loss or damage or to maintain discipline and law and order.

9.5 Restrictions regarding punishment

There are certain statutory restrictions on the employer's right to punish a worker. As per Section 33 of the Industrial Disputes Act, the conditions of service, *etc.* should remain unchanged under certain circumstances during pendency of conciliation proceedings and no employer shall, during the pendency of any conciliation proceedings in respect of an industrial dispute, take any action against any protected workman concerned in the dispute.

9.5.1 Protected workman

A protected workman means a workman who being an office-bearer of a registered trade union connected with the establishment is recognized as such. The number of protected workers shall not exceed one per cent of the total workmen subject to a minimum of five and a maximum of 100 workers. During the pendency of proceedings before Conciliation Officer, Board, Arbitrator, Court or Tribunal the employer cannot take any action against a protected worker concerned in such dispute, except with written permission of the authority concerned.

10. HOLIDAYS

The Industrial Establishments (National and Festival Holidays) Act, 1958 stipulates that the national and festival holidays of persons employed in plantation shall be as per the provisions of the enactment framed by state governments for industrial establishments in that state. The list of festival holidays shall be fixed in consultation with employer and employees (The Act, 1958; Kumar, 1995).

A statement showing the list of holidays shall be displayed in the plantation. Every employee shall be paid wages on holidays allowed under this Act. If an employee is required to work on a holiday, he is entitled to twice the wages and a substituted holiday on any other day.

11. CONCLUSION

A narration of the current position of the statutes may not itself be sufficient to tackle the labour problems. The statutes passed by the legislatures confer vast power on implementing agencies to frame rules, orders and notifications for the effective implementation of the law. Apart from this, the decisions of the courts expand considerably the scope of the statutes. An updated knowledge on these vast expanse of rules, orders, notifications and judicial decisions, is essential for practical application of the provisions of the statutes.

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