

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

## **Introduction-**

In an earlier era, India didn't really have as many laws connected with suitable employment and labour practices, as it does now. As a result, workers did not have uniformity in their service conditions as enforced by the standing orders act. This led to a lot of disruptions, friction and productivity loss between these workers and their bosses – and this was seen mostly in the industrial undertakings involving heavy workloads and multiple employees. The Labour Committee 1944- 1946 was created and they immediately spotted the key cause of issues. There was a lack of understanding, on part of the employees, about employment conditions. This committee maintained that the workers had a right to know all terms and conditions related to their work and employment.

They even wanted a distinct central law that made it obligatory for employers to frame and approve employment conditions and get them enforceable by law. The Industrial Employment (Standing Order) Act 1946 and this order act lists out laws governing the contract as devised, duly signed and eventually terminated by either party.

## **Objective**

This Act may be called the Industrial Employment (Standing Orders) Act, 1946. It extends to the whole of India. It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months.

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

Nothing in this Act shall apply to

a) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) apply; or

b) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961) apply:

- **As per Act-**

1. The first objective states that the act is to provide regular standing orders for factories, workers and the main professional or working relationship.

2. The second aim is to ensure that all employees recognize their employment terms and conditions they are expected to follow or adhere to. This is to help minimize the exploitation of workers against their will and knowledge.
3. The third objective states that it also supports the promotion of industrial peace and harmony by supporting fair industrial practices.

- **In General Sense-**

1. To provide regular standing orders for factories, workers and the main professional or working relationship.
2. To define, with sufficient condition, the principal conditions of employment in industrial establishments under them and to make the said conditions known to worker men employed by them and to make the said conditions known to workmen employed by them.
3. To regulate standards of conduct of the employers and employees so that labour management relations could be improved.
4. To maintain proper discipline, harmonious working conditions and achieve higher productive by providing satisfactory employment and working conditions.
5. To provide for redressal of grievances arising out of employment or relating to unfair treatment of wrongful exaction on the part of the employers against employees.
6. To specify the duties and responsibilities of both the employers and employees

### **Applicability of the act-**

Section 1 of the Act provides that the Act shall apply to the industrial establishments (within India). It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months: unless provided by the appropriate Government for application to any such industrial establishment – with less than a hundred employees.

### **Exclusion-**

Nothing in this Act shall apply to —

1. Industries covered similar legislation such as Bombay Industrial Relations Act, and Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961.
2. Any industry or class of industries exempted by the appropriate Government may, by notification in the official Gazette. Such exemption may be conditional or unconditional.
3. Any establishment where workmen are covered by Fundamental and Supplementary Rules, Civil Services Rules, Civilians in Defence Service Rules, Indian Railway Establishment Code or any other notified regulations apply. (Sn 13B).

### **Definition Clause:**

**Certifying Officer- Section 2(c)** means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act

**Employer- Section 2(d)** means the owner of an industrial establishment to which this Act for the time being applies, and includes-

- (i) in a factory, any person named under 14[clause (f) of sub-section (1) of Section 7 of the Factories Act,1948], as manager of the factory;
- (ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;
- (iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;

### **Industrial establishment means-**

- an industrial establishment as defined in section 2(i) of Payment of Wages Act
- Factory as defined in section 2(m) of Factories Act
- Railway
- Establishment of contractor who employs workmen for fulfilling contract with owner of an industrial establishment. [section 2(e)].

The term 'industrial establishment' includes factory, transport service, construction work, mines, plantation, workshop, building activity, transmission of power etc.

### **Definition of Workman: Sec 2(i)-**

"The expression as used in this Act is the same as is used in Section 2 (s) of the Industrial Disputes Act, and includes any person including an apprentice employed in any industry to do any skilled or unskilled, manual, supervisory, technical, operational or clerical work for hire or reward whether the terms of employment are expressed or implied and includes any person who has been dismissed, discharged or retrenched in connection with an industrial dispute or where dismissal, discharge or retrenchment has led to the dispute, but doesn't include any such person:

- i) Who is subject to the Army Act, 1950 or the Air Force Act, 1950 or the Navy Act, or (ii) Who is employed in the Police Service or as an officer of prison or (iii) Who is employed mainly in a managerial

or administrative capacity or (iv) Who being employed in supervisory capacity, draws wages exceeding 1100 rupees per mensem.

## **Standing Order-**

- **In General sense-**

An Instruction or prescribed procedure in force permanently or until changed or cancelled - Merriam- webster Dictionary.

“set of models with reference to the conditions of employment, with shared consent from the business owner or employer and the labour or a social occasion of delegates or a specialists organization said as Trade Unions, appropriately approved by the reasonable government subject to pre-embraced authorizations to keep up mechanical industry harmony and understanding.’

Standing Orders expresses the laws which administer the connection between the business and a labour in a modern foundation which incorporates the component, for example, grouping of laborers, working hours, participation, suspension, etc...

- **As per the act-**

Standing Orders’ means rules of conduct for workmen employed in industrial establishments.

The Industrial Employment (Standing Orders) Act requires employers in industrial establishments to formally define conditions of employment under them. Section 2(g) of the act defines “Standing orders” as rules relating to matters set out in the Schedule;

- **The matters listed in the schedule of standing order:**

1. Classification of workmen, e.g. whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions, which constitute misconduct.

10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter, which may be prescribed.

Some of the common inclusions in “any other matter” include service cards, service certificates, recording of address and age, and so on- (Sn 2(g), 3(2) and Rule 2A

- **Legal nature of standing orders or a contract can override standing orders-**

The Certified standing order have a statutory force. The standing order implies a contract between the employer and the workman. Therefore, the employer and workman, cannot enter into a contract overriding the statutory contract as embodied in the certified standing order.

- **Case law-**

**Behar Journals vs Ali Hasan** AIR 1959 Pat.431– the probation period provided by the standing order was 3 months only. But in the appointment letter of the respondent the period of probations was six months. It was held that the certified standing orders have statutory force. it is not possible in law for the parties to enter into contract overriding the statutory contract as embodied in the standing orders. Therefore, probationary period in this case could not be for a period longer than 3 months.

### **Submission of draft standing orders- section-3**

- (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in this industrial establishment.
- (2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where Model standing orders have been prescribed shall be, so far as is practicable, in conformity with such model.
- (3) The draft standing orders submitting under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong
- (4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

### **Hindustan Lever vs Workmen Air1974 SC 17.**

The SO made provision for transfer of an employee from one department to another of the same establishment at the discretion of the Manager provided the terms and conditions of service are not affected. There was no finding that the transfer order was malafide or vitiated by unfair labour practice. It was held that if the order of transfer is primacies valid the burden of proving that it is invalid lie on the workmen and in the absence of any finding that the transfer order was malafide or vitiated by unfair labour practice the award directing the reposting of the workman in his original department was bad.

### **Conditions for certification of Standing orders- Section -4**

- Standing orders shall be certifiable under this Act if--

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act ;  
and it shall not be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

- **Deviation from Model Standing Orders:**

The appellate authority or the Certifying Officer shall see whether the standing order satisfy the conditions necessary for certification. They can make necessary additions or modifications in Draft Standing Orders submitted to them for certification so as to make the draft certifiable under the act.

- **Reasonableness of Standing Order:**

Section 3 of the act empowers the certifying officer or the appellate authority to enquire into the impracticability to follow the model standing order and section 4 of the act authorises them to adjudicate upon the fairness or reasonableness of the Draft Standing Order. All these enquiries by authorities should be in an integrated manner and thus construed there will be no conflict between the two sections. Where the SO made no provision regarding age of retirement, an application by the employer for addition of a standing order providing age and ground of retirement could not be ordered as it could not be considered to be in conformity with the model standing orders.

- **Matters not covered by the Schedule:**

The Act contemplates by itself that the Standing Orders must cover matters included in the Schedule initially, and those which may be added to the Schedule by the appropriate Government in exercise of the authority conferred on it under Section 15. Any other provisions of such kind may be made if so certified by the Certifying Officer to be fair and reasonable under Section 4 of the Act.

- **Different set of Standing Orders:**

“Once the standing orders are certified, they constitute the conditions of the service binding upon the management and the employees serving already and in employment or who may be employed after certification.” This implies that different set of standing orders cannot exist in respect of distinct sections of workmen or the employer(s), for that would frustrate the intent of the legislature by rendering the conditions of employment as indefinite & diversified, just as existed prior to the enactment of the said Act.

## **Certifying Officers and appellate authorities to have powers of Civil Court. - section 11**

(1) Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of [Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)]

(2) Clerical or arithmetical mistakes in any order passed by a Certifying officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such officer or authority, as the case may be.]

### **Penalties and Procedure - Section -13**

(1) An employer who fails to submit draft standing orders as required by Section 3 or who modifies his standing orders otherwise than in accordance with Section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

(4) No Court inferior to that of [a Metropolitan or Judicial Magistrate of the second class] shall try any offence under this section.

### **Case laws-**

- **S.K. Sheshadri v H.A.L and others, (1983)**

In this case, the Hon'ble Karnataka High Court held that, as long as the Standing Orders fall within the Schedule to the Act, irrespective of the fact that they contain additional provisions which are not accounted for in the MSOs, the Standing Orders would not be deemed to be invalid or ultra vires of the Act. The MSOs only serve as a model for framing the Standing Orders.

- **Hindustan Lever v Workmen, (1974)**

In the present case, the issue relating to the 'transfer of workmen' was highlighted by concurring that, the Manager is vested with the discretion of transfer of workmen amongst

different departments of the same company, so far as the terms of the contract of employment are not affected. Further, if the transfer is found to be valid, the onus of proving it to be invalid lies on the workmen in dispute.

- **Management of Continental Construction Ltd. v Workmen of Continental Construction, (2003)**

In the instant case, the employer's right to terminate the service of a probationer was recognised by declaring that, if a person is an employee on probation, it is an inherent power of the employer to terminate during/ at the end of the probationary period, provided, that even while acting in accordance with the CSO, the employer's action be fair and consistent with the principles of natural justice.

- **M.K.E. Association Vs. Industrial Tribunal AIR 1959 Mysore 235**

The court held that the draft order to be valid, should contain every matter specified in the act, along with the additional matter prescribed by the government, applicable to the industrial/ commercial establishment.

- **Sudhir Chandra Sarkar Vs Tata Iron and Steel Co.Ltd. (1984) 2 LLJ 223 SC**

The supreme court has clearly stated that the conditions of service laid down in the standing orders is either statutory in character or has statutory flavour. Similarly, certified standing orders which statutorily prescribe the conditions of service shall be deemed to be incorporated in the contract of employment of each employee with his employer.

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