

The Industrial Employment (Standing Orders) Act, 1946

[Act 20 of 1946]¹

[23rd April, 1946]

*An Act to require employers in industrial establishments formally to
define conditions of employment under them*

Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them;

It is hereby enacted as follows:

History of the Act.—The Act has been amended by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1943; A.O. 1950; Act 3 of 1951; Act 36 of 1956; Act 16 of 1961; Act 39 of 1963; 51 of 1970 and 18 of 1982.

CASE LAW ▶ Nature of the Act.—The Act is a beneficial piece of legislation, *B.D. Shetty v. Ceat Ltd.*, (2002) 1 SCC 193 : 2002 SCC (L&S) 131; *Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union*, (1999) 1 SCC 626 : 1999 SCC (L&S) 361.

▶ Object of the Act.—That the object of the Act is to have uniform standing orders providing for the matters enumerated in the Schedule to the Act, that it was not intended that there should be different conditions of service for those who are employed before and those employed after the standing orders came into force and finally, once the standing orders come into the force, they bind all those who are presently in the employment of the concerned establishment as well as those who are appointed thereafter, *Agra Electric Supply Co. Ltd. v. Alladdin*, (1969) 2 SCC 598.

The object of the Act is to require the employer to make the conditions of employment precise and definite. The Act further intends to prescribe these conditions in the form of standing orders, *Bagalkot Cement Co. v. R.K. Pathan*, AIR 1963 SC 439.

Certified standing orders have statutory force and, therefore, attract principles of natural justice as also Articles 14 and 21 of the Constitution of India in case of termination of service under standing orders, *D.K. Yadav v. J.M.A. Industries Ltd.*, (1993) 3 SCC 259 : 1993 SCC (L&S) 723.

The Act was enacted to define with sufficient precision the conditions of employment of workers employed in industrial establishments and to make the same known to them. The object of the Act was to have uniform standing orders in respect of the matters enumerated in the Schedule to the Act regardless of the time of their appointment, *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Ltd.*, (1991) 1 SCC 4 : 1991 SCC (L&S) 1.

The Industrial Employment (Standing Orders) Act, 1946 was made by Parliament to require employers of all industrial establishments to define formally the conditions of employment on which the workmen

1. For Statement of Objects and Reasons, see Gaz. of India, 1946, Pt. V, pp. 179-180.

would be engaged, *Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union*, (1999) 1 SCC 626 : 1999 SCC (L&S) 361.

► **Preamble.**—It is apparent from the Preamble that the object of the Act was to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and make the said conditions known to the workmen employed by them, *Hari Shankar v. Rural Electrification Divn.*, 1976 Lab IC 1720 (FB)(All).

STATE AMENDMENTS

MAHARASHTRA AND GUJARAT STATES

Amendment of the long title of the Act.—For the long title the following title shall be substituted:

“An Act to provide for rules defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay.” (*Vide* Bombay Act 21 of 1958).

Amendment of the Preamble.—For the portion beginning with the words “to require” and ending with the words “by them” the words “to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay and for certain other matters” shall be substituted. (*Vide* Bombay Act 21 of 1958.)

TAMIL NADU

Amendment of long title.—For the long title the following shall be substituted, namely—

“An Act to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Tamil Nadu.”. [*Vide* Tamil Nadu Act 11 of 2016, S. 2, w.e.f. the date to be notified]

Amendment of Preamble.—For the preamble the following shall be substituted, namely—

“Whereas it is expedient to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Tamil Nadu and for certain other matters.”. [*Vide* Tamil Nadu Act 11 of 2016, S. 3, w.e.f. the date to be notified]

1. Short title, extent and application.—(1) This Act may be called the Industrial Employment (Standing Orders) Act, 1946.

(2) It extends to ²[the whole of India ³[* * *].]

⁴[(3) 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:

⁵[* * *].]

⁶[(4) Nothing in this Act shall apply to—

2. Subs. by the A.O. 1950, for “all the Provinces of India”.

3. Omitted by Act 51 of 1970.

4. Subs. by Act 16 of 1961, S. 2 for sub-section (3).

5. The second proviso to sub-section (3) omitted by Act 39 of 1963.

6. Added by Act 39 of 1963.

- (i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946, apply; or
- (ii) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply:

Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders), Act 1961 the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.]

STATE AMENDMENTS

KARNATAKA.—In Section 1, in its application to the State of Karnataka, for the words “one hundred” occurring in sub-section (3) and in the proviso to it, the word “fifty” shall be *substituted*. (*Vide* Karnataka Act 37 of 1975.) (w.e.f 11-7-1975.)

MAHARASHTRA AND GUJARAT STATES

For the Bombay State in sub-section (3), for the words “one hundred” the word “fifty” shall be *substituted*. (*Vide* Bom. Act 21 of 1958.)

Local Application

In **WEST BENGAL**, the Government has specified the industrial establishments wherein fifty or more, but less than one hundred, workmen are employed to be a class or other industrial establishments to which this Act shall apply. (*Vide* Noti. No. 157 Dis/D/I-A-5/51, dated 25th January, 1952, pub. in Cal. Gazette, dated 7-2-1952, Pt. I, p. 403.)

In **UTTAR PRADESH**, the Government has directed that this Act shall apply to all the industrial establishments in the State employing less than 100 workmen, in which the employers voluntarily apply for certification of the Standing Orders in accordance with the Act. [*Vide* Notification No. 2828 (LL)/XVIII-450 (LL)-50, dated November 15, 1950, pub. in U.P. Gazette, dated 18-11-1950, Pt. I, p. 894.] Further, the Government has directed that the Act shall apply to all industrial establishments which are factories within the meaning of Section 2(m) of the Factories Act, 1948 *vide* Noti. No. 5022(V)/XXXVI-3-57/SO(1)-77, dated 20-1-1978 (1978 LLT-V-80).

In **GUJARAT**, the Act has been applied to every industrial establishment wherein fifty or more but less than one hundred workmen are employed. (*Vide* Notification No. Ind. Emp. 1960-H, dated 4-6-1962.)

In **TAMIL NADU**, applied to all factories employing less than 100 workmen *vide* G.O.Ms. No. 1350, dt. 19-3-1966; to all industrial establishments where more than fifty but less than 100 workers are employed *vide* G.O.Ms. No. 1375, dated 10-11-1978. See also Section 51 of T.N. Handloom Workers Etc. Act, 1981 (T.N. Act 61 of 1981).

In **MADHYA PRADESH**, this Act does not apply to those industrial establishments to which the M.P. Industrial Employment (Standing Orders) Act, 1961 (M.P. Act 26 of 1961) applies *vide* Section 4 of M.P. Act 26 of 1961.

Relief Undertakings are exempted in some States like Maharashtra and Gujarat *vide* Bombay Act 96 of 1958 read with Act 11 of 1960; Tamil Nadu *vide* T.N. Act 21 of 1969 and Rajasthan *vide* Raj. Act 9 of 1961.

CASE LAW ▶ Scope.—Security guards of Thermal Power Station of State Electricity Board (SEB) are workmen. Their service conditions would be governed by Industrial Employment (Standing Orders) Act, 1946 and relevant rules framed by SEB. In case of their dismissal from service, they could raise industrial dispute, *Bihar SEB v. Ram Deo Prasad Singh*, (2011) 12 SCC 632.

▶ **Object.**—The Act intends to define ‘conditions of employment’ which expression includes terms of recruitment, *Dhanbad Flour Mills v. Dhanbad Mills Karmachari Sangh*, 1975 Lab IC 268 (DB) (Pat).

► **Applicability.**—The onus to prove the number of workmen employed lies on the management, *Harsha Vishwanath Kolambkar v. Ravindra Hindustan Platinum (P) Ltd.*, (1987) 1 LLN 221.

The proviso to Section 1(3) extends and does not restrict the operation of the Act, *Shitla Prasad v. State of U.P.*, 1986 Lab IC 2025 (All) (DB).

Appellant, a conductor with respondent State Roadways, being a workman defined under Section 2(s), ID Act, is employee of respondent and hence, would be governed by model standing orders framed under Industrial Employment (Standing Orders) Act, 1946, *Raghubir Singh v. Haryana Roadways*, (2014) 10 SCC 301.

"Aanganwadi sevika" is a workman and "Integrated Child Development Scheme" is an industry — Unless petitioners have their own service rules made applicable to such workmen, Industrial Employment (Standing Orders) Act, 1946 and model standing orders framed thereunder would become automatically applicable, *Chief Executive Officer v. Ratan Eknath Gund*, 2014 SCC OnLine Bom 1625 (Bom) : (2015) 2 Mah LJ 616 (Bom).

Rashtrasant Tukadoji Maharaj Nagar University is not an industrial establishment. Act of 1946 not applicable to University, *Rashtrasant Tukadoji Maharaj Nagar University v. Industrial Court*, 2015 SCC OnLine Bom 4773 (Bom) : (2016) 2 Mah LJ 454 (Bom) : (2015) 147 FLR 752 (Bom).

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

⁷[(a) "appellate authority" means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act:

Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963, that Court or authority shall be deemed to be the appellate authority;]

NOTIFICATION

Labour Commissioners to exercise powers of Appellate Authority in respect of industrial establishments under the control of Central Government

S.O. 1062, dated 15th March, 1990⁸.—In exercise of the powers conferred by clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), and in supersession of the notification of the Government of India in the Ministry of Labour No. S.O. 3042, dated 21st September, 1988, the Central Government hereby appoints the following officers to exercise the functions of Appellate Authorities under the said Act in respect of the industrial establishments under the control of the Central Government or a railway administration or a major port, mine or oilfield, situated anywhere in India, namely:—

- (1) The Chief Labour Commissioner (Central).
- (2) The Joint Chief Labour Commissioner (Central).
- (3) All Deputy Chief Labour Commissioners (Central).

2. All the appeals under the said Act will be addressed to the Chief Labour Commissioner (Central), who will allocate the appeals to any of the said Appellate Authorities:

7. Subs. by Act 39 of 1963.

8. Gaz. of India, dt. 21-4-1990, Pt. II, S. 3(ii), p. 1333.



Provided that appeals against the orders of certification of any Deputy Chief Labour Commissioner (Central) as Certifying Officer will be heard only by the Chief Labour Commissioner (Central) or the Joint Chief Labour Commissioner (Central), as the case may be.

- (b) "appropriate Government" means in respect of industrial establishments under the control of the Central Government or a ⁹[Railway administration] or in a major port, mine or oilfield, the Central Government, and in all other cases the State Government:
¹⁰[Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties;]
- ¹¹[(c) "Certifying Officer" means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act;]
- (d) "employer" 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 ¹²[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;
- (e) "industrial establishment" means—
- (i) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936, or
 - ¹³[(ii) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948, or]
 - (iii) a railway as defined in clause (4) of Section 2 of the Indian Railways Act, 1890, or

9. Subs. by the A.O. 1950, for "Federal railway".

10. Ins. by Act 18 of 1982 (w.e.f. 17-5-1982).

11. Subs. by Act 16 of 1961, S. 3, for cl. (c).

12. Subs. by S. 3, *ibid*, for "cl. (e) of sub-section (1) of S. 9 of the Factories Act, 1934".

13. Subs. by Act 16 of 1961, S. 3, for sub-clause (ii).

- (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;
- (f) "prescribed" means prescribed by rules made by the appropriate Government under this Act;
- (g) "standing orders" means rules relating to matters set out in the Schedule;
- (h) "trade union" means a trade union for the time being registered under the Indian Trade Unions Act, 1926;
- ¹⁴[(i) "wages" and "workman" have the meanings respectively assigned to them in clauses (rr) and (s) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947).]

STATE AMENDMENTS

ANDHRA PRADESH

In cl. (e) of S. 2, after sub-clause (iv), the following shall be *added*, namely:

"or

(v) such other establishment, as the State Government may, by notification in the Andhra Pradesh Gazette, specify in this behalf, which does not fall within any of sub-clauses (i) to (iv), and in respect of which the State Government is the appropriate Government." (Andh. Act 9 of 1969.)

MAHARASHTRA AND GUJARAT STATES

1. Before clause (a) the following new clause shall be *inserted*:

"(1-a) 'amendments' means, in relation to model standing orders, any amendments proposed to such orders under Section 3 and includes any alterations, variations or additions proposed thereto."

2. For sub-clause (iii) of clause (d) the following shall be *substituted*—

"(iii) in any other industrial establishment—

- (a) any person responsible to the owner for the supervision and control of the industrial establishment;
- (b) where a person who for the purpose of fulfilling a contract with the owner of the industrial establishment employs workmen on the premises of the establishment for the execution of the whole or any part of any work which is ordinarily part of such establishment then, in relation to such workmen, the owner of the industrial establishment."

3. Sub-clause (iv) of clause (e) shall be *deleted*." (Bom. Act 36 of 1956)

4. After clause (e) the following shall be *inserted*:

"(ee) 'model standing order' means standing orders prescribed under Section 15;

(ef) 'modification' includes, in relation to standing order, any alteration, variation, addition or deletion in or to such order."

TAMIL NADU

1. To clause (c) of Section 2, the following proviso shall be *added*, namely:

"Provided that the State Government may, in relation to industrial establishments in respect of which it is the appropriate Government, appoint, by notification in the Official Gazette, any officer subordinate to the Labour Commissioner to exercise, in such area as may be specified in

14. Subs. by Act 18 of 1982 (w.e.f. 17-5-1982).

the notification, the functions of a Certifying Officer under this Act, and any officer appointed as aforesaid may exercise those functions, whether or not the Labour Commissioner is absent." (*Vide* Madras Act 24 of 1960).

2. Amendment of Section 2.—In Section 2 of the principal Act,—

(1) for clause (a), the following clauses shall be *substituted*, namely—

'(a) "amendments" means, in relation to the model standing orders, any amendments proposed to such orders under Section 3 and includes any alterations, variations or additions proposed thereto;

(aa) "appellate authority" means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act:

Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963, that Court or authority shall be deemed to be the appellate authority;"

(2) in clause (d), for sub-clause (iii), the following sub-clause shall be *substituted*, namely—

"(iii) in any other industrial establishment,—

- (a) any person responsible to the owner for the supervision and control of the industrial establishment;
- (b) where a person who, for the purpose of fulfilling a contract with the owner of the industrial establishment, employs workmen on the premises of the establishment for the execution of the whole or any part of any work which is ordinarily part of such establishment then, in relation to such workmen, the owner of the industrial establishment;"

(3) in clause (e), sub-clause (iv) shall be *omitted*;

(4) after clause (e), the following clauses shall be *inserted*, namely—

'(ee) "model standing orders" means standing orders made under Section 15;

(eee) "modification" includes, in relation to a standing order, any alteration, variation, addition or deletion in, or to, such order;" *vide* Tamil Nadu Act 11 of 2016, S. 4, w.e.f. the date to be notified. [*Vide* Tamil Nadu Act 11 of 2016, S. 4, w.e.f. the date to be notified]

CASE LAW ▶ Clause (b) appropriate Government.—Where under the articles of association of the Sindri Fertilisers and Chemicals (P) Ltd. the complete control vested in the President of the Indian Union, it must be held an establishment under the Central Government. The appropriate Government for the purposes of the Standing Orders Act would be the Central Government and not the State Government, *Sindri Workers Union v. Commissioner of Labour*, (1959) 2 LLJ 531.

▶ **Clause (e): "industrial establishment".**—The term "industrial establishment" is to be given the meaning contained in the Payment of Wages Act, 1936 at the time of enactment of the Industrial Employment (S.O.) Act, i.e. in 1946. Any subsequent amendment to the former Act would not affect the position vis-à-vis the latter Act, *Valsad Zilla Sahakari Bank Ltd. v. D.K. Patel*, 1991 Lab IC 655 : (1991) 2 LLN 669 : 63 FLR 212 (Guj) (DB).

The Act would apply to the industrial establishments of the State Electricity Board, *Hari Shankar v. Rural Electrification Divn.*, 1976 Lab IC 1720 (All) (FB).

The question whether an establishment is an industrial establishment involves a factual aspect and unless raised before the trial court cannot be entertained in a writ petition after the arguments are over, *Pyarelal v. Municipal Council, Ramtek*, (1992) 2 LLN 910 (Bom).

Agricultural Produce Market Committee is covered by the definition of industrial establishment, *Agricultural Produce Market Committee v. Industrial Court*, (2011) 5 Mah LJ 953 (Bom).

► **Clause (g): “standing orders”.**—The standing orders are rules relating to matters set out in the Schedule in view of the definition in Section 2(g). In the absence of statutory provision the mere fact that ownership of an industrial establishment has changed hands, the standing orders which were applicable to the industrial establishment of its previous owner would not automatically cease to apply merely because the industrial establishment has been purchased by someone else, *Hari Shankar v. Rural Electrification Divn.*, 1976 Lab IC 1720 (All) (FB).

► **Clause (i): “Workman”.**—A Teacher in Salal Project High School is not a workman, *K. Mirnalni v. Chairman Cum-Managing Director, N.H.P.C. Ltd.*, 1994 Lab IC NOC 337 (J&K).

Workmen employed on the administrative side such as, Junior Assistants are also workmen under Section 2(s) of the Industrial Disputes Act covered by the Industrial Employment (Standing Orders) Act, 1946 hence, petitioner cannot be discriminated in the matter of pay or promotion and should be treated on par with other Junior Assistants for the purpose of pay as well as for promotion and other benefits, *S.S. Anandaraja v. T.N. Civil Supplies Corpn. Ltd.*, 2015 SCC OnLine Mad 8859 (Mad) : (2015) 3 LW 732 (Mad).

► **Overriding Effect.**—The provisions of the Act, which is a special one in regard to conditions of service of workmen in industrial establishments prevail over Section 79(c) of the Electricity (Supply) Act, 1948, which is a general provision, *U.P.S.E.B. v. Hari Shanker Jain*, (1978) 4 SCC 16 : 1978 SCC (L&S) 481. See also *S. Bagianathan v. Secy., R.D.&L.A.*, (1984) 2 LLN 874 : 1984 Lab IC 1290 : (1984) 2 LLJ 273 (Mad) (FB).

In the State of Maharashtra, in view of Section 2-A(1), model standing orders will prevail over certified standing orders certified after January 15, 1959, *Kishore Jaikishandas Ichchaporla v. M.R. Bhope*, (1987) 2 LLN 263 (Bom); doubting *M.C. Raju v. Karnataka Vidyuth Karkhane*, (1985) 1 LLN 109 (Kant) (DB) : (1985) 1 LLJ 210. Followed in *Municipal Corporation of Greater Bombay v. Laxman Saidu Timmanapyati*, (1991) 1 Cur LR 653 (Bom).

SECTION 2-A

MAHARASHTRA AND GUJARAT STATES

The following shall be *inserted* as new Section 2-A:

“2-A. *Application of model standing order in every industrial establishment.*—(1) Where this Act applies to an industrial establishment, the model standing order for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the Official Gazette appoint in this behalf:

Provided that nothing in this section shall be deemed to effect any standing orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957.” (*Vide Bom. Act 21 of 1958.*)

MAHARASHTRA

Section 2-A shall be renumbered as sub-section (1) and after sub-section (1) so *renumbered*, the following new sub-section (2) shall be *added*:

“(2) Notwithstanding anything contained in the proviso to sub-section (1), model standing orders made in respect of additional matters included in the Schedule after the coming into force of the Act referred to in that proviso (being additional matters relating to probationers or badlis or temporary or casual workmen) shall, unless such model standing orders are in the opinion of Certifying Officer less advantageous to them than the corresponding standing orders applicable to them then under the said proviso, also apply in relation to such workmen in the establishments referred to in the said proviso from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf.”. (*Vide* Mah. Act 54 of 1974.) (w.e.f. 2-10-1977.)

TAMIL NADU

Insertion of new Section 2-A.—After Section 2 the following section shall be *inserted*, namely—

“2-A. *Application of model standing order to every industrial establishment.*—(1) Where this Act applies to an industrial establishment, the model standing order for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf:

Provided that nothing in this section shall be deemed to affect any standing orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment (Standing Orders) Tamil Nadu Amendment Act, 2008 except those provisions which are inconsistent with the model standing orders:

Provided further that, notwithstanding anything contained in the proviso, any modification made to the model standing orders in respect of the existing matters in the Schedule or model standing orders made in respect of additional matters included in the Schedule after the coming into force of the Industrial Employment (Standing Orders) Tamil Nadu Amendment Act, 2008 shall, apply in relation to such workmen in the establishments referred to in the said proviso from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf.”. [*Vide* Tamil Nadu Act 11 of 2016, S. 5, w.e.f. the date to be notified.]

3. Submission of draft standing orders.—(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 submitted 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.

STATE AMENDMENTS

KARNATAKA

In its application to the State of Karnataka, for Section 3, the following shall be *substituted*, namely—

“3. *Submission of Standing Orders.*—(1) Within six months from the date on which the Industrial Employment (Standing Orders) (Karnataka Amendment) Act, 2005 becomes applicable to an industrial establishment, the employer shall prepare the Standing Orders proposed by him for adoption in his industrial establishment.

(2) The Standing Order prepared as required under sub-section (1) shall refer to 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 for as is practicable in conformity with such Model Standing Order.

(3) The Standing Orders so prepared shall be discussed with the Trade unions existing in the industrial establishment or representatives of the workmen, before adoption and the employer providing proof thereof:

Provided no Standing Order adopted under this sub-section shall be effective unless a copy thereof as adopted is sent to the Certifying Officer by Registered Post Acknowledgement due and the acknowledgement therefor is received and filed.

(4) If there is no dispute with regard to the clauses and matters set out in the Standing Orders drafted by the employer of the Industrial establishment, then it shall be adopted in the industrial establishment as if it is certified under this Act and a copy thereof shall be sent immediately to the Certifying Authority by Registered Post Acknowledgement Due.

(5) If there is any dispute or disagreement with regard to the adoption of any clause or matter set out in the schedule between the employer and the Trade Union or workmen representatives, then such Standing Orders drafted by the employer shall be submitted to the Certifying Officer notified under the rules within thirty days from the date of dispute, for adoption in the industrial establishment”. [Vide Karnataka Act 12 of 2014, S. 2 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

1. For sub-section (1) the following shall be *substituted*:

“(1) Within six months from the date on which the model standing orders apply to any industrial establishment under Section 2-A, the employer or any workman employed therein may submit to that Certifying Officer five copies of the draft amendments for adoption in such industrial establishment:

Provided that no amendment which provides for the deletion or omission of any rule in the model standing orders relating to any matter set out in the Schedule shall be submitted under this section.”

2. Sub-section (2) shall be *deleted*.

3. In sub-section (3) for the words “draft standing orders” the words “draft amendments” shall be *substituted*.

4. In sub-section (4) for the words “draft of standing orders” the words “draft of amendments” shall be *substituted*.

5. For the marginal note, the marginal note “submission of amendments” shall be *substituted*. (Vide Bom. Act 21 of 1958).

TAMIL NADU

In its application to the State of Tamil Nadu, in Section 3,—

- (1) for the marginal heading, the marginal heading "Submission of amendments" shall be *substituted*;
- (2) for sub-section (1), the following sub-section shall be *substituted*, namely—
 "(1) Within six months from the date on which the model standing orders apply to any industrial establishment under Section 2-A, the employer or any workmen employed therein may submit to the Certifying Officer five copies of the draft amendments for adoption in such industrial establishment:
 Provided that no amendment which provides for the deletion or omission of any rule in the model standing orders relating to any matter set out in the Schedule shall be submitted under this section.";
- (3) sub-section (2) shall be *omitted*;
- (4) in sub-section (3), for the expression "draft standing orders", the expression "draft amendments" shall be *substituted*;
- (5) in sub-section (4), for the expression "draft of standing orders", the expression "draft of amendments" shall be *substituted*. [Vide Tamil Nadu Act 11 of 2016, S. 6, w.e.f. the date to be notified.]

CASE LAW ► Draft standing orders.—The draft need not copy model standing orders verbatim, *M.R. Employers Association v. Industrial Tribunal*, AIR 1959 Mys 235 : (1959) 1 LJ 531. The draft must conform to the model prescribed by the appropriate Government, in substance, *A.C.C. Ltd. v. P.D. Vayas*, (1960) 1 LJ 563.

► **Binding effect.**—Standing Orders cannot be ignored and are binding and effective between the parties, *Mettur Industries Ltd. v. A.R. Varma*, AIR 1959 Mad 479.

Section 3 does not require the workmen to ensure conformity of proposed modifications to standing orders with model standing orders, *Indian Oil Corporation Ltd. v. Jt. Chief Labour Commr.*, 1990 Lab IC 871 (Del) (DB).

The standing orders when certified would be binding on the employers as well as on all the workmen who were in employment at the time the standing orders came into force and those employed thereafter, *U.P. Electric Supply Co. v. Workmen*, (1972) 2 SCC 54; relying on *Salem Erode Electricity Distribution Co. v. Employees' Union*, AIR 1966 SC 808 : (1966) 2 SCR 498; *Agra Electric Supply Co. v. Alladin*, (1970) 1 SCR 808 : (1969) 2 SCC 429; see also *Dunlop India Ltd. v. Workmen*, AIR 1972 SC 1951 and *Avery India Ltd. v. Second Industrial Tribunal*, AIR 1972 SC 1628.

► **Scope.**—The standing orders must cover matters initially included in the Schedule as well as matters which may be added to the Schedule by the appropriate Government in exercise of the authority conferred on it by Section 15, *Rohtak and Hissar District Electric Supply Co. v. State of U.P.*, (1966) 2 LJ 330 : AIR 1966 SC 1471 followed in *Punjab Khadi Gram Udyog Sangh v. Jit Ram*, (1975) 2 LJ 413.

Gherao, protest, fast, refusal to work overtime are acts of indiscipline. Worker's right to participate in politics cannot be banned by standing orders, *Workmen v. Orissa State Transport Corporation*, (1975) 1 LJ 11.

The Act does not empower the employer to frame standing orders for the transfer of its workmen from one place to another and, therefore, the right of employers to that extent is taken away, *Air Gases Mazdoor Sangh v. Indian Air Gases Ltd.*, 1977 Lab IC 575 (All).

4. Conditions for certification of standing orders.—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 ¹⁵[shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

STATE AMENDMENTS

KARNATAKA

In its application to the State of Karnataka, in Section 4, for the words "Standing Orders shall be certifiable", the words, brackets and figures "In the event of submitting the draft Standing Order under sub-section (5) of Section 3, the Standing Orders shall be certifiable" shall be *substituted*. [Vide Karnataka Act 12 of 2014, S. 3 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

For its application to Bombay State, this section shall be deleted. (Vide Bombay Act 21 of 1958.)

TAMIL NADU

In its applicability to the State of Tamil Nadu, Section 4 shall be *omitted*. [Vide Tamil Nadu Act 11 of 2016, S. 7, w.e.f. the date to be notified]

CASE LAW ► Validity of certification.—Where a standing order certified by the certifying officer contains a clause relating to superannuation, not covered by the Schedule of the Act or by the model standing order, such certification cannot be a valid certification, *Saroj Kumar Ghosh v. Chairman*, AIR 1970 Ori 126; *Punjab Khadi Gram Udyog Sangh v. Jit Ram*, (1975) 2 LLJ 413.

► **Overriding effect.**—Terms of employment specified in Standing Order would prevail over corresponding terms in contract of service, *Western India Match Co. v. Workmen*, (1974) 3 SCC 330 : 1973 SCC (L&S) 531.

The certified standing orders providing for acts and omissions constituting misconduct prevail over the provisions of former Conduct Regulations, *J. Dhanaraj v. T.N. Electricity Board*, (1995) 1 LLJ 931 (Mad)(DB).

► **Social interest.**—While adjudging the fairness or reasonableness of any standing order, the certifying officer should consider the social interest in the claims of employer and the social interest in the demands of the workmen, *Western India Match Co. v. Workmen*, (1974) 3 SCC 330 : 1973 SCC (L&S) 531.

► **Terms of employment.**—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. If any rule framed by a company read with standing orders confers absolute and unfettered discretion on the employer to allow or disallow rightful claim of employees, that would be unfair and unreasonable as also arbitrary subject to test of Article 14, *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.*, (1984) 3 SCC 369 : 1984 SCC (L&S) 540.

Reduction of age of superannuation from 55 years to 50 years by the certifying officer under the Industrial Employment (Standing Orders) Act without hearing the workmen will be null and void, *Bansidhar Sarma v. Certifying Officer & Labour Commr., Guwahati*, 1997 Lab IC 3061 (Gau).

For avoidance of Sexual harassment of women at workplaces in private sector, standing orders under the Industrial Employment (Standing Orders) Act, 1946 directed to be amended on the basis of reports of

15. Subs. by Act 36 of 1956, S. 32, for "shall not be the function" (w.e.f. 17-9-1956).

Sexual Harassment Complaints Committee, *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297 : (2013) 1 SCC (L&S) 159 : (2013) 1 SCC (Cri) 459 : (2013) 1 SCC (Civ) 458.

► **Dispute between workmen and employer.**—Dispute between workmen and employer regarding confirmation of workmen officiating in a higher grade is an industrial dispute. Such dispute is connected with the terms of employment, relating to classification of workmen which employer is bound under the Standing Orders Act to provide for in the certified standing orders, *Workmen v. Hindustan Lever Ltd.*, (1984) 4 SCC 392 : 1985 SCC (L&S) 61.

The certified orders bind all those in employment at the time of service as well as those who are appointed thereafter, *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.*, (1984) 3 SCC 369 : 1984 SCC (L&S) 540.

In view of Section 4 of the 1946 Act, Supreme Court in appeal under Article 136 shall have the power to adjudicate upon the fairness or reasonableness of the provision of a standing order and declare it ineffective and unenforceable, *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.*, (1984) 3 SCC 369.

► **Powers of certifying officer.**—Jurisdiction of certifying officer and appellate authority, held, is not limited to examining whether the draft standing orders conformed to the model standing orders but extends to determination of fairness and reasonableness of the provisions of the standing orders, *Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union*, (1999) 1 SCC 626 : 1999 SCC (L&S) 361.

If the certifying officer finds that some provisions of the standing orders relate to matters which are not included in the Schedule or finds that some provisions are unreasonable, he must refuse to certify the same. Parliament has laid this mandatory duty on the certifying officer which he must discharge in a fair and quasi-judicial manner, *Air Gases Mazdoor Sangh v. Indian Air Gases Ltd.*, 1977 Lab IC 575 (All); relying on *Bagalkot Cement Co. v. R.K. Pathan*, AIR 1963 SC 439.

► **Findings of certifying officer.**—The findings of the certifying officer or appellate authority under Section 4 are final but if the findings are recorded on extraneous considerations or under some misconception of law it is always open to the High Court under Article 226 to quash those findings, *Central Workshop Karmachari Sangh v. Industrial Tribunal*, 1978 Lab IC 1560 (All).

5. Certification of standing orders.—(1) On receipt of the draft under Section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing

orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

STATE AMENDMENTS

KARNATAKA

In its application to the State of Karnataka, in Section 5, in sub-section (1), for the word and figure "Section 3", the words, brackets and figure "sub-section (5) of Section 3" shall be *substituted*. [Vide Karnataka Act 12 of 2014, S. 4 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

1. In sub-section (1)—

- (i) after the words "as may be prescribed" the words "or the employer, as the case may be", and after the word "workmen" where it occurs for the third time, the words "or employer" shall be *inserted*;
- (ii) for the words "draft standing orders" the words "draft amendments" shall be *substituted*;

2. In sub-section (2)—

- (i) after the words "giving the employer" the words ", workmen submitting the amendment" shall be *inserted*;
- (ii) the words "or addition to" shall be *deleted*;
- (iii) for the words "the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act" the words, brackets and figures "the draft submitted under sub-section (1) of Section 3 is necessary" shall be *substituted*;

3. In sub-section (3)—

- (i) for the words "certify the draft standing orders" the words "certify the draft amendments" shall be *substituted*;
- (ii) for the words "certified standing orders" the words "model standing orders, together with copies of the certified amendments thereof" shall be *substituted*.

4. In the marginal note for the words "standing orders" the word "amendments" shall be *substituted*. (Vide Bom. Act 21 of 1958.)

TAMIL NADU

In its applicability to the State of Tamil Nadu, in Section 5,—

- (1) in the marginal heading, for the expression "standing orders", the expression "amendments" shall be *substituted*;
- (2) in sub-section (1), for the expression beginning with the words "to the workmen" and ending with the words "the draft standing orders", the expression "to the workmen in such manner as may be prescribed or to the employer, as the case may be, together with a notice in the prescribed form requiring objections, if any, which the workmen or employer may desire to make to the draft amendments" shall be *substituted*;
- (3) in sub-section (2),—
 - (a) for the expression "After giving the employer", the expression "After giving the employer, the workmen submitting the amendments" shall be *substituted*;
 - (b) for the expression "or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act", the expression "the draft submitted under sub-section (1) of Section 3 is necessary" shall be *substituted*;
- (4) in sub-section (3),—
 - (a) for the expression "certify the draft standing orders", the expression "certify the draft amendments" shall be *substituted*;

- (b) for the expression "certified standing orders", the expression "model standing orders together with copies of the certified amendments thereof" shall be substituted;
- (c) for the expression "to the employer", the expression "to the employer, the workmen who submitted the amendments" shall be substituted". [Vide Tamil Nadu Act 11 of 2016, S. 8, w.e.f. the date to be notified]

CASE LAW ▶ Certification of standing orders.—After the amendment of the law in 1956 the certifying officer and the appellate authority are duty-bound to examine the question of fairness of the standing orders and there can be no justification to not give effect to the principle of uniformity of conditions of service which is clearly contemplated by the provisions of the Act, *U.P. Electric Supply Co. Ltd. v. Workmen*, (1972) 2 SCC 54.

▶ **Nature of Certified standing orders.**—Certified standing orders contain statutory and not contractual terms and conditions of service, *Abdul Khalique v. Heavy Engineering Corpn. Ltd.*, 1985 Lab IC 1114 : (1985) 2 LLN 803 (Pat) (DB); dissenting from *Calcutta Electricity Supply Corpn. Ltd. v. Ram Ratan Mahto*, 1975 Lab IC 740 (Cal).

Certified Standing Orders, held, constitute the conditions of service binding upon the management and existing new employees, *Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union*, (1999) 1 SCC 626 : 1999 SCC (L&S) 361, relying on *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.*, (1984) 3 SCC 369 : 1984 SCC (L&S) 540; *Agra Electric Supply Co. Ltd. v. Alladin*, (1969) 2 SCC 598; *Workmen v. Firestone Tyre and Rubber Co. of India (P) Ltd.*, (1973) 1 SCC 813 : 1973 SCC (L&S) 341; *Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut*, (1984) 1 SCC 1 : 1984 SCC (L&S) 42. See also *Derby Textiles Ltd. v. Karmachari and Shramik Union*, (1991) 2 LLN 774 : 63 FLR 166 : (1991) 2 Cur LR 201 (Raj)(DB).

Termination of service in contravention of standing orders is void, *Workmen v. F.C.I.*, (1985) 2 SCC 136 : 1985 SCC (L&S) 420.

▶ **Fairness or reasonableness of standing order.**—While adjudging the fairness or reasonableness of any standing order, the certifying officer should consider and weigh the social interest in the claims of the employer and the social interest in the demands of the workmen, *Maharashtra General Kamgar Union v. Bharat Petroleum Corpn. Ltd.*, (1996) 2 LLN 571 : (1996) 2 Cur LR 544 (Bom).

Fairness and reasonableness of standing orders for certification cannot be questioned in writ petition, *Maharashtra General Kamgar Union v. Bharat Petroleum Corpn. Ltd.*, (1996) 2 LLN 571 : (1996) 2 Cur LR 544 (Bom).

▶ **Fixing of age of retirement.**—Age of superannuation for certification of standing orders could be mutually agreed between management and workmen and every workman on reaching the age of superannuation had to retire from service, *P.R.T.C. Workers Union (Regd.), Patiala v. Pepsu Road Transport Corpn., Patiala*, (1997) 2 LLJ 899 : (1997) 2 LLN 1192 (P&H).

Fixation of retirement age at 60 instead of 58 years by the certifying officer while certifying the standing orders will be legal and the High Court will not interfere, *Rashtriya Chemicals and Fertilizers Ltd. v. FCI Workers Union*, (1997) 1 Cur LR 906 : (1997) 3 LLN 145 (Bom)(DB).

▶ **Transfer or detention of employees.**—Provision for transfer of employees anywhere or detaining them for essential services beyond duty hours in the certified standing orders of a big organisation cannot be arbitrary, *Gail's Employees' Assn. Gas Authority of India v. Chief Labour Commr.*, 1997 Lab IC 1329 : 1996 LLR 986 (Del).

► **Relief against standing orders.**—Relief against non-payment of gratuity, in contravention of certified standing orders, can be sought from the civil court. If the employee is a workman there will be an additional remedy under Section 33-C(2) of Industrial Disputes Act, 1947, *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.*, (1984) 3 SCC 369 : 1984 SCC (L&S) 540.

The Supreme Court in *Uptron India Ltd. v. Shammi Bhan*, (1998) 1 LLJ 1165 : (1998) 2 LLN 959 : 1998 Lab IC 1545, held that any clause in the certified standing orders providing for automatic termination of service of a permanent employee, not directly related to "Production" in a Factory or Industrial Establishment would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically.

► **Representation of trade union.**—Provision for representation by an officer-bearer of a trade union in standing orders for certification will be mandatory, *Maharashtra General Kamgar Union v. Bharat Petroleum Corpn. Ltd.*, (1996) 2 LLN 571 : (1996) 2 Cur LR 544 (Bom).

6. Appeals.—(1) ¹⁶[Any employer, workman, trade union or other prescribed representatives of the workmen] aggrieved by the order of the Certifying Officer under sub-section (2) of Section 5 may, within ¹⁷[thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

STATE AMENDMENTS

MAHARASHTRA AND GUJARAT STATES

In this section—

- (a) in sub-section (1), for the portion beginning with the words "confirm the standing orders" and ending with the words "certifiable under this Act" the words "confirm the amendments either in the form certified by the Certifying Officer or after further modifying the same as the appellate authority thinks necessary" shall be *substituted*;
- (b) in sub-section (2)—
 - (i) for the words "unless it has confirmed without amendment the standing orders" the words "unless it has confirmed without further modifications the amendments" shall be *substituted*;
 - (ii) for the words "by copies of the standing orders" the words "by copies of the model standing orders together with amendments" shall be *substituted*. (*Vide Bom. Act 21 of 1958*).

16. Subs. by Act 18 of 1982 (w.e.f. 17-5-1982).

17. Subs. by Act 16 of 1961, S. 4, for "twenty-one days".

TAMIL NADU

In its application to the State of Tamil Nadu, in Section 6,—

- (1) in sub-section (1), for the expression beginning with the words “confirm the standing orders” and ending with the words “certifiable under this Act”, the expression “confirm the amendments either in the form certified by the Certifying Officer or after further modifying the same as the appellate authority thinks necessary” shall be *substituted*;
- (2) in sub-section (2),—
 - (a) for the expression “to the employer”, the expression “to the employer, the workmen” shall be *substituted*;
 - (b) for the expression “unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders”, the expression “unless it has confirmed without further modifications the amendments as certified by the Certifying Officer, by copies of the model standing orders together with the amendments” shall be *substituted*. [Vide Tamil Nadu Act 11 of 2016, S. 9, w.e.f. the date to be notified]

CASE LAW ► Dismissal in default.—The certifying officer cannot dismiss the case for default, *Agarwal & Co. v. Appellate Authority*, 1973 ALJ 211.

► **Powers of the appellate authority.**—The appellate authority has no power to set aside the order of the certifying officer. It can confirm or amend the standing orders, *Punjab Khadi Gram Udyog Sangh v. Jit Ram*, (1975) 2 LLJ 413.

The appellate authority cannot remand the matter for fresh consideration, *Kerala Agro Machinery Corporation Ltd. v. Industrial Tribunal*, (1988) 2 LLJ 18 : (1988) 1 LLN 229 (Ker).

The powers of the appellate authority are coextensive with those of the certifying officer, *Saru Smelting (P) Ltd. v. Appellate Authority*, (1984) 2 LLN 245 (All).

► **Maintainability of appeal.**—Mere non-participation in certification proceedings does not disentitle to prefer an appeal, *Kerala Agro Machinery Corpn. Ltd. v. Industrial Tribunal*, (1988) 2 LLJ 18 : (1988) 1 LLN 229 (Ker).

The requirement that the memorandum of appeal must be signed by the authorised officer of the aggrieved party is directory in nature and its non-compliance cannot render an appeal non-maintainable, *Central Workshop Karmachari Sangh v. Industrial Tribunal*, 1978 Lab IC 1560 (All).

An order rejecting application for modification is not appealable under Section 6 of the Act, *Indian Express Employees Union v. Indian Express (Madurai) Ltd.*, (1998) 1 Cur LR 1161 (Ker).

► **Limitation.**—An appeal timely sent by registered post but reaching late is not time barred, *Bharat Heavy Electricals Ltd. v. Chief Labour Commr.*, (1986) 1 LLN 644 (Kant) : (1986) 2 LLJ 260.

In view of Section 9(1) of the General Clauses Act, 1897, the date on which the order under appeal was sent, should be excluded in computing the period of limitation, *Badarpur Power Engineers Association v. Deputy Chief Labour Commissioner*, (1993) 1 LLJ 991 : (1993) 66 FLR 1055 : 1993 Lab IC 636 (Del) (DB).

► **Powers of appellate authority.**—Appellate authority can exercise only those powers conferred on it under S. 6(1). Appellate authority has no power to set aside order passed by certifying officer, *Foundation Brake Kamgar Sanghatna v. Foundation Brake Mfg. (P) Ltd.*, 2016 SCC OnLine Bom 3960 : (2016) 5 Mah LJ 638 (Bom).

► **Written statement.**—Filing of a written statement or a written say by respondent has not been specifically prohibited. It would neither violate Act and Rules nor would it be prejudicial in permitting respondents to counter contentions in appeal memo and assist court, *Foundation Brake Kamgar Sanghatna v. Foundation Brake Mfg. (P) Ltd.*, 2017 SCC OnLine Bom 9232 : (2017) 4 Mah LJ 366 (Bom).

7. Date of operation of standing orders.—Standing orders shall, unless an appeal is preferred under Section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6.

STATE AMENDMENTS

KARNATAKA

In its applicability to the State of Karnataka, Section 7 shall be renumbered as sub-section (2) thereof and before sub-section (2) as so renumbered, the following shall be *inserted*, namely—

“(1) Standing Orders as adopted under sub-section (4) of Section 3 shall come into operation on the expiry of 30 days from the date on which the employer and the trade union or workmen representatives agree to adopt the standing orders.” [Vide Karnataka Act 12 of 2014, S. 5 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

In the marginal note thereto after the words “standing orders” the words “or amendments” shall be *inserted*. (Vide Bombay Act 21 of 1958).

TAMIL NADU

In its application to the State of Tamil Nadu, in Section 7 in the marginal heading thereto, after the expression “standing orders”, the expression “or amendments” shall be *inserted*. [Vide Tamil Nadu Act 11 of 2016, S. 10, w.e.f. the date to be notified]

8. Register of standing orders.—A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee.

STATE AMENDMENTS

KARNATAKA

In its applicability to the State of Karnataka, in Section 8, after the words “finally certified”, the words “or adopted” shall be *inserted*. [Vide Karnataka Act 12 of 2014, S. 6 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

In this section—

- (a) after the words “all standing orders” the words “or model standing orders together with all the amendments” shall be *inserted*;
- (b) in the marginal note, after the words “standing orders” the words “and model standing orders, together with all certified amendments” shall be *inserted*. (Vide Bom. Act 21 of 1958.)

TAMIL NADU

In its application to the State of Tamil Nadu, in Section 8,—

- (1) in the marginal heading, after the expression “standing orders”, the expression “and model standing orders together with all certified amendments” shall be *inserted*;

- (2) after the expression "all standing orders", the expression "or model standing orders together with all the amendments" shall be *inserted*. [Vide Tamil Nadu Act 11 of 2016, S. 11, w.e.f. the date to be notified]

9. Posting of standing orders.—The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

STATE AMENDMENTS

KARNATAKA

In its applicability to the State of Karnataka, in Section 9, after the words "finally certified", the words "or adopted" shall be *inserted*. [Vide Karnataka Act 12 of 2014, S. 7 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

In this section—

- (a) after the words "standing orders" the words "or model standing orders together with all the amendments" shall be *inserted*;
- (b) in the marginal note, after the words "standing orders" the words "and model standing orders together with all certified amendments" shall be *inserted*. (Vide Bom. Act 21 of 1958).

TAMIL NADU

In its application to the State of Tamil Nadu, in Section 9,—

- (1) in the marginal heading, after the expression "standing orders", the expression "and model standing orders together with all certified amendments" shall be *inserted*;
- (2) after the expression "The text of the standing orders", the expression "or model standing orders together with all the amendments" shall be *inserted*. [Vide Tamil Nadu Act 11 of 2016, S. 12, w.e.f. the date to be notified]

10. Duration and modification of standing orders.—(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen ¹⁸[or a trade union or other representative body of the workmen] be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

¹⁹[(2) Subject to the provisions of sub-section (1), an employer or workman ²⁰[or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of ²¹[* * *] the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen ²²[or a trade union or other representative body of the workmen], a certified copy of that agreement shall be filed along with the application.]

18. *Ins.* by Act 18 of 1982 (w.e.f. 17-5-1982).

19. *Subs.* by Act 36 of 1956, S. 32, for the original sub-section (w.e.f. 17-9-1956).

20. *Ins.* by Act 18 of 1982 (w.e.f. 17-5-1982).

21. *Omitted* by Act 39 of 1963.

22. *Ins.* by Act 18 of 1982 (w.e.f. 17-5-1982).

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

²³[(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.]

STATE AMENDMENTS

KARNATAKA

In its application to the State of Karnataka, in Section 10,—

- (i) in sub-section (1), after the words “finally certified”, the words “or adopted” shall be *inserted*;
- (ii) after sub-section (2), the following proviso shall be *inserted*, namely—
 “Provided that nothing in this sub-section shall be applicable in case of modifications mutually agreed by an employer, workmen or a trade union or other representative body of the workmen and such modifications shall be effected under sub-sections (3) and (4) of Section 3.” [Vide Karnataka Act 12 of 2014, S. 8 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

In this section—

- (a) in sub-section (1)—
 - (i) after the words “standing orders” at both the places where they occur, the words “or the amendments” shall be *inserted*;
 - (ii) after the words “came into operation” the following shall be *added*, namely:
 “and where model standing orders have not been amended as aforesaid, the model standing orders shall not be liable to such modification until the expiry of one year from the date on which they were applied under Section 2-A”;
- (b) for sub-section (2), the following shall be *substituted*, namely:
 “(2) subject to provisions of sub-section (1), an employer, workman or any prescribed representatives of workmen desiring to modify the standing orders or the model standing orders together with the amendments, as finally certified under this Act, or model standing orders applied under Section 2-A, as the case may be, shall make an application to the Certifying Officer in that behalf and such application shall be accompanied by five copies of the standing orders, or the model standing orders, together with all amendments thereto as certified under this Act or model standing orders in which shall be indicated the modifications proposed to be made and where such modifications are proposed to be made by agreement between the employers, a certified copy of the agreement shall be filed along with the application.”;
- (c) in sub-section (3), for the words “standing orders” the word “amendments” shall be *substituted*. (Vide Bom. Act 21 of 1958).

MAHARASHTRA

- (d) in sub-section (4), the words “or the Government of the State of Maharashtra” shall be *deleted*. (Vide Mah. Act 54 of 1974).

TAMIL NADU

In its application to the State of Tamil Nadu, in Section 10,—

- (1) in sub-section (1),—
 - (a) after the expression “standing orders” occurring in two places, the expression “or the amendments” shall be *inserted*;

23. Added by Act 39 of 1963.



- (b) after the expression "came into operation", the following shall be *added*, namely—
 "and where model standing orders have not been amended as aforesaid, the model standing orders shall not be liable to such modification until the expiry of one year from the date on which they were applied under Section 2-A";
- (2) for sub-section (2), the following sub-section shall be *substituted*, namely—
 "(2) Subject to the provisions of sub-section (1), an employer, workmen or any prescribed representatives of workmen desiring to modify the standing orders or the model standing orders together with the amendments, as finally certified under this Act, or the model standing orders applied under Section 2-A, as the case may be, shall make an application to the Certifying Officer in that behalf, and such application shall be accompanied by five copies of the standing orders, or the model standing orders, together with all amendments thereto as certified under this Act or model standing orders in which shall be indicated the modifications proposed to be made and where such modifications are proposed to be made by agreement between the employer and workmen, a certified copy of the agreement shall be filed along with the application.";
- (3) in sub-section (3), for the expression "standing orders", the expression "amendments" shall be *substituted*. [Vide Tamil Nadu Act 11 of 2016, S. 13, w.e.f. the date to be notified]

CASE LAW ► Scope and applicability.—In view of Sections 4, 10 and 13(2), the inconsistent part of the special agreement cannot prevail over the standing orders, *Western India Match Company v. Workmen*, 1973 SCC (L&S) 531; *J.K. Cotton Manufacturers Ltd. v. J.N. Tiwari*, AIR 1959 All 639 and *Banaras Electric Light & Power Co. v. Government of U.P.*, (1962) 1 Lab LJ 14, *overruled*.

► **Modification of standing orders.**—While the standing orders are in force, it is not permissible to seek statutory modification of them so that there may be one set of standing orders for some employees and another set for the rest of the employees, *Western India Match Company v. Workmen*, 1973 SCC (L&S) 531.

During the operation of a settlement arrived at under Sections 18(3) and 19(2) of the Industrial Disputes Act, postulating against any change in terms or conditions of service or raising of any demand involving additional financial burden, held, the workmen could not demand any modification of the standing orders for upward revision of the age of superannuation, *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corp. Ltd.*, (1991) 1 SCC 4: 1991 SCC (L&S) 1.

A proposed modification, though in conflict with model standing order, if found reasonable and fair, can be certified, *Indian Oil Corporation v. Jt. Chief Labour Commr.*, 1990 Lab IC 871 : (1990) 1 Cur LR 202 (Del) (DB).

The modification relating to grant of 6 days' casual leave on a paid basis to workers, done by the certifying officer after considering certain relevant factors, held, cannot be interfered with by the Supreme Court under Article 136, *Gaziabad Engg. Co. v. Certifying Officer*, (1978) 1 SCC 480 : 1978 SCC (L&S) 68.

Provisions with regard to 'abandonment of service' in the standing order can be modified by the authority, *Bharat Electronics Ltd. v. Bharat Electronics Ltd. Employees Union*, (1996) 74 FLR 2147 (Bom)(DB).

► **Challenge to standing order.**—A provision in a standing order cannot be challenged by a writ petition, *Presh Chand Gupta v. Joint Labour Commr.*, (1989) 2 LLN 657 : 60 FLR 47 (P&H).

Application for modification of standing orders can be filed by workmen or trade union or other representative body of workmen. It is not necessary that such application must be filed by recognised or representative union with substantial majority of workman, *Indian Express Employees Union v. Indian Express (Madurai) Ltd.*, (1998) 1 Cur LR 1161 (Ker).

► **Time limit.**—Section 10(2) does not contain any time-limit for making modification application. It can be made at any time, *Indian Express Employees Union v. Indian Express (Madurai) Ltd.*, (1998) 1 Cur LR 1161 (Ker).

► **Statutory right of regularisation.**—Said Clause 2(ii) is not discretionary in nature but confers a right once conditions therein are met. Admittedly, temporary employees (security guards and security supervisors) concerned appointed directly by Corporation on monthly salary basis completed 240 days of service in a calendar year from date of memorandum of appointment issued to each one of the workmen concerned in the year 1988. Said appointments were made as a stopgap arrangement as government policy to depute CISF personnel into security posts was awaiting sanction from Central Government. Said workers, held, entitled to regularisation. Having met requirements of Clause 2(ii) of ONGC standing orders, workmen concerned have acquired their right to be regularised thereunder. Also, workmen concerned cannot be denied their legitimate, statutory and fundamental right to be regularised in their posts as provided under Clause 2(ii) of the ONGC certified standing orders on the basis that the Corporation did not follow the due procedure as provided under the Appointment and Recruitment Rules for appointment of the workmen concerned in the Corporation or that their appointment orders excluded applicability of the standing orders, which is not permissible. Appointing them as temporary workmen and continuing them as such for a number of years though they are entitled for regularisation under Clause 2(ii) of the standing orders of the Corporation amounts to an unfair labour practice, *ONGC v. Petroleum Coal Labour Union*, (2015) 6 SCC 494 : (2015) 2 SCC (L&S) 290.

²⁴[10-A. **Payment of subsistence allowance.**—(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance—

- (a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and
- (b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the

24. *Ins. by Act 18 of 1982 (w.e.f. 17-5-1982).*

provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.]

CASE LAW ▶ Object.—The Act is a beneficial piece of legislation and Section 10-A(1)(b) thereof is enacted with a view to ensure social welfare and security. Hence, such a beneficial piece of legislation has to be understood and construed in its proper and correct perspective so as to advance the legislative intention underlying its enactment rather than abolish it, *B.D. Shetty v. Ceat Ltd.*, (2002) 1 SCC 193 : 2002 SCC (L&S) 131.

▶ **Expression “other law”: Meaning and scope of.**—The expression “other law” refers to law other than one covered by the very Act and rules made there under. Hence, claim to higher rate of subsistence allowance as contemplated in model standing orders in Schedule 1 to the Bombay Industrial Employment (Standing Orders) Rules, 1959, rejected, *B.D. Shetty v. Ceat Ltd.*, (2002) 1 SCC 193 : 2002 SCC (L&S) 131, approving *May & Baker Ltd. v. Kishore Jaikishandas Ichchaporia*, 1991 Lab IC 2066 (Bom).

▶ **Expression “delay” directly attributable to the conduct of such workmen — Scope.**—The delay occasioned by order issued by a judicial authority at the instance of the workman staying the disciplinary proceedings pending criminal trial which was simultaneously on, held, not covered. Hence, payment of subsistence allowance @ 75% instead of 50% directed. The employer’s request to grant the relief only prospectively, rejected, *B.D. Shetty v. Ceat Ltd.*, (2002) 1 SCC 193 : 2002 SCC (L&S) 131.

▶ **Interpretation/Construction.**—Expression “any other law” in proviso to S. 10-A, refer to law other than one covered by very Act and rules made thereunder, meaning thereby Standing Orders. S. 10-A overrides or superimposes itself on S.O. 25(5-A). Subsistence allowance payable to workmen for period beyond 180 days would be at maximum of 75% as provided under S. 10-A and not 100% of wages in terms of S.O. 25(5-A), *Pravi Auto Swing (P) Ltd. v. Ashok Kisan More*, 2016 SCC OnLine Bom 8817 : (2017) 1 Mah LJ 383 (Bom).

11. Certifying Officers and appellate authorities to have powers of Civil Court.—(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).]²⁵

²⁶[(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.]

CASE LAW ▶ Draft standing orders.—When the draft standing orders are submitted for certification the certifying officer should enquire whether the said orders are in conformity with the model standing orders issued by the Government and accordingly whether they are reasonable and fair, *Punjab Khadi Gram Udyog v. Jit Ram*, (1975) 2 LLJ 413.

25. Ins. by Act 18 of 1982 (w.e.f. 17-5-1982).

26. The original S. 11 renumbered as sub-section (1) and sub-section (2) added by Act 39 of 1963.

12. Oral evidence in contradiction of standing orders not admissible.—No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.

STATE AMENDMENTS

KARNATAKA

In its application to the State of Karnataka, in Section 12, after the words “finally certified”, the words “or adopted” shall be *inserted*. [Vide Karnataka Act 12 of 2014, S. 9 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

In this section—

- (a) for the words “standing orders as finally certified under this Act” the words “standing orders or the model standing orders, or model standing orders with all the amendments as finally certified under this Act, as the case may be,” shall be *substituted*;
- (b) in the marginal note, for the words “standing orders” the words “standing order, etc.” shall be *substituted*. (Vide Bom. Act 21 of 1958).

TAMIL NADU

In its applicability to the State of Tamil Nadu, in Section 12,—

- (1) in the marginal heading, for the expression “standing orders”, the expression “standing orders, etc.” shall be *substituted*;
- (2) for the expression “standing orders as finally certified under this Act”, the expression “standing orders or the model standing orders, or model standing orders with all the amendments as finally certified under this Act, as the case may be,” shall be *substituted*. [Vide Tamil Nadu Act 11 of 2016, S. 14, w.e.f. the date to be notified]

27[12-A. Temporary application of model standing orders.—(1) Notwithstanding anything contained in Sections 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under Section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of Section 9, sub-section (2) of Section 13 and Section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.]

STATE AMENDMENT

KARNATAKA

In its application to the State of Karnataka, in Section 12-A, after the words “finally certified”, the words “or adopted” shall be *inserted*. [Vide Karnataka Act 12 of 2014, S. 10 (w.e.f. 28-2-2014)]

TAMIL NADU

In its application to the State of Tamil Nadu, in Section 12-A, in sub-section (2), after the expression “or the Government of State of Maharashtra”, the expression “or the Government of State of Tamil Nadu” shall be *added*. [Vide Tamil Nadu Act 11 of 2016, S. 15, w.e.f. the date to be notified]

27. Added by Act 39 of 1963.

CASE LAW ▶ Applicability of model standing orders.—Where there are two categories of workmen, one in respect of the daily-rated workmen and the other in respect of the monthly-rated workmen, if there are certified standing orders in respect of the daily-rated workers only, the prescribed model standing orders should be deemed to have been adopted for those who are employed on monthly basis until such categories have their own certified standing orders, *Indian Iron & Steel Co. v. Ninth Industrial Tribunal*, 1977 Lab IC 607 (Cal).

Notwithstanding a stipulation in the appointment letter for the applicability of a different Government's model standing order, held, the service conditions would be governed by the appropriate Government's model standing orders, *Bhim Sain Prabhakar v. H.R. Chaturvedi*, (1990) 1 LLN 591 : 59 FLR 179 (P&H).

In absence of notification of regulations under Section 13-B, the model standing orders apply to U.P. State Road Transport Corporation, *Shitla Prasad v. State of U.P.*, 1986 Lab IC 2025 (All) (DB).

Where an establishment had its certified standing orders and consequent upon addition of a new matter to the Schedule the model standing orders were amended, in absence of compliance with Section 10, such amended model standing orders would not become applicable to the establishment, *M.C. Raju v. Karnataka Vidyuth Karkhane*, (1985) 1 LLN 109 (Kant) (DB) : (1985) 1 LLJ 210. But see *Artificial Limbs Manufacturers Corporation of India v. Som Pal Singh*, (1994) 2 Cur LR 566 : (1994) 2 LLN 469 (All) (DB). For the law in the State of Maharashtra, see *Kishore Jaikishandas Ichhaporia v. M.R. Bhope*, (1987) 2 LLN 263 : 56 FLR 478 (Bom); followed in *Municipal Corpn. of Greater Bombay v. Laxman Saidu Timmanapyati*, (1991) 1 Cur LR 653 (Bom).

▶ **Overriding effect.**—The Act is a special law vis-à-vis regulations framed under the general law. Hence provisions of the former prevail over the latter, *Tamil Nadu Water Supply and Drainage Board v. M.D. Vijaykumar*, (1991) 1 Cur LR 677 (Mad) (DB); following *S. Bagianathan v. Govt. of T.N.*, (1984) 2 LLN 874 : (1984) 2 LLJ 273 (Mad) (FB).

Regulations made under Section 79(c) of the Electricity (Supply) Act, 1948 in respect of conditions of service will be subservient to the provisions of Industrial Employment (S.O.) Act, 1946, which is a special Act in respect of such matters, *U.P.S.E.B. v. Hari Shanker Jain*, (1978) 4 SCC 16 : 1978 SCC (L&S) 481.

The petitioner impugned his transfer from Kanpur to Calcutta on the ground that though there is a provision of transfer in appointment order, the standing orders subsequently certified did not contain any provision for transfer and as such transfer was illegal, it was held that the certified standing orders prevail over terms and conditions contained in appointment order and as such order of transfer is quashed, *Sompal Singh v. Artificial Limbs Mfg. Corpn.*, (1995) 1 LLJ 81 (All).

13. Penalties and procedure.—(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 ²⁸[a Metropolitan Magistrate or Judicial Magistrate of the second class] shall try any offence under this section.

STATE AMENDMENTS

KARNATAKA

In its application to the State of Karnataka, in Section 13,—

- (i) sub-section (1), after the words and figure “Standing Orders as required by Section 3”, the words and figures “or who fails to adopt Standing Order as required by sub-section (4) of Section 3” shall be *inserted*;
- (ii) in sub-section (2), after the words “finally certified”, the words “or adopted” shall be *inserted*. [Vide Karnataka Act 12 of 2014, S. 11 (w.e.f. 28-2-2014)]

MADHYA PRADESH

After sub-section (4), *insert* the following sub-sections:

“(5) A Court taking cognizance of an offence under sub-section (2) shall state upon the summons to be served on the accused person that he—

- (a) may appear by pleader and not in person; or
- (b) may, by a specified date prior to the hearing of the charge, plead guilty to the charge by registered letter acknowledgement due and remit to the Court such sum as the Court may, subject to the maximum limit of fine prescribed for the said offence, specify.

(6) Where an accused person pleads guilty and remits the sum in accordance with the provisions of sub-section (5) no further proceedings in respect of the offence shall be taken against him.

(7) Nothing contained in this section shall apply to the continuing offence referred to in sub-section (2).”—M.P. Act 18 of 1967, Section 2 (1-6-1968).

MAHARASHTRA AND GUJARAT STATES

In this section—

- (a) in sub-section (1)—
 - (i) for the words and figure “who fails to submit draft standing orders as required by Section 3, or who modifies his standing orders” the words “who modifies the standing orders, model standing orders or amendments” shall be *substituted*;
 - (ii) for the word and figure “Section 10” the words “the provisions of this Act” shall be *substituted*;
 - (iii) for the words “shall be punishable” the words “shall, on conviction, be punished” shall be *substituted*;
- (b) in sub-section (2), for the words “the standing orders finally certified under this Act for his industrial establishment shall be punishable” the words “the standing orders, model standing orders or the amendments, as finally certified under this Act for his industrial establishment, as the case may be, shall, on conviction, be punished” shall be *substituted*;
- (c) after sub-section (2) the following new sub-section shall be *inserted*, namely:

28. Subs. by Act 18 of 1982 (w.e.f. 17-5-1982).

“(2-A) Whoever contravenes the provisions of this Act or of any rule made thereunder in cases other than those falling under sub-section (1) or sub-section (2), shall, on conviction, be punished with fine which may extend to one hundred rupees and in the event of such person being previously convicted of an offence under this Act, with fine which may extend to two hundred rupees and in 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.

(2-B) The Court convicting an employer under sub-section (1) or sub-section (2) may direct such employer to pay such compensation as it may determine to any workman directly and adversely affected by the modifications or contravention of the standing orders, model standing orders or amendments, as the case may be.

(2-C) The compensation awarded under sub-section (2-B) may be recovered as if it were a fine and if it cannot be so recovered the person by whom it is payable shall be sentenced to imprisonment of either description for a term not exceeding three months as the Court thinks fit.” (Vide Bom. Act 21 of 1958).

TAMIL NADU

In its applicability to the State of Tamil Nadu, in Section 13,—

- (1) in sub-section (1), for the expression “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”, the expression “who modifies the standing orders, model standing orders or amendments otherwise than in accordance with the provisions of this Act shall, on conviction, be punished” shall be *substituted*;
- (2) in sub-section (2), for the expression “the standing orders finally certified under this Act for his industrial establishment shall be punishable”, the expression “the standing orders, model standing orders or the amendments, as finally certified under this Act for his industrial establishment, as the case may be, shall, on conviction, be punished” shall be *substituted*;
- (3) after sub-section (2), the following sub-sections shall be *inserted*, namely—

“(2-A) Whoever contravenes the provisions of this Act or of any rule made thereunder in cases other than those falling under sub-section (1) or sub-section (2) shall, on conviction, be punished with fine which may extend to one hundred rupees and in the event of such person being previously convicted of an offence under this Act, with fine which may extend to two hundred rupees and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day during which the offence continues.

(2-B) The court convicting an employer under sub-section (1) or sub-section (2) may direct such employer to pay such compensation as it may determine to any workman directly and adversely affected by the modifications or contravention of the standing orders, model standing orders or amendments, as the case may be.

(2-C) The compensation awarded under sub-section (2-B) may be recovered as if it were a fine and if it cannot be so recovered, the person by whom it is payable shall be sentenced to imprisonment of either description for a term not exceeding three months as the Court thinks fit.” [Vide Tamil Nadu Act 11 of 2016, S. 16, w.e.f. the date to be notified]

CASE LAW ▶ Clauses in the standing orders.—If the management has no objection to certain matters being included in the standing orders, and if its inclusion is accepted by the workmen as well as the certifying officer, that clause in the standing orders cannot be struck off. Since the management did not apply under Section 10 for modification of that clause, after the prosecution under Section 13(2), it was not open

to the management to contend that the inclusion of that clause was ultra vires the Act, *Abu Mohd. v. State of Bihar*, 1977 Lab IC 1390 (Pat).

²⁹[13-A. Interpretation, etc., of standing orders.—If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman ³⁰[or a trade union or other representative body of the workmen] may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

STATE AMENDMENTS

KARNATAKA

In its application to the State of Karnataka, in Section 13-A, after the words “Standing Orders Certified”, the words “or adopted” shall be *inserted*. [Vide Karnataka Act 12 of 2014, S. 12 (w.e.f. 28-2-2014)]

MAHARASHTRA AND GUJARAT STATES

In this section, after the words “standing order” and in the marginal note thereto after the words “standing order”, the words “model standing order or amendment” shall be *inserted* and after the word “workmen” the words “or any prescribed representatives of workmen” shall be *inserted*. (Vide Bom. Act 21 of 1958).

TAMIL NADU

In its applicability to the State of Tamil Nadu, in Section 13-A,—

- (1) in the marginal heading, after the expression “standing orders”, the expression “model standing orders or amendments” shall be *inserted*;
- (2) after the expression “standing order”, the expression “model standing order or amendment” shall be *inserted*. [Vide Tamil Nadu Act 11 of 2016, S. 17, w.e.f. the date to be notified]

CASE LAW ► Purpose.—The limited purpose of Section 13-A is to provide a forum for determination of any question arising as to application or interpretation of the certified standing orders as such, in case either the employer or employees entertain a doubt as to their meaning or their applicability, *Rajasthan State Road Transport Corpn. v. Krishna Kant*, (1995) 2 Cur LR 180 : (1994) 1 LLJ 136 : (1994) 68 FLR 105 (SC).

► **Scope.**—Where a workman had been dismissed under the said provisions without holding an enquiry and dismissal was set aside by Labour Court and decision affirmed by High Court and thus becoming final, at this stage another workman, the present respondent, filing an application under Section 13-A for interpretation and true effect of the said SO, the management contended that no dispute or controversy existed between the parties and that the application was motivated merely by an unreal apprehension of victimisation, in such circumstances, held, High Court rightly rejected the management’s contention and rightly held that action once having been taken against a workman in a particular manner, correctness of which was put in issue for interpretation, the matter was covered by Section 13-A, *Calcutta Electric Supply Corpn. Ltd. v. Shew Kr. Singh*, (2001) 1 SCC 449.

29. Ss. 13-A and 13-B *ins.* by Act 36 of 1956, S. 32 (w.e.f. 10-3-1957).

30. *Ins.* by Act 18 of 1982 (w.e.f. 17-5-1982).

► **Interpretation of a standing order.**—The definition of the word “workman” in Section 2(f) of the Act does not include a dismissed or discharged workman. Hence, a dismissed or discharged workman cannot apply under this section to the labour Court as to the application and interpretation of a standing order, *Sushil Kumar Mukherjee v. Calcutta Electric Supply Co. Ltd.*, (1963) 1 LLJ 603.

The provision of Section 13-A does not take away the aggrieved party's right to approach the State Government for reference under Section 10 of the Industrial Disputes Act and in such reference to get the question relating to application or interpretation of standing orders decided incidentally therein, *Indian Iron & Steel Co. Ltd. v. Ninth Industrial Tribunal*, 1977 Lab IC 607 (Cal).

► **Applicable rules of interpretation.**—Ordinary rules of interpretation of statutes would be applicable to interpretation of standing orders as well, *Glaxo Laboratories v. Presiding Officer*, (1984) 1 SCC 1 : 1984 SCC (L&S) 42.

► **Jurisdiction of Civil Court.**—Section 13-A lays down that even an application for interpretation of a standing order certified under the Act may be referred to one of the labour courts and a finality has been given to the decision of such courts. The jurisdiction of the Civil Court to take cognizance of an industrial dispute is impliedly barred, *Empire of India & Ceylon Tea Co. v. Jitendra Nath*, 1975 Lab IC 1539 : (1975) 2 LLN 393 (Gau). Followed in *Bhim Sain Prabhakar v. H.R. Chaturvedi*, (1990) 1 LLN 591 : 59 FLR 189 (P&H).

A question as to the application of a standing order cannot be examined by the Court. *Rajasthan State Road Transport Corpn. v. Krishna Kant*, (1995) 2 Cur LR 180 : (1994) 1 LLJ 136 : (1994) 68 FLR 105 (SC)

► **Jurisdiction of Industrial Court.**—Jurisdiction of Labour Court to decide the interpretation of a certified standing order does not exclude the jurisdiction of Industrial Court to deal with the issue, *Welcome Group Searock Land's End v. Trayambak Karbhari Wagh*, (2003) 99 FLR 1095 (Bom).

► **Maintainability of writ petition.**—A writ petition on the question of application of a standing order is not maintainable as remedy is available under Section 13-A, *Abdul Khalique v. Heavy Engineering Corporation Ltd.*, 1985 Lab IC 1114 (Pat) (DB) : (1985) 2 LLN 803.

A provision in a standing order cannot be challenged by a writ petition, *Presh Chand Gupta v. Joint Labour Commr.*, (1989) 2 LLN 657 : 60 FLR 47 (P&H).

► **Interim relief.**—Under Section 13-A while considering the question of interpretation of a standing order, the Labour Court cannot accord an interim relief, *Amini John v. Barofarn Chemicals Ltd.*, (1993) 1 Cur 687 : (1993) 66 FLR 706 (Guj)(DB).

13-B. Act not to apply to certain industrial establishments.—Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.]

CASE LAW ► Applicability.—The Act applies to newspaper establishments and superannuation matters pertaining to such establishments in West Bengal included in the Schedule to the Standing Orders Act, *Binoy Kumar Chatterjee v. Jugantar Ltd.*, (1983) 3 SCC 289.

Age of retirement fixed by Regulations framed under Section 79-C of Electricity (Supply) Act, 1948 and notified under Section 13-B of Standing Orders Act after takeover of management by Electricity Board is binding on workmen who opted for Board's service agreeing to their service conditions and to be governed by the regulations, *U.P.S.E.B. v. Labour Court*, (1984) 1 SCC 147.

Once the regulations framed under Section 79-C of the Electricity (Supply) Act have been notified by the State Government under Section 13-B of the Standing Orders Act, the standing orders framed by the erstwhile licensee to the extent they concerned the subject dealt with by the regulations become ineffective and inoperative and in respect of such matters the rights of the parties would be governed only by the regulations so notified, *Bhai Lal v. Superintending Engineer, Allahabad*, 1979 Lab IC 110 (All).

The Act is a special law in regard to matters enumerated in the Schedule and the regulations made by the Electricity Board under Section 79-C of the Electricity (Supply) Act with respect to any of those matters are of no effect unless such regulations are either notified by the Government under Section 13-B or certified by the certifying officer under Section 5. In regard to matters in respect of which the regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board, the Standing Orders Act shall continue to apply, *U.P.S.E.B. v. Hari Shankar Jain*, (1978) 4 SCC 16 : 1978 SCC (L&S) 481.

Under Section 13-B, a rule or regulation, if notified by the Government, will exclude the applicability of the Act to the extent that the rule or regulation covers the field. Section 13-B cannot be said to be applicable only to those industrial establishments in which the workmen employed could properly be described as government servants. It applies to workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorises the making of rules or regulations, *U.P.S.E.B. v. Hari Shankar Jain*, (1978) 4 SCC 16 : 1978 SCC (L&S) 481; reversing *Hari Shankar v. Rural Electrification Division*, 1976 Lab IC 1720 (All) (FB).

► **Publication of Regulations.**—Under Section 13-B, publication of Regulations governing disciplinary proceedings in the gazette is mandatory, *Muniswamy Gowda H. v. Management of K.S.R.T.C.*, (1998) 1 LJ 1088 : (1997) 76 FLR 269 (Kant)(DB).

STATE AMENDMENTS

Section 13-C

Union Territory of Jammu and Kashmir.—In its application to the Union Territory of Jammu and Kashmir, after Section 13-B insert—

“13-C. *Compounding of offences.*—(1) Any offence punishable under the Act may, either before or after the institution of the prosecution, on an application by the alleged offender, be compounded by payment of compounding amount of not more than rupees fifty thousand, by such officer or authority as the appropriate Government may, by notification in the Official Gazette, specify in this behalf for the amount of rupees fifty thousand:

Provided that the appropriate Government may, by notification in the Official Gazette, amend the said specified compounding amount:

Provided further that the offences of the same nature committed by the same offender for more than three occasions shall not be compoundable:

Provided also that such offences shall be compounded only after the alleged offender has acted to the satisfaction of such officer or authority that such offence is not continued any further.

(2) Where an offence has been compounded under sub-section (1), no further proceedings shall be taken against the offender in respect of such offence and the offender, if in custody, shall be released or discharged.” [Vide S.O. 3465(E), dated 5-10-2020 (w.e.f. 5-10-2020)].

Union Territory of Ladakh.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

UTTAR PRADESH.—In its application to the State of Uttar Pradesh, after Section 13-B, the following section shall be *inserted*, namely—

“13-C. *Composition of offences.*—(1) Any offence punishable under this Act shall be compounded on the application of accused either before or after institution of prosecution by a competent authority notified by the State Government in this regard, after imposing 50% of the fine for the offence as compounding fee along with the prescribed fine:

Provided that remedy for compounding shall be available for the first offence only.

(2) Every officer referred to in sub-section (1) shall exercise the power to compound an offence, subject to direction, control and supervision of the State Government.

(3) Every application for the compounding of an offence shall be made in such form and in such manner as may be prescribed.

(4) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(5) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing to the notice of the court in which prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.” [Vide U.P. Act 16 of 2018, S. 2, dated 9-1-2018]

14. Power to exempt.—The appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

³¹[**14-A. Delegation of powers.**—The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or any rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—

- (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;
- (b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government, as may be specified in the notification.]

15. Power to make rules.—(1) The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition;
- (b) set out model standing orders for the purposes of this Act;

31. *Ins.* by Act 16 of 1961, S. 5 and *subs.* by Act 39 of 1963.

- (c) prescribe the procedure of Certifying Officers and appellate authorities;
- (d) prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders;
- (e) provide for any other matter which is to be or may be prescribed:

Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government.

³²[(3) 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 for a total period of thirty days which may be comprised in one session or ³³[in two or more successive sessions, and if, before the expiry of the session 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.]

STATE AMENDMENTS

MAHARASHTRA AND GUJARAT STATES

In sub-section (2) of this section—

- (a) in clause (a), after the words “standing orders” the words “or amendments” shall be *inserted*;
- (b) in clause (d), for the words “copies of standing orders entered in the register of standing orders” the words and figure “copies of standing orders or model standing orders together with all the amendments filed in the register under Section 8” shall be *substituted*. (*Vide* Bom. Act 21 of 1958).

TAMIL NADU

In its application to the State of Tamil Nadu, in Section 15, in sub-section (2),—

- (1) in clause (a), after the expression “standing orders”, the expression “or amendments” shall be *inserted*;
- (2) in clause (d), for the expression “copies of standing orders entered in the register of standing orders”, the expression “copies of standing orders or model standing orders together with all the amendments filed in the register under Section 8” shall be *substituted*. [*Vide* Tamil Nadu Act 11 of 2016, S. 18, w.e.f. the date to be notified]

THE SCHEDULE

[See Sections 2(g) and 3(2)]

MATTERS TO BE PROVIDED IN STANDING ORDERS UNDER THIS ACT

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers,

³⁴[badlis], ³⁵[fixed term employment].

32. *Ins.* by Act 16 of 1961, S. 6.

33. *Subs.* by Act 18 of 1982 (w.e.f. 17-5-1982).

34. *Subs.* for “badlis or fixed term employment” by G.S.R. 655(E), dt. 10-10-2007 (w.e.f. 10-10-2007).

35. *Subs.* for “fixed term employment workmen in apparel manufacturing sector” by G.S.R. 235(E), dt. 16-3-2018 (w.e.f. 16-3-2018).

2. Manner of intimating to workmen periods and hours of work, holidays, paydays 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 reopening 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.

STATE AMENDMENTS

KARNATAKA

After Item 10 the following new item shall be *inserted*;

"10-A. Age for retirement or superannuation." (*Vide* Noti. No. SWL. 106, LBW 81, dated 11-3-1982).

MAHARASHTRA AND GUJARAT STATES

(a) In the heading—

(i) for the words, figures, brackets and letter "Sections 2(g) and 3(2)" the word, figure and letter "Section 2-A" shall be *substituted*;

(ii) after the words "standing orders" the words, "model standing orders and amendments" shall be *inserted*;

(b) after Item 10, the following new item shall be *inserted*, namely:

"10-A. Age for retirement or superannuation". (*Vide* Bom. Act 21 of 1958).

"10-B. Employment or re-employment of probationers or badlis or temporary or casual workmen, and their conditions of service". (*Vide* Mah. Act 54 of 1974).

TAMIL NADU

In its application to the State of Tamil Nadu, in the Schedule,—

(1) in the heading,—

(a) for the expression "Sections 2(g) and 3(2)", the expression "Section 2-A" shall be *substituted*;

(b) for the expression "Standing Orders", the expression "Standing Orders, model standing orders and amendments" shall be *substituted*;

(2) after Item 10, the following items shall be *inserted*, namely—

"10-A. Employment or re-employment of apprentices, probationers or badlies or temporary or casual workmen, and their conditions of service.

10-B. Fixation of number of percentage of apprentices, probationers or badlies or temporary or casual workmen employed with reference to the total number of workmen employed in that industrial establishment." [*Vide* Tamil Nadu Act 11 of 2016, S. 19, w.e.f. the date to be notified]

UTTAR PRADESH.—By virtue of Rule 6 (as *substituted* on 10-2-1978) of the U.P. Industrial Employment (Standing Orders) Rules, 1946 in the Schedule to the Act, the following additional matters shall be *included*, namely:—

"6. In addition to the matters set out in the Schedule, the following additional matters shall be included in the Schedule:—

- 1-A. Recruitment.
- 8-A. Issue of service certificate.
- 9-A. Censure and warning notice.
- 10-A. Conditions for promotion of workmen.
- 11-A. Issue of wage slips.
- 11-B. Introduction of welfare schemes, such as provident fund, gratuities, etc.
- 11-C. Age of superannuation or retirement, rate of pension or any other facility, which the employers may like to extend or may be agreed upon between the parties."—1978 LLT-V-99

CASE LAW ▶ Schedule, Items 8 and 9.—Every type of action—removal, dismissal, retrenchment, ending employment by notice in terms of contract—would be covered by the term 'termination'. In view of the fact that Item 9 refers to dismissal for misconduct, 'termination' as provided in Item 8 would refer to all other actions by which service comes to an end excepting dismissal for misconduct, *Gouri Hari Patra v. Presiding Officer, Industrial Tribunal*, 1976 Lab IC 999 (Ori).

▶ **Age of retirement or superannuation.**—In considering whether the age of retirement or superannuation should be raised, the ability of the employer to meet the additional commitments that would be involved is a relevant fact. Management of "The Hindu", *Madras v. Secretary, Hindu Office and National Press Employees' Union*, (1960) 1 LLJ 187 : AIR 1961 Mad 107.

Item 8 is confined to termination of employment by notice in writing and does not contain any mention of superannuation or retirement. Retirement which is mentioned in the standing order may be under the terms of contract of employment entered into between the employer and the employees. *U.P. Electric Supply Co. v. Workmen*, (1972) 2 SCC 54.

▶ **Misconducts specified in standing orders.**—Once misconducts are specified in the standing orders, workmen cannot be punished on any other ground of misconduct, *Glaxo Laboratories v. Presiding Officer*, (1984) 1 SCC 1 : 1984 SCC (L&S) 42.

▶ **Failure to classify workmen.**—The employer's failure to classify the workmen violates Section 4 of the Act and gives rise to an industrial dispute, *Workmen v. Hindustan Lever Ltd.*, (1984) 4 SCC 392 : 1985 SCC (L&S) 6.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) (BOMBAY AMENDMENT) ACT, 1957

(Bom. Act XXI of 1958)

SECTIONS 20 and 21

(APPLICABLE TO MAHARASHTRA AND GUJARAT BY ACT 11 OF 1960, S. 87)

"20. *Consequential.*—In the said Act, in its application to the Saurashtra area of the State of Bombay, in Section 7, sub-section (2) *inserted* by the Industrial Employment Standing Orders (Saurashtra Amendment) Act, 1953, shall be *deleted* and Section 7(1) shall be *renumbered* as Section 7 of the said Act:

Provided that any model standing orders in respect of any industrial establishment referred to in the said sub-section (2) of Section 7 deleted as aforesaid, and in operation on the date of the coming into force of the Act shall be deemed to be the model standing orders prescribed under Section 15 of the said Act and applied to the industrial establishment under Section 2-A; and the

provisions of the said Act shall apply thereto as they apply to the model standing orders duly applied under the said Section 2-A.

21. *Savings*.—Nothing in this Act shall be deemed to affect any industrial establishment in respect of which the appropriate Government is the Central Government."
