

able with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

¹[29. **Penalty for breach of settlement or award.**—Any person who commits a breach of any term of any settlement or award, which is binding on him under his Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, ²[and where the breach is a continuing one with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first,] and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation³ to any person who, in its opinion, has been injured by such breach.]

30. Penalty for disclosing confidential information.—Any person who wilfully discloses any such information as is referred to in section 21 in contravention of the provisions of that section shall on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

31. Penalty for other offences.—Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

CHAPTER VII

MISCELLANEOUS

32. Offence by companies, etc.—Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the

1. Subs. by Act 36 of 1956.

2. Ins. by Act 35 of 1965, S. 6.

management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

¹[33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.— (1) During the pendency of any conciliation proceeding before ²[an arbitrator or] a Conciliation Officer or a Board or of any proceeding before Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding ; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute ²[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman]—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding ; or

(b) for any misconduct ^{not} connected with the dispute, discharged or punish, whether by dismissal or otherwise, that workman :

Provided that no such workman shall be discharged, or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

1. Subs. by Act 36 of 1956.

2. Ins. by Act 36 of 1964.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—

(a) by altering to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings ; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.—For the purposes of this sub-section, a ‘protected workman’, in relation to an establishment means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to Conciliation Officer, Board, ¹[an arbitrator, a] Labor Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit.]

²[33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.— Where an

1. Ins. by Act 36 of 1964.

2. Ins. by Act 48 of 1950.

employer contravenes the provisions of section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court, Tribunal or National Tribunal and on receipt of such complaint that Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly.]

1[33-B. Power to transfer certain proceedings.—(1) The appropriate Government may by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may subject to special directions in the order of transfer, proceed either *de novo* or from the stage at which it was so transferred :

Provided that where a proceeding under section 33 or section 33-A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

(2) Without prejudice to the provisions of sub-section (1), any Tribunal or National Tribunal, if so authorised by the appropriate Government, may transfer any proceeding under section 33 or section 33-A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official *Gazette*, and the Labour Court to which proceeding is so transferred shall dispose of the same.]

2[33-C. Recovery of money due from an employer.—(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A, the workman himself or any other person authorised by him in writing in this behalf, or in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it

1. Sections 33-B and 33-C inserted by Act 36 of 1956.

2. Subs. by Act 36 of 1964

shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue :

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer :

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court, and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.]

Explanation.—In this section “Labour Court” includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State.]

34. Cognizance of offences.—(1) No Court shall take cognizance of any offence, punishable under this Act or of the abetment of any such

offence, save on complaint made by or under the authority of the appropriate Government.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

35. **Protection persons.**—No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section be subjected to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

¹[36. **Representation of parties.** —(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

- (a) an officer of a registered trade union of which he is a member;
- (b) an officer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;
- (c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

1. Subs. by Act 48 of 1950.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

- (a) an officer of an association of employers of which he is a member;
- (b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;
- (c) where the employer is not a member of any association of employers by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be presented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal as the case may be.]

1[36-A. Power to remove difficulties.—(1) If, in the opinion of the appropriate Government, any difficult or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.]

37. Protection of action taken under the Act.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

38. Power to make rules.—(1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

1. Ins' by Act 36 of 1956.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the powers and procedure of Conciliation Officers, Boards, Courts, Labour Courts, Tribunals and National Tribunal including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;
- ¹[(aa) the form of arbitration agreement, the manner in which it may be signed by the parties, ²[the manner in which a notification may be issued under sub-section (3-A) of section 10-A] the powers of the arbitrator named in the arbitration agreement and the procedure to be followed by him;
- (aaa) the appointment of assessors in proceedings under this Act;]
- (b) the constitution and functions of and the filling of vacancies in Works Committees and the procedure to be followed by such Committees in the discharge of their duties;
- (c) the allowances admissible to members of Courts and Boards and presiding officers of Labour Courts, Tribunals and National Tribunals and to assessors and witnesses;
- (d) the ministerial establishment which may be allotted to a Court, Board, Labour Court, Tribunal or National Tribunal and the salaries and allowances payable to members of such establishments;
- (e) the manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such notices shall be communicated;
- (f) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court, Labour Court, Tribunal or National Tribunal;
- (g) any other matter which is to be or may be prescribed.

2. Ins. by Act 36 of 1964.

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees.

¹[(4) All rules made under this section shall, as soon as possible after they are made, be laid before the State Legislature or, where the appropriate Government is the Central Government, before both Houses of Parliament.]

²[(5) 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 in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both the 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.]

³39. **Delegation of powers.**—The appropriate Government may, by notification in the Official *Gazette*, direct that any power exercisable by it under this Act or 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; and
- (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.]

⁴40. **Power to amend Schedules.**—(1) The appropriate Government may, if it is of opinion that it is expedient or necessary in the public

1. Ins. by Act 36 of 1956.

2. Ins. by Act 36 of 1964.

3. Subs. by Act 36 of 1956.

4. Original Sec. 40 was repealed by Act 35 of 1950 but was again inserted by Act 36 of 1956. It is now substituted by Act 36 of 1964.

interest so to do, by notification in the Official *Gazette*, and to the First Schedule any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.

(2) The Central Government may, by notification in the Official *Gazette*, add to or alter or amend the Second Schedule or the Third Schedule and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.

(3) Every such notification shall as soon as possible after it is issued, be laid before the Legislature of the State, if the notification has been issued by a State Government, or before Parliament, if the notification has been issued by the Central Government.]

THE FIRST SCHEDULE

[See section 2 (n) (vi)]

Industries which may be declared to be Public Utility Services under sub-clause (vi) of clause (n) of section 2

1. Transport (other than railways) for the carriage of passengers or goods by ¹[land or water.]
2. Banking
3. Cement
4. Coal
5. Cotton textiles
6. Foodstuffs
7. Iron and steel
8. Defence establishments
9. Service in hospitals and dispensaries
10. Fire Brigade service.

1. Subs. by Act 36 of 1964.

THE SECOND SCHEDULE

(See section 7)

Matters within the Jurisdiction of Labour Courts

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

THE THIRD SCHEDULE

(See section 7-A)

Matters within the Jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment;
2. Compensatory and other allowances;
3. Hours of work and rest intervals;
4. Leave with wages and holidays;
5. Bonus, profit-sharing, provident fund and gratuity;
6. Shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Rules of discipline;
9. Rationalisation;
10. Retrenchment of workmen and closure of establishment; and
11. Any other matter that may be prescribed.

THE FOURTH SCHEDULE

(See section 9-A)

Conditions of Service for change of which Notice is to be given

1. Wages including the period and mode of payment;

2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders.
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;
11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, ¹[not occasioned by circumstances over which the employer has no control.]

1. Subs. by Act 36 of 1964.