

FIRST REPORT

**STANDING COMMITTEE ON LABOUR
(2009-10)**

(FIFTEENTH LOK SABHA)

MINISTRY OF LABOUR AND EMPLOYMENT

THE INDUSTRIAL DISPUTES (AMENDMENT) BILL, 2009

Presented to Lok Sabha on 9th December, 2009

Laid in Rajya Sabha on 9th December, 2009



LOK SABHA SECRETARIAT

NEW DELHI

December 2009/Agrahayana 1931 (Saka)

CONTENTS

	PAGE(s)
COMPOSITION OF THE COMMITTEE	(ii)
INTRODUCTION	(iv)
REPORT	1-39

ANNEXURES

- (i) The Industrial Disputes (Amendment) Bill, 2009
- (ii) Minutes of the sitting of the Committee

**COMPOSITION OF THE STANDING COMMITTEE ON LABOUR
(2009-2010)**

SHRI HEMANAND BISWAL-CHAIRMAN

MEMBERS
LOK SABHA

2. Shri M. Anandan
3. Shri P. Balram (Mahabubabad)
4. Dr. Shafiqur Rahman Barq
5. Shri Sudarshan Bhagat
6. Shri Hassan Khan
7. Shri Kaushalendra Kumar
8. Shri P. Lingam
9. Shri Hari Manjhi
10. Shri P.R. Natarajan
11. Km. Mausam Noor
12. Shri S. Pakkirappa
13. Shri Ramkishun
14. Shri Mahendra Kumar Roy
15. Shri Chandu Lal Sahu
16. Shri Murari Lal Singh
- ***17. Shri Raj Babbar
18. Vacant
19. Vacant
20. Vacant
21. Vacant

RAJYA SABHA

22. Shri G. Sanjeeva Reddy
23. Shri Rudra Narayan Pany
- **24. Shri Pyarelal Khandelwal
25. Shri Rajaram
26. Smt. Renubala Pradhan

27. Shri G.N. Ratanpuri
- *28. Shri Mohammad Adeeab
29. Vacant
30. Vacant
31. Vacant

* Changed the nomination from Committee on Labour to Committee on Commerce w.e.f. 17th September, 2009.

** Expired on 6th October, 2009.

*** Nominated w.e.f. 3rd December, 2009.

SECRETARIAT

- | | | |
|--------------------------|---|---------------------|
| 1. Shri Devender Singh | - | Joint Secretary |
| 2. Shri B.S. Dahiya | - | Director |
| 3. Shri Ashok Sajwan | - | Additional Director |
| 4. Smt. Bharti S. Tuteja | - | Under Secretary |

INTRODUCTION

I, the Chairman of the Standing Committee on Labour having been authorized by the Committee to submit the Report on their behalf, present this First Report on 'The Industrial Disputes (Amendment) Bill, 2009' of the Ministry of Labour and Employment.

2. The Industrial Disputes (Amendment) Bill, 2009' was introduced in Rajya Sabha on 26th February, 2009 and referred to the Committee by the Speaker, Lok Sabha in consultation with the Chairman, Rajya Sabha for examination and report within three months from the date of publication of the reference of the Bill in Bulletin Part- II of Lok Sabha dated 9th September, 2009.

3. In the process of examination of the Bill, the Committee invited the representatives of the Ministry of Labour and Employment on 22nd October, 2009 and heard their views. The Committee also sought written information on various aspects of the Bill from the Ministry.

4. The Committee invited the views of major Central Trade Unions on the Bill through Memorandum. On 3rd November, 2009, the representatives of Trade Unions also deposed before the Committee to share their views and give their suggestions on the proposed amendments.

5. The Committee further took oral evidence of the officials of the Ministry of Labour and Employment on 11th November, 2009 on the proposed amendments by the Government.

6. The Committee considered and adopted their draft Report on the Bill at their sitting held on 4th December, 2009.

7. The Committee wish to express their thanks to the representatives of Trade Unions for tendering evidence before the Committee and furnishing written inputs/suggestions on the amending Bill.

8. For facilitation of reference and convenience, the observations and recommendations of the Committee have been printed in bold in the body of the Report.

NEW DELHI;

**HEMANAND BISWAL,
Chairman,**

**4th December, 2009
13 Agrahayana, 1931 (Saka)**

Standing Committee on Labour

REPORT

CHAPTER-I

Introductory

The Industrial Disputes Act, 1947 essentially applies to organized sector, mainly benefits unskilled and semi-skilled workers, provides for conciliation and adjudication and regulates strikes and lock-outs. In short, the Act primarily provides for a framework for investigation and settlement of industrial disputes. The Act was last amended in 1982.

2. The Industrial Disputes (Amendment) Bill, 2009 seeks to provide for:

- (1) amendment of the term “appropriate Government” defined under section 2 (a) of the Act to amplify the existing definition;
- (2) enhancement of wage ceiling of a workman from one thousand six hundred rupees per month to ten thousand rupees per month under section 2 (s) of the Act;
- (3) direct access for the workman to the Labour Court or Tribunal in case of disputes arising out of section 2A of the Act;
- (4) expanding the scope of qualifications of Presiding Officers of Labour Courts or Tribunals under sections 7 and 7A of the Act;
- (5) establishment of Grievance Redressal Machinery in every Industrial establishment employing twenty or more

workmen for the resolution of disputes arising out of individual grievances;

- (6) empowering the Labour Court or Tribunal to execute the awards, orders or settlements arrived at by Labour Court or Tribunal.

3. The amendment proposals were discussed with social partners during 40th session of Indian Labour Conference (ILC) held in December, 2005. The Bill contains the proposals on which consensus was evolved among social partners.

4. The Ministry of Labour and Employment also discussed the proposed amendments with the representatives of employers and employees on 21.6.2006. The Standing Labour Committee (SLC) during its 41st session held on 20.12.2006, after considering the Action Taken Report on the conclusions of 40th session of Indian Labour Conference suggested that the Government should go ahead with those amendments on which consensus has been arrived at.

The consensus was arrived at on the following six proposals:-

- (i) Section 2 (a)- Amplification of definition of 'Appropriate Government'.
- (ii) Section 2A - Direct reference of disputes to Central Government Industrial Tribunals-(CGITs)-cum-Labour Courts (CGITs) in cases of termination/dismissal/retrenchment/discharge.
- (iii) Relaxation of qualifications of Presiding Officers (POs) under Section 7 and 7A.
- (iv) Chapter-IIB- Setting up of Grievance Redressal Machinery for redressal of grievances of individual workman.

- (v) Section 38 (2) (c) - Salaries and Allowances and other terms and conditions of service of Presiding Officers of CGIT-cum-Labour Courts and National Tribunals.
- (vi) Section 11 - Power to enforce decree by Central Government Industrial Tribunals-cum-Labour Courts and National Tribunals.

5. The salient features of the Industrial Disputes Amendment (Bill), 2009 are as follows:-

Amendment to Section 2

- The Bill seeks to amplify the definition of 'Appropriate Government' to remove certain ambiguities in its interpretations.
- In addition to existing provision the Central Government shall be 'Appropriate Government' for:
 - * any company whose share capital is held by the Central Government to the extent of 51% or more.
 - * any corporation established under any Act of Parliament.
 - * subsidiary companies and autonomous bodies in the Central sphere.
- State Government shall be the Appropriate Government for State PSUs, subsidiary companies and autonomous bodies in State sphere and all others not covered by the Central Government.

Amendment to Section 2 (s) (iv)

- At present, persons employed in supervisory capacity drawing wages exceeding Rs.1600/- per month is not treated as workman.
- The Bill seeks to enhance the wage ceiling to Rs.10,000/- per month.
- This will bring parity with other labour legislations and match ground realities.

Amendment to Section 2 A

- In the existing provision, adjudication by CGIT-cum-LC only after reference by the 'Appropriate Government'.
- This causes delay in grievance redressal.
- The Bill provides for direct access to Industrial Tribunals/Labour Courts to the individual workman.
- Direct access is limited to cases of retrenchment, discharge, dismissal or termination of services of an individual workman.
- Individual workman can directly access the CGIT-cum-LC after the expiry of 3 months from the date of making an application to the conciliation officer.

- Direct access can be made before expiry of 3 years from the date of discharge, dismissal, retrenchment etc.

Amendment to Section 7 & 7 A

- The Bill seeks to expand the scope of eligibility for appointment for the posts of Pos in CGITs-cum-LC.
- In addition to the existing qualifications, the following will also become eligible:
 - * Officers of the CLS in Grade-III and Officers of State Labour Service of the rank of Joint Labour Commissioner with 7 years post law degree experience including 3 years as Conciliation Officer.
 - * Officers of the Indian Legal Service in Grade-III.
 - * The officers of the Central/State Labour Departments will not be appointed unless they resign from the service.

Setting up of Grievance Settlement Authorities – Chapter IIB.

- Grievance Settlement Authorities provided for in Chapter IIB of ID (Amendment) Act, 1982 could not be enforced in the absence of notified rules for the purpose.
- The rules could not be notified due to lack of unanimity among Trade Unions.
- Now the modified provision is sought to be made with adequate details. There will be no need to frame separate rules.

- The Bill makes provision for setting up of GRM to provide for in-house dispute resolution mechanism.
- All industrial establishments with 20 or more workmen shall set up GRM with one stage appeal.
- These provisions shall not apply to the workmen for whom there is an established Grievance Redressal Mechanism in existence.

Amendment to Section 11

- At present, Tribunals have no power to enforce the Awards/orders given by them.
- For effective enforcement, the Bill provides:
 - * That any award, order or settlement by a Tribunal/NIT shall be executable as a decree of Civil Court.
 - * And also to provide for transmitting to Civil Courts having civil jurisdiction for execution.

Amendment to Section 38

- At present, there are no specific provisions in the Act with regard to salaries and allowances and other terms and conditions of service of Presiding Officers.
- The Bill now empowers the Government to
 - * make rules to decide and review the salaries and allowances and other terms and conditions of appointment of POs.

CHAPTER-II

Clause by Clause analysis of 'The Industrial Disputes (Amendment) Bill, 2009'

I. Appropriate Government-Amendment to Section 2

6. (a) In sub-clause (i), for the words “major port, the Central Government, and”, the words “major port, any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central Public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and” shall be substituted;
- (b) for sub-clause (ii), the following sub-clause shall be substituted, namely:-
- “(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government.”;

7. The Ministry in their explanatory note to the amendment stated as follows:-

“It is sought to amplify the definition of Appropriate Government under Section 2(a) of the Industrial Disputes Act, 1947. It is further clarified that the Central Government would be appropriate Government for any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, (not being a corporation referred to in this clause) established by or under any law made by Parliament, or the Central Public Sector Undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government.

The Central Government is the appropriate Government in respect of categories listed in Section 2 (a) (i) of the I.D. Act, 1947. In addition to this State Government will be the appropriate Government in relation to any other industrial dispute, including the State Public Sector Undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government.”

8. When asked why ‘Industrial disputes between the contractor and the contract labour engaged in an enterprise/establishment’, as recommended by the Second National Labour Commission, have not been included under the amended definition of the appropriate government, the Ministry in their post evidence reply stated as follows:-

“Contractors establishment is also an establishment having distinct identity different from that of principal employer. If the definition of ‘appropriate Government’ for the Contractor under Industrial Disputes Act, 1947 is based on industrial establishment, they are working it may create complications when the contractor goes from one establishment to the other after completion of the work as it happens in case of provident fund account.”

II. Enhancement of wage ceiling-Amendment to Section 2 (s) (iv)

9. It is proposed to enhance the upper wage limit to Rs.10,000/- from Rs.1600/- per month in respect the workmen who are engaged in supervisory work and as such one not covered under the Act.

10. The Ministry in their explanatory note to the amendment stated:-

“As per the existing provision, the definition of ‘workman’ under Section 2 (s) and definition of wages under Section 2 (rr), a person employed in a supervisory capacity drawing wages exceeding Rs.1600 per month is not treated as a workmen under the Industrial Disputes Act, 1947.

Due to increase in wages of industrial workers over the years, most of the supervisors get wages far more than Rs.1600 per month, and as such are not covered under the provisions of the Industrial Disputes Act, 1947. In other enactments, namely the Payment of Bonus Act, 1965, the Payment of Wages Act, 1936 and the Employees State Insurance Act, 1948, the wage limit for covering of the ‘workman’ has been enhanced.”

11. On being asked why the supervisory staff should not be kept out of the 'workman' category irrespective of the wages they are drawing and be clubbed with administrative and managerial personnel, the Ministry in their post evidence reply stated:-

“In case of small establishments, the supervisory persons are paid a low salary. If these low paid supervisors are kept out of the purview of Industrial Disputes Act, 1947 they would be deprived of the benefit of an inexpensive dispute settlement mechanism. Accordingly it is felt that supervisors drawing salaries of Rs.10,000/-per month or less should be treated as workman under Industrial Disputes Act, 1947.”

12. When further asked to give their views on the suggestion that the Government should lay down a list of highly paid jobs which presently come under 'workman' category as being outside the purview of the laws relating to workmen, the Ministry in their reply stated as under:-

“Apparently, the suggestion that Government should lay down a limit of highly paid job outside the purview of Industrial Disputes Act, 1947 appears to be reasonable. However, for example, if pilots who are highly paid are kept out of the definition of 'workman', there will be no dispute settlement machinery for them. There will be nobody to deal with strike resorted by these pilots. It is, therefore, felt that such highly paid workman doing a manual or clerical or technical job should continue to be workman until an alternative dispute resolution mechanism is put in place.”

13. A representative of the Central Trade Union while deliberating on the issue stated:-

“With regard to the next amendment, that is, section 2 (4) on wage limit, I think the entire trade union movement in the country is in one voice that the wage ceiling should go. According to the annual survey of industries 2004-05, the average wages for the sugar staff, etc. were around

Rs.20,000, to be specific, it was Rs.18,995 in 2004-05. In 2009-10, we are proposing an amendment of Rs.10,000, which is totally away from the ground reality. So, without making any argument for increasing the ceiling, we say that it should be totally removed...In today's context, wage cannot be a primary consideration, it should be the nature of job and the delegation of power... The Supreme Court judgement is that the nature of job should be considered and whether one has got the financial or administrative power should be the criteria. In the original provision of the Act it is written, 'exercise either by nature of duties attached to the office or by reason of power'. So, there is no question of ceiling. It should be totally removed. That is our submission...."

14. In the same context, another representative of Central Trade Union stated that:-

"One is regarding Section 2 about salary of Rs.10,000 for the supervisors. A lot of justification has been given by my friends. The original Act was enacted in 1947. It has taken more than 62 years to amend the Act. If it takes about 63 years, then will this Rs.10,000, or Rs.20,000, or Rs.25,000 even if we suggest something like Rs.30,000—have any relevance after 5 years, or 10 years or 15 years...If it will have no relevance, then this Committee can make a recommendation that if the amount is strictly to be mentioned in the Act or the Bill, there should be some indexation so that the Act remains relevant; ...Of course, the best thing would be that it is not mentioned at all; it is eliminated."

**III. Direct reference of disputes to CGIT-cum-LCs-
Amendment to Section 2 A**

15. Section 2A of the Principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:-

“(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of three months from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)”.

16. The Ministry in their explanatory note have stated:-

“It is sought to amend section 2A of the Industrial Disputes Act, 1947 providing individual workman direct access to Labour Courts/Tribunals in cases of disputes arising out of cases falling under Section 2A. The workman will be allowed to make a petition to the Labour Court/Tribunal within three years of the date of his

dismissal, discharge, retrenchment or termination. However, the direct access to Labour Courts/Industrial Tribunal shall be allowed to the individual workman only after allowing a time period of three months from the date of making an application to the Conciliation Officer for conciliation of the dispute.”

17. The Bill provides that a workman can make an application direct to the Labour Court or Tribunal for adjudication of the dispute after the expiry of three months from the date he has made the application to the Conciliation Officer.

18. On being enquired why the workman should not be given an option to either go for conciliation or approach the Labour Court directly, the Ministry in their post evidence reply stated as follows:-

“Immediately after disciplinary action is taken by the management, the relation between employer and workman tends to be acrimonious and even the workman does not feel like taking recourse to conciliation. However, after passage of a few days, the attitude of both the parties gets softened and an atmosphere is created for settlement in conciliation. Perhaps, this is the reason that 10% of the disputes arising out of termination of service (i.e. Section 2A) are settled in conciliation. If this three months limit is not kept, the workman would like to go the Labour Court straightaway and miss the opportunity of settlement in conciliation which is most inexpensive and easy method of resolution of industrial dispute.

Settlement in conciliations heals the wound of the past and smoothens the way to future. Even if a workman wins in Tribunal or Higher Court; its implementation becomes difficult due to prolonged litigations. However, it has been observed that implementation of settlement arising out of conciliation is spontaneous rather than awards by the Tribunal/Higher Courts. It is, therefore, felt that the three months is ideal to allow these advantages to the parties mentioned above.

Three month limit would also help in avoiding the choking of Tribunals with avoidable litigations.”

19. When asked by the Committee regarding difficulty in waiving of the period of three months for a workmen for going to a Labour Court, the Secretary, Ministry of Labour and Employment stated:-

“We will just examine this again. We have absolutely no intention to dilute or curtail the advantage that is available to a worker. The intension was to give him benefit. But, as I said, normally, a dispute is referred to by the appropriate Government to the Central Government Tribunal. After this amendment, if the dispute is not settled within a period of three months, he can directly approach the Central Tribunal. That was the intention. We will certainly examine it if it is to the disadvantage of the worker.”

20. The representative of the Trade Union deliberating on the issue deposed:-

“The proposal to directly approach the Labour Court is a welcome step. The Conciliation Officer/Machinery used to take months and even years for reference of the matter to the Court and even in certain cases the matter was not referred to the Labour Court at all. The worker should have the liberty either to go to the Labour Court or the Conciliation Officer. It should be his choice as he is a dismissed person. You are creating three months time and he has to wait for the Conciliation Officer and has to be at his mercy. So, the worker has to spend three months unnecessarily. The Conciliation Officer does not have any power except to call both the parties and ask them to just compromise. He has no right to give award or give a decision. It is already taking ten years for the

dismissed person to get an award from the Labour Court...After the expiry of three months, a retrenched employee can go to CGIT or Labour Court. I feel that this time limit of three months is too much and it should be reduced to 45 days. For three months, the worker will not get any wages, and he will be already coming under the pressure of livelihood. So, it should be reduced to 45 days.”

IV. Eligibility for appointment of Presiding Officers in CGIT-cum-LC

Amendment to Section 7

21. In section 7 of the Principal Act, in sub-section (3), after clause (e), the following clauses shall be inserted, namely:-

“(f) he is or has been a Deputy Chief Labour Commissioner(Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years’ experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the Presiding Officer; or

(g) he is an officer of Indian Legal Service in Grade III with three years’ experience in the grade.”

22. In section 7A of the principal Act, in sub-section (3), after clause (aa), the following clauses shall be inserted, namely:-

“(b) he is or has been a Deputy Chief Labour Commissioner(Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years’ experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the Presiding Officer; or

(c) He is an officer of Indian Legal Service in Grade III with three years’ experience in the grade.”

23. Citing the reasons for the amendment, the Ministry in their explanatory note stated:-

“At present serving/retired High Court/District Judges are eligible to work as Presiding Officers in the Central Government Industrial Tribunals-cum-Labour Courts (CGIT-cum-LCs). This is creating considerable problems in the availability of officers willing to serve as Presiding Officers in the Central Government Industrial Tribunals-cum-Labour Courts. The proposed expanding of the scope of qualification of Presiding Officers will enable the Government to appoint the Presiding Officers from wider range of eligible officers from the relevant field.”

24. The representatives of the Central Trade Union while deliberating on the issue during their evidence before the Committee stated that there were number of Labour Courts and Tribunals which do not have any Presiding Officers. If there is a case in Labour Court, workers have to wait for the Presiding Officer and his appointment. The Workers are not sure when the Presiding Officer would be appointed. This is also a complicated problem due to which workers had to face many difficulties and there was a need to pay attention to this issue.

25. On being asked to furnish details of vacancies of Presiding Officers in various Labour Courts and tribunals at present and the emoluments being paid to them, the Ministry in their post evidence reply stated thus:-

“The present vacancy position of Presiding Officer in CGIT-cum-Labour Courts are seven which includes Bangalore, Mumbai-1, Ahmedabad, Dhanbad-II, Chandigarh-II, Kolkata and Bhubaneshwar.

The salary of Presiding Officers at National Tribunals carries the pay scale of Rs.80,000/- fixed whereas the scale of pay attached to the post of Presiding Officer of the CGITs-cum-Labour Courts (other than National Tribunals) are as follows:

- (i) District Judge (Entry level) – Rs.16,750-400-19,150-450-20,500/-
- (ii) District Judge (Selection Grade) – Rs.18,750-400-19,150-450-21,850-500-22,850/-
- (iii) District Judge (Super time scale) – Rs.22,850-500-24,850/-

The procedure of selection of Presiding Officers is time consuming and sometimes selected candidates show their inability to join the assignment.

Ministry are aware of the problems of getting eligible candidates from serving and retired High Court judges and District Judges as Presiding Officers. To address this problem the amendment has been sought to include experienced Officers of Indian Legal Service and Central Labour Service having Law degree etc. The benefit of this amendment will also be available to the State Government who have not yet amended their rules under Industrial Disputes Act, 1947 relaxing the qualification for appointment of Presiding Officers of Labour Court/ Tribunal.”

**V. Setting up of Grievance Settlement Authorities-
Insertion of New Chapter IIB.**

26. After Section 9 B of the Principal Act, for Chapter IIB, the following Chapter shall be substituted namely;- Chapter IIB – Grievance Redressal Machinery.

9C.(1) Every industrial establishment employing twenty or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

(2) The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.

(3) The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.

(4) The total number of members of the Grievance Redressal Committee shall not exceed more than six:

Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately.

(5) Notwithstanding anything contained in this section, the setting up of Grievance Redressal Committee shall not affect the right of the workman to raise industrial dispute on the same matter under the provisions of this Act.

(6) The Grievance Redressal Committee may complete its proceedings within forty-five days on receipt of a written application by or on behalf of the aggrieved party.

(7) The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned.

(8) Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned.”

27. The Ministry in their explanatory note have stated the following motive for bringing the amendment:-

“In order to promote better industrial relations at the industrial establishment level, there has been a long-felt need to provide for an in-house grievance redressal machinery which would work as an elaborate grievance ventilation within an establishment and reduce the burden on adjudicators.

Although, provision of Grievance Settlement Authorities was made vide Section 7 and 22 of the Industrial Disputes (Amendment) Act, 1982 and incorporated in the principal Act as Chapter IIB vide Section 9 C and in Section 38 (2) (ab). However, this provision could not be notified in the absence of framing of rules for the purpose due to lack of unanimity among the Central Trade Union Organisations.

Now, this modified provision is sought to be made with adequate details and there will be no need to frame separate rules for execution of the same.”

28. When asked to explain the reason for specifying the limit of 20 or more workmen for setting up of Grievance Redressal Machinery in an establishment, the Ministry in their post evidence reply stated:-

“The limit of 20 workmen has been kept for Grievance Redressal Machinery because for a small establishments employing less than 20, it would be difficult for them to constitute a Committee for this purpose. Besides in small establishments, the interaction between employer and workmen is direct, much easier and on day to day basis where such Committees may not be required.”

29. On being asked regarding the rationale for prescribing a period of 45 days for completion of proceedings by the Grievance Redressal Machinery, the Ministry replied as follows:-

“As the Committee consists of members from management and trade unions, the immediate hurdle is to find out convenient time for all the members because they have their own duties and the task assigned to them to work as a member of the Committee would be in addition to their normal work. At least two to three sittings may be required to take decisions involving conflicting interests. Moreover, forty five days is the outer limit. If a dispute is settled before forty five days

that would not also violate the norms of GRM. Therefore, it is felt that the limit of forty five days is reasonable and just. With regard to thirty days time for appeal it may be mentioned that the Appellate Authority may be a senior functionary with multifarious responsibility and for him to decide the issue within one month appears to be just and reasonable”.

30. In the context of introduction of Grievance Redressal Machinery when asked to give their views on the roles of Works Committee *vis-à-vis* Grievance Redressal Machinery, the Ministry in their post evidence reply stated:-

“As per the provision of section 3 of the ID Act, 1947, the duty of the Works Committee is to promote measure for securing amity and good relations between the employer and workmen and, to that end to comment upon matters of their common interest. Over the years it has become an established practice that Works Committees are to decide the collective matters of common interests mostly welfare measures and holidays etc. and not settling of individual grievance concerning individual workman. To address grievances concerning individual workman, this provision in the amendment is necessary.”

VI. Powers to enforce Awards/Orders by Tribunals

31. In section 11 of the principal Act, after sub-section (8), the following sub-sections shall be inserted, namely:-

“(9) Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908.

(10) The Labour Court or Tribunal or National Tribunal, as the case may be shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.”

32. The Ministry in their explanatory note stated as follows:-

“The amendment seeks to provide that any award/order/settlement made by a tribunal or national tribunal shall be executable as a decree of a Civil Court. In addition any tribunal or national tribunal may transmit any award/order/settlement to a Civil Court having civil jurisdiction for execution of the same as if it were a decree.”

33. The representatives of Trade Union during their deposition on the Bill stated:-

“Though we welcome this addition of Chapter of Grievance Redressal Machinery, yet, we feel that this limit of 20 workers should go. Having a Grievance Redressal Machinery in small establishments is more important because generally those workers are not unionized.

In larger interest, in establishments the workers have a tendency to form union, but the workers of small and medium scale industry establishments having less than 20 in number need more protection for resolution of their day-to-day grievances. In this chapter, unfortunately, no role has been given to trade unions. We feel that in establishments wherever the unions already exist, at least, those unions should have the authority to nominate the workmen in the grievance committee.

A provision has been made that once an issue is referred to the grievance committee, it takes about 45

days and if the workman is not satisfied he can appeal to the higher authority. The higher authority takes about another 30 days. We feel that this 75 days is too big a period. This period should be further reduced.”

34. Another representative of the Trade Union expressed his views on Grievance Redressal Machinery as follows:-

“There is a Trade Union where a cell for grievance procedure for twenty workers is proposed. If you nullify the role of trade union, it is possible that if somebody wants to create a trade union, he will have to face a lot of problem, they still face problem. Number of the workers should not be important in a factory for that purpose to end their grievances. If a factory has then workers and a dispute erupts, there is a requirement of a mechanism to solve the problem, because nomination will create dispute. As you have said that three persons will be nominated from the each side that will cause dispute and election will be held through secret ballot and hence an activity will start that will caused disruption in industrial work.”

35. Another representative of the Trade Union speaking on Grievance Redressal Machinery stated as follows:-

“Sir, I straightway go to the Grievance Redressal Machinery. I also support the view that any industrial establishment employing 20 or more persons, this number of 20 should be eliminated. But I am simultaneously apprehensive that if we reduce it to below 10, can we have a trade union or can we have an establishment where we will be in a position to set up the Grievance Redressal Machinery at all? That has also to be kept in view. I think, instead of eliminating, we can reduce the number to 10, which will be a more practical solution. If somebody is running an industry with five

employees and then we say, Now, you have the Grievance Redressal Machinery, then, where three or two representatives will come; it is a little complicated problem.”

VII. Salaries, Allowances and terms and conditions of service of Presiding Officers

36. In section 38 of the Principal Act, in sub-section (2),-

- (i) Clause (ab) shall be omitted;
- (ii) For clause (c), the following clause shall be substituted, namely:-

“(c) the salaries and allowances and the terms and conditions for appointment of the presiding officers of the Labour court, Tribunal and the National tribunal including the allowances admissible to members of Courts, Boards and to assessors and witnesses;

37. The Ministry, citing the reasons for amendment of Section 38, have stated in their explanatory note as follows:-

“It is sought to make a specific provision in section 38(2)(c) of the Act empowering Government to make rules to decide and review the salaries and allowances and other terms and conditions for appointment of Presiding Officers.”

CHAPTER-III

Analysis of other important sections of the Industrial Disputes Act, 1947 which not covered by the Industrial Disputes (Amendment) Bill, 2009

Chapter VB - Special provisions relating to lay off, retrenchment and closure in certain establishments

38. The Chapter applies to an industrial establishment in which not less than one hundred workmen are employed. The Chapter provides that no workman whose name is borne on the muster rolls of the industrial establishment shall be laid off or retrenched except with the prior permission of the appropriate government. The Chapter also provides that an employer who intends to close down an undertaking of an industrial establishment has to apply for prior permission at least ninety days before the date of intended closure and if the appropriate government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days, the permission will deemed to have been granted.

39. When asked to explain the reasons for not amending Chapter VB of the Industrial Disputes Act, 1947, which requires prior permission of the appropriate Government in respect of lay off and retrenchment in an establishment employing 100 or more workers and has attracted huge criticism from different quarters and also started off a public debate, the Ministry in their written reply stated:-

“Only those amendment proposals could be included in the Industrial Disputes (Amendment) Bill, 2009 in which a consensus could be arrived at the 40th Indian Labour Conference. As no consensus could be arrived at regarding amendment to Chapter VB of the Act, this could not be included in the Bill. Section 25 O of the

Industrial Disputes Act, 1947 lays down procedure for closing down an undertaking. The prescribed limit of sixty days is ordinarily binding on the Government. In case no refusal is communicated to grant the permission to employer for closure within that period, the permission applied for shall be deemed to have been granted on expiry of the sixty days notice period. The delay occurs in cases where in the employer fails to follow the prescribed procedure such as informing the representatives of the workman in the prescribed manner etc.”

40. A representative of the Trade Union during his evidence on the Bill, stated as follows:-

“The proposed amendment for the award which is given by the arbitration is a welcome step. Some amendments should have been proposed regarding closure, retrenchment and compensation because many labourers are being affected due to closure of many factories. This should have also been included in proposed amendments and this aspect should have been kept in mind. Today the situation of closure, retrenchment and compensation is rampant. We want to draw your attention towards the workers who are being retrenched and do not getting their compensation and dues.”

Payment of Subsistence Allowance during suspension:

- (ii) Second National Commission had recommended that any worker who, pending completion of domestic enquiry, is placed under suspension, should be entitled to 50% of his wages as subsistence allowance and 75% of wages for the period beyond 90 days if the period of suspension exceeds 90 days, for no fault of the worker, so however, the total period of suspension shall not, in any case exceed one year.

41. On being asked to explain the reason for non-inclusion of such a vital aspect in the Amendment Bill, the Ministry replied thus:-

“Payment of subsistence allowance comes under Industrial Employment (Standing Order) Act, 1946. This may be looked into when IE (SO) Act, 1946 is amended”.

Compulsory Recognition of Trade Unions

(iii) The representatives of the Trade Unions drew attention of the Committee regarding compulsory recognition of registered Trade Unions by the industrial establishments, covered under the Industrial Dispute Act, 1947. When asked as what they have to say in this regard, the Ministry stated in their written reply:-

“Recognition of Trade Unions is carried out in terms of the Code of Discipline where it is laid down that the management agree to recognize the union in accordance with the criteria evolved at the 16th Session of the Indian Labour Conference held in May, 1958’. However, Code of Discipline does not have any legal mandate. It solely depends on the voluntary approach of both the management and workers. Presently, recognition is not mandated statutorily. However, interference of the employer either in making or not making a Trade Union is an unfair labour practice. The employer can be punished for indulging in unfair labour practices.”

CHAPTER-IV
OBSERVATIONS/RECOMMENDATIONS

42. The Industrial Disputes Act, 1947 was enacted by Parliament to provide machinery and forum for the investigation and settlement of industrial disputes. The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions and provides the mechanics and necessary infrastructure for dispute resolutions so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of peace and enduring goodwill. Hence, the goal to which the Industrial Disputes Act is geared, is legal mechanism for canalising conflicts along conciliatory or adjudicatory processes.

Appropriate Government

43. The Committee note that to eliminate ambiguities in interpretation of the term 'Appropriate Government', the Government proposes to amplify its definition. The Central Government will be the 'Appropriate Government' for any

company in which not less than 51% of the paid up share capital is held by the Central Government. Similarly, State Government will be the 'Appropriate Government' in relation to any other industrial dispute in companies owned or controlled by the State Government. The Committee, concur with the proposed amendment, of the term 'Appropriate Government'. As regards, the inclusion of disputes between a Contractor and Contract Labour under the purview of the definition of 'Appropriate Government', the Committee do not find the contention of the Government that "it may create complications when the contractor goes from one establishment to the other after completion of work", plausible. The Committee feel that it may be specified in the Act itself so that if there is a dispute between a contractor and the contract labour employed through him, the dispute would fall under the purview of the 'Appropriate Government' of the Industrial establishment where the dispute first arose. The Committee feel that industrial disputes between a contractor and contract labour, employed in an industrial establishment, as recommended by the Second National Labour Commission also

needs to be brought under the purview of the definition of 'Appropriate Government'. The Committee hope that the Labour Courts will be suitably strengthened and their members commensurately increased as the amplification of the definition will bring more cases within the purview of Labour Courts.

Enhancement of wage ceiling

44. The Committee note with serious concern that the Government have raised the wage ceiling to Rs.10,000/- from Rs.1,600/- per month after the lapse of twenty five years. The Committee are of the view that it would be logical for the Government to keep the supervisory staff out of the 'workman' category irrespective of the wages they are drawing. The Committee urge the Government that supervisory staff be clubbed with the managerial and administrative employees. The Committee strongly feel that the social security benefits should be available to all employees including administrative, managerial and supervisory employees which can be done

through a separate legislation. The Committee believe that, in today's scenario of economic liberalisation, there would be hardly any supervisor drawing a salary of Rs.10,000/- per month and if the Government is of the view that the low paid supervisors should not be deprived of the benefit of an inexpensive dispute settlement mechanism, the Government may consider fixing a wage ceiling which is pragmatic and substantially reasonable enough, viz. Rs.25,000/-. The Committee also urge the Government to lay down a list of highly paid jobs which presently come under the 'workman' category, as being outside the purview of the laws relating to workmen, as workmen like airline pilots are quite capable of negotiating their terms of employment on their own since they hardly take recourse to the Industrial Disputes Act.

Direct reference of disputes to CGIT-cum-LCs

45. The Committee appreciate the amendment proposed by the Government regarding provision of direct access for a workman to the Labour Court. The Committee note that 10%

of the disputes arising out of termination of service are settled in conciliation which implies that 90% of the cases go to courts. The argument of the Government that three month limit would help in avoiding choking of Tribunals with avoidable litigations is far from sustainable. The Committee feel that a period of forty-five days is sufficient for the settlement of a dispute through conciliation. The Committee, therefore, recommend that the waiting period of three months, as has been prescribed in the proposed amendment, may be reduced to forty-five days.

Appointment of Presiding Officers in CGIT-cum-Labour Courts

46. The Committee note that there are several Labour Courts and Tribunals without Presiding Officers due to which the workers are facing difficulties. According to the Ministry at present only serving/retired High Court/District Judges are eligible to work as Presiding Officers resulting in the considerable problems in the availability of Officers for

appointment as Presiding Officers. The Committee agree in principle with the proposal that the scope of qualification of Presiding Officers be expanded to enable Government to appoint Presiding Officers from the officers of Indian Legal Service and Central Labour Service found eligible. The Committee, however, find no valid reason as to the year of acquisition of law degree. In their considered opinion acquisition of law degree coupled with the seniority contemplated in the amendment would suffice. The Committee hope and trust that the recruitment of Presiding Officers will be done immediately by the Government so that the cases which are pending before the Labour Courts for want of Presiding Officers could be settled speedily.

Grievance Redressal Machinery

47. The Committee note that in order to promote better industrial relation at the industrial establishment level, it has been proposed that every industrial establishment employing

twenty or more workman shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances. The Committee note that since the Grievance Redressal Machinery for establishments employing less than 10 workers has already been spelt out in unorganized workers' Social Security Act, 2008, the establishments having 10 to 20 workmen have been left out. The Committee, therefore, recommend that the provision of Grievance Redressal Machinery under Industrial Disputes Act, 1947 should be made for industrial establishment employing 10 or more workmen.

48. The Committee note that a period of 45 days has been prescribed for completion of proceedings by the Grievance Redressal Machinery. As per the reply of the Government, the rationale behind prescribing the period of 45 days is that the Members have to discharge their normal work duties in addition to the duties to be performed as a Member of Grievance Redressal Machinery. The Committee do not agree with the contention of the Government and feel that an in-

house set up can decide a case much faster. The Committee, therefore, recommend that the period of 45 days specified for completion of proceedings should be reduced to one month.

49. The Bill seeks to substitute Chapter IIB to introduce Grievance Redressal Machinery within the organization having 20 or more workmen with one stage appeal at the level of Head of the Industrial establishment to settle maximum disputes within the organization itself with minimum necessity for adjudication. The Committee find that though the provision was made *vide* Sections 7 and 22 of the Industrial Disputes (Amendment) Act, 1982 and incorporated in the Principal Act as Chapter IIB *vide* Section 9C and in Section 38 (2) (ab) the same could not notified in the absence of framing of rules due to lack of unanimity among the Central Trade Union Organisations. The Committee observe that the Industrial Disputes Act, 1947 already provides for the constitution of Works Committees in case of any industrial establishment having 100 or more workmen, whereas the present amendment

seeks to cover industrial establishment having 20 or more workmen for the purpose of setting up of the Grievance Redressal Machinery. The Committee are in agreement with the present amendment for introduction of GRMs in the industrial establishment. They, however, desire that the number of 20 workmen be reduced to 10 as the workers of small and medium establishments need more protection for resolution of their day-to-day grievances.

50. The Committee find that since the provision of Works Committee with similar powers is already there in the case of any industrial establishment having 100 or more workmen, the GRM should be avoided to escape dilatory procedures. The Committee observe from the reply of the Government that presently the Works Committee's role has been confined to decide the collective matters of common interests, mainly, welfare measures and holidays etc. and not settling of individual grievance of workman. The Committee therefore, recommend that rather than having two separate entities for the same purpose, the Works Committee be laced with the

additional powers as prescribed for the GRMs and the GRMs may only be confined to the industrial establishment having 10 to 100 workmen.

Powers to enforce Awards/Orders by Tribunals

51. The Committee note that at present the Tribunals under the Industrial Disputes Act, 1947 do not have any powers to enforce the awards/orders given by them. In the absence of any specific provision regarding power to tribunals under the Industrial Disputes Act, 1947 it becomes extremely difficult to enforce the award/order given by them. The Committee, therefore, support the proposed amendment in the Act, so that the Central Government, Industrial Tribunals, Labour Courts and National Tribunals be empowered to execute their awards/orders/settlements as a decree of the civil court.

Terms and Conditions of Service of Presiding Officers

52. The Bill proposes to substitute Section 38 (2) (c) of the Act, for empowering the Government to make rules to decide and review the salaries and allowances and other conditions for appointment of Presiding Officers. The Committee find that presently the Act does not contain any specific provision in this regard. The Committee are, therefore, in agreement with the proposed amendment which would empower the Government to make rules to decide and review the salaries and allowances and other terms and conditions of Service of Presiding Officers. The Committee, however, desire that after the proposed amendment, the Government should come out with a blue print of the rules so framed.

General Observations

Special provisions for lay off, retrenchment and closure

53. The Committee have analyzed the views of both the parties *i.e.* employers and trade unions. The employers feel that the introduction of new technology often renders some of the workers as surplus and secondly, at times, retrenchment is necessary to reduce costs and maintain global competitiveness and therefore, Chapter VB should be scrapped altogether. Trade Unions, on the other hand, feel that total scrapping of this chapter would mean sudden loss of jobs and incomes and may lead to starvation of workers and their families. Therefore, the Committee feel that both, economic efficiency of the establishment and job security for the workmen, are important considerations. The Committee opine that the Government should try to evolve consensus through consultations with both the sections and consultation should include provision of prior notice, adequate compensation package and other benefits for the retrenched workers.

Subsistence Allowance during suspension

54. The Committee has been informed that payment of subsistence allowance during the period of suspension comes under Industrial Employment (Standing order) Act, 1946 and strongly feel that provision for payment of subsistence allowance should be made part of the Model Standing Orders which shall be applicable where an establishment has no Standing Orders or where draft Standing Orders are still to be finalized.

Compulsory Recognition of Trade Unions

55. The Committee note with deep concern that as soon as employers come to know about the attempt of the workers to register their unions, the employers start transferring and victimizing the workers. The Committee feel that a specific provision in the Act should be made for compulsory recognition of registered trade unions by the industrial establishments covered under the Industrial Dispute Act, 1947.

NEW DELHI;

4th December, 2009
Labour
13 Agrahayana , 1931 (Saka)

HEMANAND BISWAL,
Chairman,

Standing Committee on

ANNEXURE

AS INTRODUCED IN THE RAJYA SABHA

Bill No.VI of 2009

THE INDUSTRIAL DISPUTES (AMENDMENT) BILL, 2009

A

BILL

further to amend the Industrial Disputes Act, 1947.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Industrial Disputes (Amendment) Act, 2009.

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

2. In the Industrial Disputes Act, 1947 (hereinafter referred to as the principal Act), in section 2, —

(i) in clause (a),—

(a) in sub-clause (i), for the words “major port, the Central Government, and”, the words “major port, any company in which not less than fifty-one percent. of the paid-up share capital is held by the Central Government, or any corporation, not being

a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and” shall be substituted;

- (b) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government.”;

(ii) in clause (s), in sub-clause (iv), for the words “one thousand six hundred rupees”, the words “ten thousand rupees” shall be substituted.

- 3.** Section 2A of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

“(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of three months from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the

provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”.

4. In section 7 of the principal Act, in sub-section(3), after clause (e), the following clauses shall be inserted, namely:—

“(f) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years’ experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or (g) he is an officer of Indian Legal Service in Grade III with three years’ experience in the grade.”.

5. In section 7A of the principal Act, in sub-section (3), after clause (aa), the following clauses shall be inserted, namely:—

“(b) he is or has been a Deputy Chief Labour Commissioner (Central) or Joint Commissioner of the State Labour Department, having a degree in law and at least seven years’ experience in the labour department after having acquired degree in law including three years of experience as Conciliation Officer:

Provided that no such Deputy Chief Labour Commissioner or Joint Labour Commissioner shall be appointed unless he resigns from the service of the Central Government or State Government, as the case may be, before being appointed as the presiding officer; or

(c) he is an officer of Indian Legal Service in Grade III with three years' experience in the grade.”.

6. After section 9B of the principal Act, for chapter IIB, the following Chapter shall be substituted, namely:—

“CHAPTER IIB
GRIEVANCE REDRESSAL MACHINERY

9C. (1) Every industrial establishment employing twenty or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.

(2) The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.

(3) The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.

(4) The total number of members of the Grievance Redressal Committee shall not exceed more than six:

Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately.

(5) Notwithstanding anything contained in this section, the setting up of Grievance Redressal Committee shall not affect the right of the workman to raise industrial dispute on the same matter under the provisions of this Act.

(6) The Grievance Redressal Committee may complete its proceedings within forty-five days on receipt of a written application by or on behalf of the aggrieved party.

(7) The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned.

(8) Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned.”.

7. In section 11 of the principal Act, after sub-section (8), the following sub-sections shall be inserted, namely:—

“(9) Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908.

(10) The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.”.

8. In section 38 of the principal Act, in sub-section (2),—

(i) clause (*ab*) shall be omitted;

(ii) for clause (c), the following clause shall be substituted,
namely:—

“(c) the salaries and allowances and the terms and conditions for appointment of the presiding officers of the Labour Court, Tribunal and the National Tribunal including the allowances admissible to members of Courts, Boards and to assessors and witnesses;”.

STATEMENT OF OBJECTS AND REASONS

The Industrial Disputes Act, 1947 provides the machinery and procedure for the investigation and settlement of industrial disputes. The provisions of the Act had been amended from time to time in the light of experience gained in its actual working, case laws and industrial relations policy of the Government.

2. At present the workman, whose services have been discharged, dismissed, retrenched, or otherwise terminated under section 2A of the Act, is unable to approach the Labour Court or Tribunal in the absence of a reference of industrial dispute by the appropriate Government to Labour Court or Tribunal. This causes delay and untold suffering to the workmen. The Industrial Disputes (Amendment) Act, 1982 provided for an in-house Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the Industrial establishment, but it does not permit the workman to approach Labour Court or Tribunal until such dispute has been decided by the Grievance Settlement Authority. The Labour Courts and Tribunals have no power under the Act to enforce the awards published by the appropriate Government.

3. In view of the above, it is considered necessary to provide for workman a direct access to Labour Court or Tribunal in case of disputes arising due to discharge, dismissal, retrenchment or termination of service of workman. It is also proposed to establish a Grievance Redressal Machinery as an in-house mechanism in an Industrial establishment with twenty or more workmen without affecting the right of workman to raise an industrial dispute on the same matter under the provisions of the Act.

4. Accordingly, the Industrial Disputes (Amendment) Bill, 2009, *inter-alia*, seeks to provide for–

(i) amendment of the term “appropriate Government” defined under section 2(a) of the Act to amplify the existing definition;

(ii) enhancement of wage ceiling of a workman from one thousand six hundred rupees per month to ten thousand rupees per month under section 2(s) of the Act;

(iii) direct access for the workman to the Labour Court or Tribunal in case of disputes arising out of section 2A of the Act;

(iv) expanding the scope of qualifications of Presiding Officers of Labour Courts or Tribunals under sections 7 and 7A of the Act;

(v) establishment of Grievance Redressal Machinery in every Industrial establishment employing twenty or more workmen for the resolution of disputes arising out of individual grievances;

(vi) empowering the Labour Court or Tribunal to execute the awards, orders or settlements arrived at by Labour Court or Tribunal.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 19th February, 2009.

OSCAR FERNANDES.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill confers power upon the Central Government to make rules relating to the salaries, the terms and conditions for appointment of the Presiding Officers of the Labour Court, Tribunal or National Tribunal.

2. The rules made by the Central Government shall be laid as soon as may be, after they are made, before each House of the Parliament.

3. The matters in respect of which rules may be made are generally matters of procedure and administrative details. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE
EXTRACTS FROM THE INDUSTRIAL DISPUTES ACT, 1947
(14 OF 1947)

* * * * *

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

(a) "appropriate Government" means—

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company for concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956, or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act,

1962, or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963, or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994, or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976, or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987, or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, the Central Government, and (ii) in relation to any other industrial dispute, the State Government;

* * * * *

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

* * * * *

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

* * * * *

7. (1) * * * *

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless—

* * * * *

7A. (1) * * * *

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless—

* * * * *

38. (1) * * * *

(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:—

* * * * *

(ab) the constitution of Grievance Settlement Authorities referred to in section 9C, the manner in which industrial disputes may be referred to such authorities for settlement, the procedure to be followed by such authorities in the proceedings in relation to disputes referred to them and the period within which such proceedings shall be completed;

* * * * *

(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;

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RAJYA SABHA

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BILL

further to amend the Industrial Disputes Act, 1947.

(Shri Oscar Fernandes, Minister of Labour & Employment)

**MINUTES OF THE SITTING OF STANDING COMMITTEE ON
LABOUR HELD ON 22ND OCTOBER, 2009.**

The Committee met from 1130 hrs. to 1300 hrs in Committee Room `A', Parliament House Annexe, New Delhi to have briefing by the representatives of the Ministry of Labour and Employment on `The Industrial Disputes (Amendment) Bill, 2009' and `The Employees' State Insurance (Amendment) Bill, 2009'.

PRESENT

Shri Hemanand Biswal – CHAIRMAN

MEMBERS

LOK SABHA

2. Shri M. Anandan
3. Shri P. Balram
4. Dr. Shafiqur Rahman Barq
5. Shri Kaushalendra Kumar
6. Shri Hari Manjhi
7. Shri P.R. Natarajan
8. Km. Mausam Noor
9. Shri S. Pakkirappa
10. Shri Ramkishun
11. Shri Chandu Lal Sahu

RAJYA SABHA

12. Shri G. Sanjeeva Reddy
13. Shri Rudra Narayan Pany
14. Shri Rajaram

15. Smt. Renubala Pradhan

SECRETARIAT

- | | | | |
|----|-----------------------|---|---------------------|
| 1. | Shri Devender Singh | - | Joint Secretary |
| 2. | Shri Ashok Sajwan | - | Additional Director |
| 3. | Smt. Bharti S. Tuteja | - | Under Secretary |

REPRESENTATIVES OF THE MINISTRY OF LABOUR & EMPLOYMENT

1. Shri P. C. Chaturvedi, Secretary
2. Shri S.K. Srivastava, Additional Secretary
3. Shri Anil Swarup, Director General, Labour Welfare
4. Shri S. K. Dev Verman, Joint Secretary
5. Shri S. K. Mukhopadhyay, Chief Labour Commissioner (Central)
6. Shri Rajiv Dutt, Financial Commissioner, ESIC
7. Shri B. K. Sahu, Insurance Commissioner, ESIC
8. Dr. Mrs. K. Tyagi, Medical Commissioner, ESIC
9. Dr. S.K. Jain, Deputy Medical Commissioner, ESIC

2. XX XX XX

3. The Chairman welcomed the representatives of the Ministry of Labour & Employment to the sitting of the Committee convened to have briefing by them on 'The Industrial Disputes (Amendment) Bill, 2009' and 'The Employees' State Insurance (Amendment) Bill, 2009'. After the introduction by the representatives of the Ministry, the Committee first took up 'The Industrial Disputes (Amendment)

Bill, 2009'. The Secretary, Ministry of Labour briefed the Committee on the amendments proposed in 'The Industrial Disputes (Amendment) Bill, 2009'. Members sought certain clarifications on the Bill. The Secretary and other officials of the Ministry replied to the queries of the Chairman and other Members.

4. The main discussion on the Bill was on the following amendments:-

- (i) role of Grievance Redressal Committee vis-à-vis Works Committee.
- (ii) direct access for workman to the Labour Court or Tribunal after expiry of three months from the date of making an application to the Conciliation Officer.
- (iii) enhancement of wage ceiling prescribed for supervisors from Rs. 1,600/- to Rs. 10,000/-.
- (iv) compulsory recognition of Trade Unions.
- (v) non-implementation of recommendations made by first and second National Labour Law Commission.

5.	XX	XX	XX
6.	XX	XX	XX

7. A copy each of List of Points relating to amendments on both the Bills was handed over to the Secretary for furnishing replies thereto to the Committee, within a week.

The witnesses then withdrew.

The verbatim proceedings were kept for record.

The Committee then adjourned.

XX Do not pertain to this Report.

**MINUTES OF THE SITTING OF STANDING COMMITTEE ON
LABOUR HELD ON 3RD NOVEMBER, 2009.**

The Committee met from 1130 hrs. to 1330 hrs in Committee Room `B', Parliament House Annexe, New Delhi to hear the views of the representatives of Central Trade Unions on `The Industrial Disputes (Amendment) Bill, 2009' and `The Employees' State Insurance (Amendment) Bill, 2009'.

PRESENT

Shri Hemanand Biswal – CHAIRMAN

MEMBERS

LOK SABHA

2. Shri K. Murugesan Anandan
3. Shri Sudarshan Bhagat
4. Shri Hassan Khan
5. Shri Kaushalendra Kumar
6. Shri P. Lingam
7. Shri Hari Manjhi
8. Shri P.R. Natarajan
9. Shri Ramkishun
10. Shri Chandu Lal Sahu

RAJYA SABHA

11. Shri Rudra Narayan Pany
12. Shri Rajaram
13. Smt. Renubala Pradhan

SECRETARIAT

- | | | |
|--------------------------|---|---------------------|
| 1. Shri Devender Singh | - | Joint Secretary |
| 2. Shri B. S. Dahiya | - | Director |
| 3. Shri Ashok Sajwan | - | Additional Director |
| 4. Smt. Bharti S. Tuteja | - | Under Secretary |

REPRESENTATIVES OF THE CENTRAL TRADE UNIONS

Sl. No.	Name of the Organisation	Name of the representative	Designation
1.	Bharatiya Mazdoor Sangh	Shri R. V. Subba Rao	Vice President
2.	Hind Mazdoor Sabha	Shri R. A. Mittal	Secretary
3.	Centre for Indian Trade Unions	Shri Swadesh Dev Roye	National Secretary
4.	Indian National Trade Union Congress	Shri Chandra Prakash Singh	President
5.	All India Trade Union Congress	(i) Shri D.L. Sachdev (ii) Shri G. L. Dhar	Secretary Secretary

2. At the outset, the Chairman welcomed the representatives of the Trade Unions to the sitting of the Committee convened to hear the views of the Trade Unions on 'The Industrial Disputes (Amendment) Bill, 2009' and 'The Employees State Insurance (Amendment) Bill, 2009' and also drew their attention to Direction 55 of Directions by the Speaker, Lok Sabha. The Chairman, thereafter, sought their views on the various provisions of 'The Industrial Disputes (Amendment) Bill, 2009' in the first instance.

3. The representatives of the Trade Unions deposing before the Committee expressed their views and gave their suggestions on various provisions of the Bill. Some of the major views expressed by them related to the following provisions:-

- (i) definition of 'Appropriate Government' under Section 2(i) of the Act.
- (ii) enhancement of wage ceiling of a workman from one thousand six hundred rupees per month to ten thousand rupees per month under section 2(s) of the Act;
- (iii) direct access for the workman to the Labour Court or Tribunal in case of disputes arising out of section 2A of the Act;
- (iv) establishment of Grievance Redressal Machinery in every Industrial establishment employing twenty or more workmen for the resolution of disputes arising out of individual grievances by inserting a new chapter II B.

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6. The queries raised by members, pertaining to both the Bills, were also responded to by the representatives of Trade Unions.

7. The Chairman then thanked the representatives of Trade Unions for giving valuable suggestions on both the Bills.

The witnesses then withdrew.

Verbatim proceedings of the sitting were kept for record.

The Committee then adjourned.

XX Do not pertain to this Report.

**MINUTES OF THE SITTING OF STANDING COMMITTEE ON
LABOUR HELD ON 11TH NOVEMBER, 2009.**

The Committee met from 1400 hrs. to 1545 hrs in Committee Room No. `139', Parliament House Annexe, New Delhi to have oral evidence of the representatives of the Ministry of Labour and Employment on `The Industrial Disputes (Amendment) Bill, 2009' and `The Employees' State Insurance (Amendment) Bill, 2009' and to consider and adopt draft Action Taken Reports.

PRESENT

Shri Hemanand Biswal – CHAIRMAN

**MEMBERS
LOK SABHA**

2. Shri M. Anandan
3. Shri P. Balram
4. Dr. Shafiqur Rahman Barq
5. Shri Sudarshan Bhagat
6. Shri Hassan Khan
7. Shri Kaushalendra Kumar
8. Shri P. Lingam
9. Shri Hari Manjhi
10. Shri P.R. Natarajan
11. Shri Chandu Lal Sahu

RAJYA SABHA

12. Shri G. Sanjeeva Reddy
13. Shri Rajaram
14. Smt. Renubala Pradhan
15. Shri G.N. Ratanpuri

SECRETARIAT

- | | | | |
|----|-----------------------|---|---------------------|
| 1. | Shri Devender Singh | - | Joint Secretary |
| 2. | Shri B.S. Dahiya | - | Director |
| 3. | Shri Ashok Sajwan | - | Additional Director |
| 4. | Smt. Bharti S. Tuteja | - | Under Secretary |

REPRESENTATIVES OF THE MINISTRY OF LABOUR AND EMPLOYMENT

1. Shri P. C. Chaturvedi, Secretary
2. Shri S. K. Dev Verman, Joint Secretary
3. Shri S. K. Mukhopadhyay, Chief Labour Commissioner (Central)
4. Shri Rajiv Dutt, Financial Commissioner, ESIC
5. Shri B. K. Sahu, Insurance Commissioner, ESIC
6. Dr. Mrs. K. Tyagi, Medical Commissioner, ESIC
7. Shri Devender Singh, Director
8. Shri S.K. Verma, Director
9. Shri A.V. Singh, Director

2. At the outset, the Chairman welcomed the representatives of the Ministry of Labour and Employment to the sitting of the Committee convened to take their oral evidence on 'The Industrial Disputes (Amendment) Bill, 2009' and 'The Employees' State Insurance (Amendment) Bill, 2009'. The Committee first took up 'The Industrial Disputes (Amendment) Bill, 2009'.

3. The Secretary, Ministry of Labour briefed the Committee on the proposed amendments in the Bill. Members sought clarifications on the amendments. The Secretary and other officials of the Ministry responded to the queries of the Chairman and members.

4. The main discussion on the Bill was on the following amendments:-

- (i) role of Grievance Redressal Committee vis-à-vis Works Committee.
- (ii) direct access for workman to the Labour Court or Tribunal after expiry of three months from the date of making an application to the Conciliation Officer.
- (iii) enhancement of wage ceiling from Rs. 1,600/- to Rs. 10,000/-.

5. XX XX XX

6. XX XX XX

7. A copy each of supplementary list of points relating to amendments on both the Bills was handed over to the Secretary for furnishing replies thereto to the Committee, within three days.

The witnesses then withdrew.

The verbatim proceedings of the sitting were kept for record.

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| 8. | XX | XX | XX |
| 9. | XX | XX | XX |
| 10. | XX | XX | XX |

The Committee then adjourned.

XX Do not pertain to this Report.

**MINUTES OF THE SITTING OF STANDING COMMITTEE ON
LABOUR HELD ON 4TH DECEMBER, 2009.**

The Committee met from 1530 hrs. to 1600 hrs in Committee Room `E', Parliament House Annexe, New Delhi to consider and adopt the draft reports on `The Industrial Disputes (Amendment) Bill, 2009' and `The Employees' State Insurance (Amendment) Bill, 2009'.

PRESENT

Shri Hemanand Biswal – CHAIRMAN

**MEMBERS
LOK SABHA**

2. Shri P. Balram
3. Dr. Shafiqur Rahman Barq
4. Shri Hassan Khan
5. Shri Kaushalendra Kumar
6. Shri P.R. Natarajan
7. Shri S. Pakkirappa

RAJYA SABHA

8. Shri G. Sanjeeva Reddy
9. Shri Rudra Narayan Pany
10. Shri G.N. Ratanpuri

SECRETARIAT

1. Shri Devender Singh - Joint Secretary
2. Shri Ashok Sajwan - Additional Director

2. At the outset, the Chairman welcomed the Members and apprised them about the draft Reports on 'The Industrial Disputes (Amendment) Bill, 2009' and on 'The Employees' State Insurance (Amendment) Bill, 2009'.

3. The Committee first took up the draft Report on 'The Industrial Disputes (Amendment) Bill, 2009' for consideration. The Committee adopted the same without any modification.

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5. The Committee then authorized the Chairman to present the Reports to both the Houses of Parliament.

The Committee then adjourned.

XX Do not pertain to this Report.

