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PART V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill which was introduced on the 4th March, 2010 by Shri Sabirbhai Khedavala M.L.A. is published under rule 127-A of the Gujarat Legislative Assembly Rules for general information.

GUJARAT BILL NO. 7 OF 2010.

THE GUJARAT UNEMPLOYMENT ALLOWANCE PAYMENT TO WORKMEN IN FACTORIES (FOR TEMPORARY PERIOD)

BILL, 2010

A BILL

to require employers to pay unemployment allowance to certain workmen who, due to short working of factories on account of shortage of power, cannot be given employment therein on certain days during a certain temporary period and to provide for matters connected therewith,

WHEREAS it is expedient to take immediate action to require employers to pay unemployment allowance to certain workmen who, due to short working of factories on account of shortage of power, could not be given employment therein on certain days during a temporary period notified either in relation to the whole State or any part thereof and to provide for matters connected therewith, and for that purpose.

Short title
extent and
commencement.

It is hereby enacted in the Sixty one Year of the Republic of India as follows:-

14 of
1947

Definitions.

1. (1) This Act may be called Gujarat Unemployment Allowance Payment to Workmen in Factories (For Temporary Period) Act, 2010
 - (2) It extends to the whole of the State of Gujarat.
 - (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context requires otherwise—

(a) "Badli workman" means a workman who is provided with a Badli card and who is employed in place of another workman who is temporarily absent and whose name is borne on the muster roll of the factory;

(b) "factory" means any premises including precincts thereof wherein ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, but does not include a factory in respect of which the Central Government is the appropriate Government in relation to industrial disputes concerning it under the Industrial Disputes Act, 1947.

(c) "Manager" means the person who is for the time being managing the factory, and includes any other officer duly authorised by the employer to act as Manager, such authorisation being notified to the workmen by displaying it on the notice board of the factory;

(d) "permanent workman" means a workman who has been employed on a permanent basis or whose appointment has been confirmed in writing by the Manager or by a person duly authorised in this behalf by the Manager, and includes a workman who has completed a probationary period of three months in the aggregate in the same or another occupation in the factory, and an apprentice who is asked or appointed to work in a post or vacancy of a permanent workman for the purposes of payment of wages to him during the period he works on such post or in such vacancy;

(e) "temporary period" means such period (including its extension) as the State Government may for the whole State or any part thereof, from time to time by notification in the Official Gazette, specify in this behalf;

(f) "temporary workman" means a workman who has been appointed in a factory for a limited period for work which is of an essentially temporary nature or who is employed temporarily as an additional workman in connection with temporary increase in work of a permanent nature.

(g) the expression "workman" and any other words or expressions used in this Act but not defined therein shall have the same meanings respectively assigned to them in the Industrial Disputes Act, 1947, with the modification that the expression "workman" shall include a Badli workman, a temporary workman, and for avoidance of doubt, also a permanent workman.

3. (1) Where any workman, whose name is borne on the muster roll, or, as the case may be, Badli Register of factory on the first day of the temporary period is not provided, due to short working of factories on account of shortage of power, with employment therein on any days during the temporary period, then notwithstanding anything contained in any law for the time being in force, he shall, subject to the provisions of this Act, be paid by the employer an unemployment allowance at such rate per day and for such number of days in each calendar month during the temporary period, as is provided in sub-section (2) of this section.

Payment
of
unemploy-
ment
allowance

(2) The rate of unemployment allowance payable shall be equal to 50 per cent of the total of the basic wages and dearness allowance that would have been payable to him had he been provided with employment during the temporary period;

The number of days in each calendar month for which the unemployment allowance shall be paid at the rate aforesaid shall be equal to the average of the total number of days in each month on which a workman has actually worked during a period of one year immediately before the commencement of the temporary period:

Provided that such number of days in each calendar month shall not exceed, the number of days in that month on which he is not provided with employment.

Explanation.—Where the interval between two or more periods is less than one year, then for calculating the period of one year in relation to the last of such temporary periods for the purposes of this sub-section, the temporary period or periods immediately before such last temporary period shall be excluded.

(3) In computing the amount of unemployment allowance, the amount payable shall, where necessary, be rounded off to the nearest rupee, fractions of fifty paise and over being counted as one, and less than fifty paise being disregarded.

(4) Where a workman does not actually work for the full number of hours on any day, then in counting the number of days on which he has actually worked on such days, the number of hours during which a workman has worked on each such day shall be added together to ascertain the number of days.

4. No unemployment allowance shall be paid to any workman—

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(a) if he is entitled to any lay-off compensation under the provisions of the Industrial Disputes Act, 1947;

(b) if he refuses to accept any alternative employment in the same factory in which he has been provided with his usual employment, or in any other factory belonging to the same employer in the same town or village or situated within, a radius of 8 kilometres from the factory to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workmen:

Provided that the wages which would normally have been paid to the workmen are offered for the alternative employment also;

(c) if such non-provision for employment on any day is due to any strike or slowing down of production on the part of the workmen in another part of the factory

Recovery of money from employer.

5. (1) Where any money by way of unemployment allowance is due to a workman from an employer under the provisions of this Act, the workman him-self 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 State Government or one or more officers authorised by it for any area or areas, for the recovery of money due to him, and subject to the provisions of sub-section (2), if the State Government or the authorised officer is satisfied that any money is so due, it or such authorised officer 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:

Workmen not entitled to unemployment allowance in certain cases.

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 State Government or the authorised officer is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) No certificate under sub-section (1) shall be issued unless the employer has been given an opportunity to represent his case as to why he did not pay the unemployment allowance to the workman in accordance with the provisions of section 3, and his representation or any evidence produced by him is duly considered, if necessary, after hearing the employer.

Penalty.

6. Any person who commits a breach of any of the provisions of this Act, shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine, or with both, 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 time 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 unemployment allowance to any person who in its opinion has been injured by such breach.

7 (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 State Government.

Cognizance of offence.

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

8. (1) Where an offence, under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence; and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

*Explanation.—*for the purposes of this section—

(i) "company" means any body corporate, and includes a firm or other association of individuals and

(ii) "director", in relation to a firm, means a partner in the firm.

9. Notwithstanding the expiry of any temporary period notified under clause savings (e) of section 2, the provision of this Act shall continue to have effect for the purpose of recovery of any money by way of unemployment allowance due, or for the purpose of any penalty incurred on or before the expiry of such period, or for any other purposes connected with, or incidental to, any of the purposes aforesaid.

STATEMENT OF OBJECTS AND REASONS

Due to the announcement of power cuts and dislocation of power supply industrial production is affected resulting in lay-off or reduction of employment in some cases.

Under the provisions of Chapter VA of the Industrial Disputes Act, 1947, lay-off compensation is payable to workmen, who are laid off due to failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stock or the break down of machinery or for any other reason to give employment to a workman whose name is borne on the muster roll of an Industrial establishment. This lay-off compensation, however, is payable to workmen in industrial establishment in which 50 or more workmen are working and industrial establishments which are not of a seasonal character or in which work is not performed only intermittently. Moreover, workmen (including Badli workmen) who have not completed one year of continuous service under an employer are not eligible for lay-off compensation under the said Act. These provisions are applicable in relation to industrial establishments which not only include factories which are working with the aid of power but also to all other establishments.

In order to give relief to workmen who would not otherwise be entitled to any lay-off compensation under Industrial Disputes Act, 1947, it is proposed to provide for payment of unemployment allowance for a temporary period to certain workmen working in factories who could not be given employment therein on any day or days for the reason of power shortage and to provide for matters connected therewith.

This is necessary and justifiable so as to end discrimination between workmen and to provide relief as such unemployment has arisen for no fault of theirs.

Dated the 15th February ,2010

SABIRBHAI KHEDAVALA
M. L. A.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (e) of clause 2 of the Bill empowers the State Government to specify from time to time by notification in the Official Gazette, the temporary period (including its extension) for the whole State or any part thereof.

The delegation of the above power is of a normal character

Dated the 15th February ,2010.

SABIRBHAI KHEDAVALA
M. L. A.

FINANCIAL, MEMORANDUM

The Bill provides for payment of compensation by employers to workers in factories employing 10 or more workers, who are not eligible to lay-off compensation under the provisions of The Industrial Disputes Act, 1947, in respect of shortfall, if any, due to power cut in the number of days on which the workers were unemployed during the temporary period, at 50 percent of the total of the basic wages and D.A. that would have been payable to them during the temporary period, had they been provided with employment. While lay-off compensation to the extent of 45 days in a period of 12 months at the same rate is payable under the Industrial Disputes Act, 1947 to workmen in factories, in which 50 or more workmen employed, who are laid off due to various reasons, power cut being one of them, and who have completed not less than one year of continuous service under the employer, this legislation seeks to compensate workers other than those eligible to lay-off compensation under the Industrial Disputes Act, 1947, as described above and this compensation is limited only in respect of the days by which their monthly employment during this temporary period falls short of their average month employment during the preceding year. Other provisions are incidental or consequential.

Government, as an employer, will have to pay lay-off compensation in pursuance of the provisions of this legislation. However, the amount of lay off compensation to be paid will vary according to the number of days of lay-off, and number of workers laid off. It is difficult to enumerate the exact financial involvement of Government as an employer on account of this legislation.

Dated the 15th February, 2010

SABIRBHAI KHEDAVALA
M. L. A.

Gandhinagar.
Dated the 4th March, 2010.

D. M. PATEL,
Secretary,
Gujarat Legislative Assembly.