

an>

Title: The Minister of State of the Ministry of Labour and Employment made a statement correcting the reply to Unstarred Question No. 147 given on 24th November, 2014 asked by Sarvashri C.N. Jayadeven, Dharmendra Yadav, Kodikkunnil Suresh, Dileep Singh Bhuria, Shrirang Appa Barne, Adhalrao Patil Shivajirao, Sumedhanand Sarswati and Ram Mohan Naidu Kinjarapu, MPs regarding 'Amendments to Labour Laws'.

THE MINISTER OF STATE OF THE MINISTRY OF LABOUR AND EMPLOYMENT (SHRI BANDARU DATTATREYA): Sir, I beg to lay a Statement correcting the reply to Unstarred Question No. 147 given on 24th November, 2014 asked by Sarvashri C.N. Jayadeven, Dharmendra Yadav, Kodikkunnil Suresh, Dileep Singh Bhuria, Shrirang Appa Barne, Adhalrao Patil Shivajirao, Sumedhanand Sarswati and Ram Mohan Naidu Kinjarapu, MPs regarding 'Amendments to Labour Laws'.

Revised Reply

**GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT
LOK SABHA**

**UNSTARRED QUESTION NO. 147
TO BE ANSWERED ON 24.11.2014**

AMENDMENTS TO LABOUR LAWS

147. SHRI C.N. JAYADEVEN:

SHRI DHARMENDRA YADAV:

SHRI KODIKKUNNIL SURESH:

SHRI DILEEP SINGH BHURIA:

SHRI SHRIRANG APPA BARNE:

SHRI ADHALRAO PATIL SHIVAJIRAO:

SHRI SUMEDHANAND SARSWATI:

SHRI RAM MOHAN NAIDU KINJARAPU:

Will the Minister of LABOUR AND EMPLOYMENT be pleased to state:

- (a) whether the Union Government and also some State Governments have proposed certain amendments in labour laws;**
- (b) if so, the details of the proposed amendments proposed by the Union and the State Governments separately along with the reasons therefor;**
- (c) the extent to which the proposed changes in the labour laws are likely to reduced hassles for employers and employees;**
- (d) whether the Government has also proposed for self-certification by the employer regarding the safety and security of the employees and of the people in and around the factory; and**
- (e) if so, the details thereof?**

ANSWER

**MINISTER OF STATE (IC) FOR LABOUR AND EMPLOYMENT
(SHRI BANDARU DATTATREYA)**

(a): Yes, Madam.

(b): The details of the amendments proposed by the Union Government are at Annexure-I. The details of amendment proposed by the State Governments and submitted for obtaining the instructions of the Hon'ble President of India are at Annexure-II.

(c) to (e): Review/updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy after tripartite consultations amongst Government, Employers' & Employees' Organizations. While undertaking such changes overall interests of labour like wages, employment, social security, working environment, health and safety etc. are protected keeping in view the requirements of the Indian Industry to make it efficient and internationally competitive. This constitutes an essential part of labour reforms which essentially means taking steps to increase production, productivity and employment opportunities in the economy.

The Ministry of Labour & Employment is also proactively engaged in addressing the issues related to multiplicity of labour laws and the ease of compliance to promote an enabling business environment.

A single unified Web Portal has been developed for Online Registration of units, Reporting of inspections, and submissions of Annual Returns and redressal of grievances. This portal facilitates ease of reporting at one place for various Labour Laws by a single online annual return; consolidate information of Labour Inspection and its enforcement thereby enhancing transparency in Labour Inspection as well as that in monitoring of Labour Inspections.

Annexure-I

Annexure referred to in reply to part (b) of the Lok Sabha Unstarred Question No. 147 for 24.11.2014 by Shri C.N. Jayadeven, Shri Dharmendra Yadav, Shri Kodikkunnil Suresh, Shri Dileep Singh Bhuria, Shri Shirang Appa Barne, Shri Adhalrao Patil Shivajirao, Shri Sumedhanand Sarswati and Shri Ram Mohan Naidu Kinjarapu regarding Amendments to Labour Laws.

Amendments proposed to Labour Laws by Union Government

1. The Child Labour (Prohibition & Regulation) Act, 1986

- ☞ Linking the definition of child under this Act to that under the Right to Education Act, 2009,
- ☞ complete prohibition on employment of children below 14 years and linking the age of the prohibition with the age under Right to Free and Compulsory Education Act,
- ☞ prohibition of working of Adolescents in Mines, Explosives and hazardous occupations set forth in the Factories Act, 1948,
- ☞ More strict punishment to the offenders and making the offences under the Act cognizable.

2. The Factories Act, 1948

- ☞ The threshold limit for coverage under the Factories Act as defined in Section 2(m), is proposed to be amended to include besides the existing limits of 10 workers (for units with power) and 20 workers (for units without power), units with such number of workers as may be prescribed by the State Government with a cap of 20 workers (for units with power) and 40 workers (for units without power) respectively. This will provide flexibility to the State Governments to amend their State Law as per their requirements.
- ☞ Amendment of Section 66 of the Act relating to permission for employment of women for night work for a factory or group or class or description of factories with adequate safeguards for safety and provision of transportation till the doorstep of their residence.
- ☞ Amendment of Sections 64 and 65 of the Act to enhance the limit of overtime hours from the present limit of 50 hours per quarter to 100 hours per quarter. The amendment also proposes this limit to be increased to a maximum of 125 hours per quarter in public interest with the approval of State Government. Insertion of provision relating to compounding of certain offences (Section 92 C and new Fourth Schedule) and amendment of Section 92 of the Act enhancing the quantum of penalty for offences.
- ☞ The provision of self-certification has been introduced for the purpose of expansion of the factory through amendment in Section 6.
- ☞ Provision of empowering the State Government to increase the period of spreadover from 10.5 hours to 12 hours (Section 56) through notification in the Official Gazette.
- ☞ Introduction of a new Section 35A on provision of personal protective equipment for workers exposed to various hazards and amendment of Sections 36 and 37 regarding entry into confined spaces and precautions against dangerous fumes, gases etc.

- ☞ Provision of canteen facilities in respect of factories employing 200 or more workers instead of the present stipulation of 250 workers (Section 45) and also provision of shelters or restrooms and lunchrooms in respect of factories employing 75 or more workers instead of the present stipulation of 150 workers (Section 47).
- ☞ Introduction of new terms like "hazardous substance" and "disability" to existing definitions (Section 2cc. 2ea)
- ☞ Prohibition of employment of pregnant women (it was earlier for all women) and persons with disabilities on or near machinery in motion and near cotton openers (Section 22 (2)).
- ☞ Reduction in the eligibility criteria for entitlement of annual leave with wages from 240 days to 90 days (Section 79).
- ☞ Presently only the State Governments are empowered to make rules under the Factories Act. It is now proposed to empower the Central Government also to make rules under the Act on some of the important provisions.

3. The Mines Act, 1952

- ☞ Amend the "long title" so as to provide that "the regulation of conditions of work, health and welfare of persons employed in mines",
- ☞ Substitute the definition of owner so as to make it more comprehensive;
- ☞ Define "foreign company" with reference to the Companies Act, 1956;
- ☞ Make provisions for appointment of officials in addition to agents of the employer in the mines;
- ☞ Increase the penalties provided in sections 63 to 70, sections 72A, 72B, 72C and 73 and also to shift the burden of proof upon the person who is being prosecuted or proceeded against to prove that it was not reasonably practical, or, all practical measures to satisfy the safety requirements; and
- ☞ Amend section 76 so as to enlarge the scope to cover the foreign companies and to insert a new section 76 A to provide that the person who has actual ultimate control over the affairs of the mines would continue to be liable for the contravention of the provisions of the Act or of any rule or regulation or by law or order made there under.

4. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

- ☞ Extending the coverage of the Principal Act from 9 Scheduled Acts to 16 Scheduled Acts as had been proposed in the 2005 Bill,
- ☞ Continuing with the existing method of defining establishments as 'very small' and 'small' with the change that the 'small' establishments would now cover the establishments employing between 10 to 40 workers as against the existing provision of 10 to 19 workers,
- ☞ The small establishments will be required to maintain two registers as against the existing provision of maintaining three registers,
- ☞ Allow maintaining of registers or records in computer, floppy, diskette or on other electronic media and submitting return through e-mail as had been proposed in the 2005 Bill.

5. The Apprentices Act, 1961

In order to make the apprenticeship more responsive to youth and industry, the major proposed changes in the Apprentices Act, 1961 are given below:

- ☞ providing for establishments operating in four or more states will be taken into the fold of Directorate General of Employment and Training;
- ☞ providing for prescribing number of apprentices to be engaged at establishment level instead of trade wise;
- ☞ providing for apprenticeship training to non-engineering graduate and diploma holders;
- ☞ providing for employers to undertake new courses (optional trades) which are demand based;
- ☞ providing for employers to determine, qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentice in optional trade;
- ☞ providing for simplifying the procedure for registration of contract apprenticeship training;
- ☞ providing for exchange of information through a portal-site;
- ☞ providing for allowing employers to engage apprentices from other states;
- ☞ providing for employers to formulate their own policy for recruiting apprentice;
- ☞ the regime for penalties will be in terms of fine only;
- ☞ providing for ex post facto rule making powers to facilitate recognition of training started pending notification of new trades under the Act;
- ☞ providing for sitting in the examination optional and certification from any competent agency.

Annexure-II

Annexure referred to in reply to part (b) of the Lok Sabha Unstarred Question No. 147 for 24.11.2014 by Shri C.N. Jayadeven, Shri Dharmendra Yadav, Shri Kodikkunnil Suresh, Shri Dileep Singh Bhuria, Shri Shirang Appa Barne, Shri Adhalrao Patil Shivajirao, Shri Sumedhanand Sarswati and Shri Ram Mohan Naidu Kinjarapu regarding Amendments to Labour Laws.

1. Amendments proposed by Government of Rajasthan in the Apprentices Act, 1961 [Statement of Objects and Reasons of the Apprentices (Rajasthan Amendment) Bill, 2014]

In the skill sector and for an apprentice; the importance of shop-floor training in an industry, to learn by actually doing the job, cannot be over-emphasized. Since creation of marketable skill is a State priority to make youths of the State more employable; apprenticeship training scheme in

Rajasthan under the Apprentices Act, 1961, needs to be effectively implemented. However, number of current provisions in the Act needs to be realigned to bring them in sync with rapidly changing skill sector.

The Apprentices Act, 1961 is a Central Act and received the assent of the President on 12th December, 1961. Subsequently, the Act was amended from time to time. Nonetheless, reasons generally attributed to poor implementation of Apprentice Training Scheme, stem from the inflexibility and incapability of the Act, to cater to the industry as well as to the apprentice in accordance with their felt needs.

The periods of training for various designated trades prescribed by Rules of 1992 under the section 6 of the Act are quite long. Now-a-days, compact modules of shorter durations with desired quality are available. Neither the apprentice nor the industry prefers long periods of training. Moreover, instead of the Union, the State being closely aware of the demands of the sectors should be empowered to carry out the required changes in consultation with industry. Therefore to make State Apprenticeship Council enable to prescribe the periods of training clause (b) of section 6 of the Act is proposed to be substituted.

In case of termination of an apprenticeship contract either by the industry or by the apprentice, State Apprenticeship Council and State Apprenticeship Adviser are being empowered in place of their central counterparts in order to expedite the grievance redressal mechanism. Therefore proviso to sub-section (3) of section 7 of the Act is proposed to be substituted.

Section 8 stipulates the number of apprentices to be trained by an industry in a designated trade, as per a prescribed ratio applicable to the number of permanent employees of the industry in the same trade. If an industry seeks lower number of apprentices in a particular trade, the same can be granted up to fifty per cent, provided the industry carries out adjustments of the rest of the seats in other trades. In order to make these provisions more realistic and conducive for the State to take steps as per the need, the State Apprenticeship Council, is being empowered to work out the ratio. Accordingly amendments are proposed under section 8 to replace the Union by the State. The lowest limit for a trade to qualify for intra-industry readjustment of seats is also being proposed to be reduced from fifty per cent to thirty per cent.

After completion of apprentice training under a designated trade as per prescribed curriculum, National Apprenticeship Council conducts the test and awards National Apprenticeship Certificate to successful candidates. Many industries lack proper working environment and trainer to conduct apprentice training in the campus. In the market today, there are third party professional trainers, capable of providing industry level training as per prescribed curriculum. However, current provisions do not allow third party training. Therefore sub-section (1) of section 9 is proposed to be substituted to allow third party training provider to conduct practical training of apprentices.

There has been persistent demand from the industries to exempt them to bear the recurring costs in connection with basic training imparted to trade apprentices. To encourage the industry to come forward to ensure better implementation of the Act, amendment in clause (a) of sub-section (8) of section 9 is proposed accordingly. Without providing reasonable amount of stipend to defray the basic costs of accommodation, food and transport; it is not possible to attract large number of willing apprentices for apprenticeship training. The present amount of stipends being quite low. Therefore amendment in section 13 is proposed to pay notified minimum wage of unskilled worker category to apprentices.

The purpose of amendment in section 14 is to make the health, safety and welfare standards as prescribed under Rajasthan Shops and Commercial Establishments Act, 1958 applicable to apprentices under the Act. This will ensure uniformity across the sponsoring industries in the best interest of apprentices. Accordingly section 14 of the Act is proposed to be amended.

Section 23 of the Act provides for mandatory affiliation of State Council and State Apprenticeship Council to their central counterpart. The said provision is proposed for this to be made optional, to ensure more flexibility at State level for expeditious decision making in the apprenticeship training sector. Accordingly section 23 of the Act is proposed to be amended.

2. Amendments proposed by Government of Uttarakhand in the Payment of wages (Uttarakhand Amendment) Bill:

In place of section 6 of the Payment of Wages Act, 1936 (Central Act No.04 of 1936), the following section shall be substituted; namely:-

"6. All wages shall be paid by Banks Cheques or Real Time Gross Settlement or National Electronic Fund Transfer or Electronic Clearing service System or Postal Cheque:

Provided that if the work of the Employed person is of temporary nature or employed person is migrant person and he wants getting cash payment of his earn wage, then after the written permission of the officer not below the rank of Assistant Labour Commissioner posted in the work area of employer may be paid cash payment of wage of the concerning employed person".

3. Amendments proposed by Government of Punjab in the Payment of Wages (Punjab Amendment) Bill, 2013:

In the Payment of Wages Act, 1936, in its application to the State of Punjab, in section 6, at the end of the existing proviso, for the sign (punctuation)." the sign ":" shall be substituted and thereafter, the following proviso shall be added namely:-

"Provided further that the State Government may, by notification in the Official Gazette, specify the industrial establishments, the employers of which shall pay to the persons employed therein, the wages either by cheque or by crediting the wages in their bank account."

4. Amendments proposed by Government of Kerala in the Payment of Wages (Kerala Amendment) Ordinance, 2014:

In the Payment of Wages Act, 1936, in section 6, after the existing proviso, the following proviso shall be inserted, namely:-

"Provided further that notwithstanding anything contained in this Act, the State Government may, by notification in the Official Gazette, specify the industrial establishments, the employers of which shall pay to the persons employed therein, the wages either by cheque or by crediting the wages in their bank account, without obtaining any authorization of the employed person."

5. Proposal of Government of Madhya Pradesh regarding the Madhya Pradesh Labour Laws (Amendment) and Miscellaneous Provisions Ordinance, 2014

The Objectives of the proposed Ordinance are to amend various Labour Laws as follows:

- (i) Insertion of sub section 3A after sub section (3) of Section 7 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996: for incorporating the deeming provision for registration of establishment after lapse of prescribed period after submission of application complete in all respects for registration.
- (ii) Insertion of sub section (1A) after sub section (1) of section 3 of the Building and other Construction Workers Welfare Cess Act, 1996: for arriving at the rational cost of building construction works by excluding the cost of plant and machinery purchased from outside the installation in a factory and such other costs that can be specified by the government e.g. such costs which are the part of the project cost but should not be included towards the cost of construction such as : Taxes, Bank Interest, Advertisement Expenses, Audit Fees, Legal Fees, Cost of Finance, etc.
- Substitution of sub section (1) of section 11 of the Act is to streamline and simplify the procedure for appeal against an order of assessment of cess by assessing officer. At present the assessee, with appeal, has to deposit ordered amount of cess and one percent of the disputed amount as fee. This seems unjust as the amount in dispute has to be deposited in full, therefore, intention of this amendment is to incorporate such provisions in the rules by the state government so that only undisputed cess amount in full and one percent of the disputed amount as fee has to be deposited with appeal.
- (iii) Insertion of a new section 14-A after section 14 in the Child Labour (Prohibition and Regulation) Act, 1986 is to incorporate a new provision for recovery of Rupees Twenty Five Thousand from the employer engaging a child labour after summary enquiry for ensuring speedy rehabilitation of released child labour.
- (iv) Insertion of sub section (3) of section 7 and sub section (4) of section 13 of the Contract Labour (Regulation & Abolition) Act, 1970: to incorporate the deeming provisions for registration of principal employer and license to contractor respectively after lapse of prescribed period after submission of application complete in all respects for registration or license, as the case may be.
- (v) Deletion of sub section (2) and (3) of section 65 and addition of section 65-A in the Factories Act, 1948 are proposed for doing away with prior permission for overtime work, for extending the limit of overtime work and also to include element of consent from workers for taking overtime work and deletion of clause (b) of sub section 66 is to facilitate employment of women during night shifts.

Insertion of sub section 1-A of section 66 of the Act is to make provisions for health & safety of women employees working in night shifts in factories.

Amendment in sub section (1) of section 79 is proposed to enable the workers who have worked for 180 days (in place of present provision of 240 days) in a calendar year, will get benefit of leave with wages in the same calendar year instead of next calendar year.

Amendment in sub section (1) of section 105 is proposed for seeking permission of Labour Commissioner before filing any prosecution in the Court of Law so as to avoid unnecessary harassment of employers & to ensure filing of prosecution after due scrutiny.

- (vi) To propose amendment in sub section (3) of section 2-A of Industrial Disputes Act, 1947 is to fix maximum time limit of 3 years for approaching conciliation officers thus making this time limit in consonance with the time limit prescribed for courts and tribunals to entertain applications in the matters related to discharge, dismissal, termination etc.

Amendment of clause (a) of section 25-F is proposed for amending the notice period to three months from one month before retrenchment of an employee for providing him more time for seeking new job and amendment of clause (b) of section 25-F is to provide for better compensation of at least 3 months average pay to every/ retrenched employee.

Amendment of sub section (1) of section 25-K is proposed to increase the number of employees from 100 to 300 for application of Chapter V-B of the Act with respect to permission for lay-off, retrenchment and closure, thus making such procedures simple for small and medium scale establishment and also to promote such units to enroll upto 300 workers on their permanent / regular pay roll instead of keeping the workers as contract labour.

- (vii) Amendment of sub section (3) of section 4 of Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979 is proposed for including deeming provision of registration of an establishment after a period of 30 days after submission of application complete in all respects.
- (viii) Amendment of sub section (2) of section 3 of the Motor Transport Workers Act, 1961 is proposed for including deeming provision of registration of an establishment after a period of 30 days elapsed after submission of application complete in all respects.
- (ix) Special provision for exemption to Micro industries, as classified under the Micro, Small and Medium Enterprises Development Act, 2006 from application of various labour laws, namely:

- (a) The Contract Labour (Regulation & Abolition) Act, 1970 (No 37 of 1970);
- (b) The Factories Act, 1948 (No.63 of 1948). Provided that if the said factory is notified by the State Government under section 85 of the Factories Act, 1948 then all the provisions of the Act shall apply on it;
- (c) The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979 (No.30 of 1979)
- (d) The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 (No.51 of 1988);
- (e) The Motor Transport Workers Act, 1961 (No.27 of 1961);
- (f) The Sales Promotion Employees (Conditions of Service) Act, 1976 (No.11 of 1976).
- (g) The Trade Unions Act, 1926 (No.16 of 1926)

The above exemption of proposed as the Micro and Very Small Industries and establishment face hardship in getting registrations, maintaining multiple records and registers and furnishing annual returns, ensuring formalities and multiplicity of provisions provided under multiple labour laws and thus have to in turn they have to face unnecessary litigations.

Therefore, it is proposed to keep them out from the purview of certain Labour Laws and from the frequent inspections under such Acts. Though it is also being proposed that the State Government, at any time, may withdraw all or any of such exemption, in the interest of workers.

- (x) It is proposed to incorporate the provisions of composition of offences and abatement of trials under various labour laws, namely:

- (a) The Equal Remuneration Act, 1976 (No.25 of 1976)
- (b) The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 (No.51 of 1988);
- (c) The Minimum Wages Act, 1948 (No.11 of 1948);
- (d) The Payment of Wages Act, 1936 (No.4 of 1936);
- (e) The Sales Promotion Employees (Conditions of Service) Act, 1976 (No.11 of 1976).

This proposal is for ensuring speedy disposal of cases of such breaches wherein the penalty and imprisonment upto 3 months are provided. It is observed that under the existing provisions in various labour laws, there is no provision for compounding of offences, resulting in higher number of prosecutions cases pending in various courts that also leads to consumption of precious time of government officials and the employers as well. For speedy disposal of offences with penalties and imprisonment up to 3 months only and to minimize the number of litigations, this amendment is being proposed.

An offence punishable with fine only can be compounded after the expiry of two years period from the previous offence. But an offence punishable with imprisonment (upto 3 months) can be compounded only once and that too on depositing ten times of the maximum fine prescribed.

(xi) It is also proposed to exempt from maintaining multiple registers and submission multiple returns in Labour Laws, namely:-

- (a) The Contract Labour (Regulation and Abolition) Act, 1970 (No.37 of 1970);
- (b) The Equal Remuneration Act 1976 (No.25 of 1976)
- (c) The Factories Act 1948 (No.63 of 1948)
- (d) The Industrial Disputes Act, 1947 (No.14 of 1947)
- (e) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (No.30 of 1979)
- (f) The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 (No.51 of 1988);
- (g) The Maternity Benefit Act, 1961 (No.53 of 1961)
- (h) The Minimum Wages Act, 1948 (No.11 of 1948)
- (i) The Motor Transport Workers Act, 1961 (No.27 of 1961)
- (j) The Payment of Bonus Act, 1965 (No.21 of 1965)
- (k) The Payment of Gratuity Act, 1972 (No.39 of 1972)
- (l) The Payment of Wages Act, 1936 (No.4 of 1936)
- (m) The Sales Promotion Employees (Condition of Service) Act, 1976 (No.11 of 1976)

To prescribe simplified and integrated registers and returns in lieu of those prescribed in above Acts in order to minimize unnecessary harassment to entrepreneurs and commercial establishments and to avoid the multiplicity of information and records.