

**SHRI RAGHUNATHA REDDY :** The previous law was passed for the duration of the emergency period. But now we thought that just as there are provisions for charitable funds, etc., we can also make a provision permanently for contributions to a fund of this character. Naturally when emergency is not there Government will exercise sufficient caution in coming to a decision whether they should accept such contributions. If the receiver does not accept, the company cannot force it on the government. We thought of making it permanent in the statute-book because whenever there is an emergency, we need not trouble Parliament with this type of legislation. When we can provide for charitable funds, etc. we thought the National Defence Fund would be in a much better position.

I welcome the support given by the DMK member. He raised certain general questions about amendments to the Companies Act. I assure him that Government is examining the various amendments necessary in the Companies Act for giving protection to the shareholders and to enable rapid economic development of this country. When the Bill is ready, certainly hon. members would come to know about it.

With these words, I commend the Bill to the acceptance of the House.

**MR. CHAIRMAN :** The question is :

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

*The motion was adopted.*

*Clause 2 (Insertion of new Section 293B)*

**SHRI MOHAMMAD ISMAIL :** I beg to move :

Page 1, line 15, add at the end —

"during the period of operation of the proclamation of emergency" (1)

**MR. CHAIRMAN :** He has already spoken on it and the minister has replied to it. I will now put the amendment to the House.

*Amendment No. 1 was put and negatived.*

*\*Moved with the recommendation of the President.*

**MR. CHAIRMAN :** The question is :

"That clause 2 stand part of the Bill."

*The motion was adopted.*

*Clause 2 was added to the Bill*

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

**SHRI RAGHUNATHA REDDY :** I beg to move :

"That the Bill be passed."

**MR. CHAIRMAN :** The question is :

"That the Bill be passed."

*The motion was adopted.*

14.20 hrs.

#### PAYMENT OF GRATUITY BILL

**THE MINISTER OF LABOUR AND REHABILITATION (SHRI R. K. KHADILKAR) :** Sir, I beg to move :\*

"That the Bill to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, plantations, shops or other establishments and for matters connected therewith or incidental thereto, be taken into consideration."

There is at present no Central Act to regulate the payment of gratuity to industrial workers, except the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. The Government of Kerala enacted legislation last year for payment of gratuity to workers employed in factories, plantations, shops and establishments. The West Bengal Governor promulgated an Ordinance on the 3rd June 1971 prescribing a similar scheme of gratuity; the Ordinance has since been replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971, enacted by the President on 28th August, 1971. Gratuity is also being paid by some employers to their workers under awards or agreements.

The enactment of the Kerala Act and the West Bengal Employees' Payment of Com-

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pulsory Gratuity Act, 1971 have brought out the need for the introduction of Central legislation on the subject. If each State enacts its own legislation on gratuity, it will be difficult to ensure uniform conditions of service to the employees of establishments which have branches in more than one State; the mobility of these employees from one State to the other will also be affected.

The proposal for Central legislation on gratuity was discussed in the Labour Ministers Conference held at New Delhi on the 24th and 25th August, 1971. Representatives of most of the State Governments agreed that Central legislation on gratuity might be undertaken expeditiously. The subject was also considered by the Indian Labour Conference at its session held on the 22nd and 23rd October, 1971. The Conference recommended that Central legislation on payment of gratuity might be undertaken as early as possible. The workers' representatives at the Indian Labour Conference suggested that the proposed law, which should preferably be brought into force as an Ordinance, should apply to all establishments irrespective of the number employed should cover all wage-earners without any limit of salary. They further suggested that (a) there should be no ceiling on gratuity and no requirement of minimum qualifying service (b) the rate of gratuity in case of death or disability while in service should be higher (c) dismissal from service should not act as a disqualification for gratuity and (d) service should not be deemed to have been broken on account of strike, legal or illegal.

As recommended by the Labour Ministers' Conference and the Indian Labour Conference, it has been decided to undertake Central legislation on gratuity. In enacting the President's Act for West Bengal in August, 1971 care had been taken to so design its provisions that they could serve as far as possible, as norms for Central legislation. Accordingly, subject to certain modifications, the Central legislation has been modelled on the West Bengal Act.

The West Bengal Act extends to the following classes of establishments :

- (a) Factories as defined in the Factories Act, 1948 ;
- (b) Plantations as defined in the Plantations Labour Act, 1951 ;

- (c) Shops and establishments, as defined in the Shops and Commercial Establishments Act, in which ten or more persons are employed.

The coverage of the Bill is the same as in the West Bengal Act. However, the Kerala and West Bengal Acts do not apply to mines as the State Governments are not competent to enact legislation in regard to mines. There has been a persistent demand for provision of the benefit of gratuity to workers in coal mines and the proposed Bill provides for coverage of all mines as defined in the Mines Act, 1952. Provision has also been made for extension of the Act to other establishments employing ten or more persons.

Labour legislation normally covers only employees falling under the definition of workmen under the Industrial Disputes Act, 1947 i. e., those who do any skilled or unskilled manual, supervisory, technical or clerical work, except that supervisors drawing wages exceeding Rs. 500 per month are excluded. The definition excludes all employees employed mainly in a managerial or administrative capacity. Both the Kerala and West Bengal Acts exclude from their purview employees employed in a managerial or administrative capacity although the Kerala Act does include supervisors without any wage limit. For the purposes of the Bill, the definition in the West Bengal Act had been adopted, that is, employees employed on wages not exceeding Rs. 750/- per month to do any skilled, unskilled, semi-skilled or unskilled manual, supervisory, technical or clerical work have been covered.

#### *Ceiling on quantum of gratuity*

Gratuity is payable under the Kerala and the West Bengal Acts at the rate of 15 days' wages for each completed year of service subject to a maximum of 15 months' wages. All Gratuity Schemes in the country have adopted a ceiling of 15 months' wages ; this is also true of the Gratuity Scheme applicable to Government employees. It has, therefore, been provided that the quantum of gratuity shall not exceed 15 months' wages.

#### *Qualifying service for gratuity*

According to the West Bengal Act, gratuity is payable after completion of not less than of 5 years' continuous service except that no

minimum qualifying service is necessary in the case of death or total disablement due to accident or disease. The Kerala Act does away with minimum qualifying service in the case of superannuation also. It is necessary that there should be some minimum qualifying service if the concept of gratuity as a reward for continuous and satisfactory service is to be preserved. A qualifying service of 5 years has therefore, been proposed except in cases of death or total disablement due to accident or disease.

#### Definition of 'Wages'

As regards the definition of wages for computation of gratuity, 'wages' under the Kerala Act has been defined to include (in addition to basic pay) dearness allowance, value of any house accommodation or supply of light, medical attendance or other amenity or of any service or any concessional supply of foodgrains or other articles and any travelling concession. Under the West Bengal Act, the term 'wages' includes basic wages and dearness allowance. Under certain other Gratuity Schemes, the quantum of gratuity is related to the basic wage only. In many industries, the dearness allowance is higher than the basic wage and in such cases, gratuity based only on the basic wage would be too low and unrelated to present day realities. It is for this reason that workers are demanding that gratuity should be based on basic wages plus D. A. The dearness allowance is, therefore, taken into account for payment of gratuity; house rent and other allowances could, however, be excluded. At the Labour Ministers' Conference held in August, 1971, most of the State Governments agreed that for purposes of gratuity, "wages" should mean basic wage plus dearness allowance; this view was also accepted by the Indian Labour Conference.

As regards dismissal, the provision in the West Bengal Act reads as follows :—

"No gratuity shall be payable to an employee whose employment has been terminated for his gross misconduct.

*Explanation :* "Gross misconduct" means—

- (a) any act or wilful omission on the part of the employee resulting in loss or damage to, or destruction of, property belonging to or owned by the employer; or

(b) any serious act of violence on the part of the employee; or

- (c) any act on the part of the employee which constitutes an offence involving moral turpitude punishable under the Indian Penal Code."

The underlying concept is that misconduct on the part of an employee, no matter at which stage of service, should entail certain consequences either by way of reduction of the gratuity-payment or by its total forfeiture. There are various degrees and grades of misconduct and forfeiture of gratuity should arise only in the case of misconduct which may be described as grave or serious. The considerations bearing on this question have been summed up in a recent Supreme Court Judgment in the case of the Delhi Cloth and General Mills Co. Ltd and others *versus* its workmen and others.

Accordingly, disentitlement to gratuity for misconduct by way of any serious act of violence on the part of the employee would seem to be justified, but for his misconduct resulting in loss or damage to or destruction of property of the employer, forfeiture to the extent of the amount of loss directly suffered by the employer would be more appropriate. The workers' representatives have also complained that reference to offences involving moral turpitude may be construed as extending even to offences totally unconnected with the employee's service in the establishment. To remove this source of apprehension, a modification has been made in order to make it clear that the provision applies only to offences committed in the precincts of the vicinity of the establishment or in the course of the employee's service in the establishment.

Under the proposed legislation, the Central Government will be the appropriate Government for administration of the Act in mines and establishments belonging to, or under the control of the Central Government or in relation to establishment connected with a railway company, a major port, or an oil field and establishments having departments or branches in more than one State. The State Government concerned will be the appropriate Government for administration of the Act in other establishments.

Sir, now, as I said, I propose to move for reference of the Bill to a Select Committee

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of the House, with your permission. Therefore, instead of my earlier motion, I beg to move:

"That the Bill to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, plantations, shops or other establishments and for matters connected therewith or incidental thereto, be referred to a Select Committee consisting of 20 members, namely :—

- (1) Shri R. D. Bhandare
- (2) Shri Dinen Bhattacharyya
- (3) Shri M. C. Daga
- (4) Shri C. T. Dhandapani
- (5) Shri Jagdish Chandra Dixit
- (6) Shri S. B. Giri
- (7) Shri Raja Kulkarni
- (8) Shri Prasannbhai Mehta
- (9) Dr. G. S. Melkote
- (10) Shri Jagannath Mishra
- (11) Shri N. Sreekantan Nair
- (12) Shri Damodar Pandey
- (13) Shri S. Radhakrishnan
- (14) Shri Ranen Sen
- (15) Shri R. N. Sharma
- (16) Shri R. R. Sharma
- (17) Shri C. M. Stephen
- (18) Shri G. Venkatswamy
- (19) Shri Balgovind Verma ; and
- (20) Shri R. K. Khadilkar

with instructions to report by the last day of the first week of the next session."

MR. CHAIRMAN : So, you are moving this motion for referring it to Select Committee. Mr. Daga.

SHRI M. C. DAGA (Pali) : I am not pressing my amendment.

MR. CHAIRMAN : The question is :

"That the Bill to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, plantations, shops or other establishments and for matters connected therewith or incidental thereto, be referred to a Select Committee consisting of 20 members, namely :—

- (1) Shri R. D. Bhandare
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- (19) Shri Balgovind Verma ; and
- (20) Shri R. K. Khadilkar

with instructions to report by the last day of the first week of the next session."

*The motion was adopted.*

MR. CHAIRMAN : The House stands adjourned till 10 a. m. tomorrow.

14.35 hrs.

*The Lok Sabha then adjourned till Ten of the Clock on Wednesday, December 22, 1971/Pausa 1, 1893 (Saka).*