

Bihar Shops And Establishments Act, 1953

8 of 1954

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Bihar Shops And Establishments Act, 1953

8 of 1954

In exercise of the powers conferred by Section 85 of the Bihar Reorganisation Act, 2000, the Government of Jharkhand do hereby adapt "The Bihar Shops and Establishment Act, 1953. The Bihar Shops and Establishment Rules, 1955" (hereinafter referred as the said Rules) with the following amendments : -- 1. In the said Rules wherever the word "Bihar" is mentioned to the word "Jharkhand" shall be deemed to have been substituted. 2. Hereinafter the said Rules shall be known as "The Jharkhand Shops and Establishment Rules, 2001. Note.--Though the Act has been adapted vide Notification S.O. No. 2/SEA (LC) 501/2001--L&T 2870, dated 14th

November, 2002 but the word "Bihar" and the year "1953" of the title of the Act have not seen changed. An Act to provide for the Regulation of conditions of work and employment in shops and other establishments and for certain other purposes. Whereas it is expedient to provide for the regulation of conditions of work and employment in shops and other establishment and for certain other purposes hereinafter specified. 1. Act received the assent of the President on 17.3.1954 and is in force from 15.2.1955 vide Notification No. 1/S6-108.55 L-1794.L, dated 15.2.1955.

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Bihar Shops and Establishments Act, 1953. (2) It extends to the whole of the State of Bihar. (3) It shall come into force on such date¹ as the State Government may, by notification appoint and different dates may be appointed for different provisions of this Act or for different areas or for different classes of shops or establishments. (4) It shall apply, in the first instance, to the local areas comprised within a municipality, notified area or a municipal corporation constituted and established under any law for the time being in force, relating to municipalities and to any mining settlement for which a Mines Board of Health has been established under Section 5 of the Bihar and Orissa Mining Settlements Act, 1920 (B. & O. Act IV of 1920). 1. Came into force on 15.2.1955 vide Notifi. No. 1 /S6-108.55L- 1794.L, dated 15.2.1955.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context-- (1) "Apprentice" means a person, aged not less than twelve years, who is employed, whether on payment of wages or not, for the purpose of being trained in any trade, craft or employment in any establishment; (1-A) "child" means a person who has not completed the age of fourteen years; (2) "closed" means not open for the service of any customer to any business connected with the establishment; (3) "day" means a period of twenty-four hours beginning at midnight : Provided that, in the case of an employee whose hours of work begins before and extend beyond midnight, day means a period of twenty-four hours beginning at the hour his work commences; 1[(4) "employee" means a person wholly or partially employed for hire, wages including salary, reward, or commission in and in connection with

any establishment and includes apprentice but does not include member of the employers family. It also includes person employed in a factory who are not worker within the meaning of the Factories Act, 1948 (63 of 1948), and for the purpose of proceeding under this Act, include an employee, who has been dismissed, discharged or retrenched for any reason whatsoever; (5) "employer" means a person who owns or exercise ultimate control over the affairs of an establishment and includes a manager, agent or any other person in the immediate charge of the general management or control of such establishment; 1[(6) "establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and includes -- (i) administrative or clerical service appertaining to such establishment; (ii) a shop, restaurant, residential hotel, eating house, theatre or any place of public amusement or entertainment; and (iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies; but does not include a motor transport undertaking as defined in clause (g) of Section 2 of the Motor Transport Workers Act, 1961 (27 of 1961)] (7) "family" in relation to an employer means the husband or wife, child or children, father or mother, brother or sister, brothers son, sisters son, daughters son and sons son of such employer living with him and dependent on him; (8) "holiday" means a day on which an establishment shall remain closed or on which an employee shall be given a holiday under the provisions of this Act; (9) "Inspecting officer" means an Inspecting Officer appointed under sub-section (1) of Section 29 and includes the Chief Inspecting Officer, Additional Inspecting Officer and ex officio Inspecting Officer appointed under or referred to in that section; (10) "Leave" means leave provided for in Chapter IV of this Act; (10-A) "Opened" means opened for the service of any customer or for any business connected with the establishment; (10-B) "Period of work" means the time during which an employee is at the disposal of the employer; (11) "Prescribed" means prescribed by rules made under this Act; (12) "Residential hotel" means any premises used for the reception of guests travellers desirous of dwelling or sleeping therein and includes a club; (13) "Restaurant" or "eating house" means any premises in which is carried on wholly or principally the business of the supply of meal or refreshments to the public or a class of the public for consumption on the premises; (14) "Retail trade or business" includes the business of a hawker, hairdresser,

the sale of cooked food, refreshments or intoxicating liquors and retail sale by auction; (15) "Schedule" means the Schedule appended to this Act; (16) "Shop" means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers and includes an office, store-room, godown, warehouse and work place, whether in the same premises or elsewhere, used in connection with such sales or services, but does not include a restaurant, a residential hotel, eating house, theatre or other place of public amusement or entertainment; (17) "Spread over" means the period between the commencement and the termination of the work of an employee on any day; (18) "Theatre" includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of a cinematograph or other suitable apparatus or for dramatic performance, or any other public amusement or entertainment; (19) "Wage period" in relation to the payment of wages of any employee, means a wage period fixed by an employer under Section 20 in respect of such employee; (20) "Wages" means wages as defined in the Payment of Wages Act, 1936 (IV of 1936) and includes the dearness allowance as the workman is for the time being entitled to; (21) "Week" means a period of seven days beginning at midnight of Saturday; 2[(21-A) "Year" means a year commencing on the first day of January, and] (22) "Young person" means a person who is not a child and has not completed the age of eighteen years. 1. Substituted by Act 2 of 1975. 2. Inserted by Act 12 of 1961.

3. Reference To Time Of Day :-

References to the time of day in this Act are reference to the Indian standard time, which is five and a half hours ahead of Greenwich Mean Time.

4. Exceptions :-

(1) The provisions of this Act shall not apply to any precinct or premises of a mine as defined in clause (j) of Section 2 of the Mines Act, 1952 (XXV of 1952). (2) Notwithstanding anything contained in this Act, the provisions thereof specified in the third column of the Schedule shall not apply to the establishment, employees and other persons referred to in the corresponding entry in the second column : Provided that the State Government may, by notification, add to, omit or alter any of the entries in the Schedule in respect of one or more areas of the State and on the publication of such notification, the entries in either column of the

Schedule shall be deemed to be amended accordingly.

5. Rights And Privileges Under Other Laws, Etc. Not Affected :-

Nothing in this Act shall affect any right or privilege to which an employee in any establishment is entitled, at the date on which this Act applies to such establishment, under any other law for the time being in force, or under award, agreement contract, custom or usage applicable to such establishment, if such right or privilege is more favourable to him than any right or privilege conferred upon him by this Act.

CHAPTER 2

ESTABLISHMENT

6. Registration Of Establishments And Renewal Thereof :-

1[The State Government may make rules requiring the registration of establishment or any class of establishments or renewal thereof and prescribing manner and the fees payable for such registration or renewal.] 1. Substituted by Act 2 of 1975.

7. Opening And Closing Hours Of Establishments :-

1[(1) No establishment shall on any day be opened earlier than 9 a.m. and closed later than 9 p.m. : Provided that any customer who was being served or was waiting to be served at such closing hour in any establishment may be served in such establishment during the quarter of an hour immediately following such hour.] (2) The State Government may, by notification, after the opening or closing hours for different establishments or for different areas or for different periods of the year. (3) When they are conducted in an establishment two or more trades or business, any or which is of such a character that, if it was sole trade or business, therein conducted, the provisions of this section would not apply to that establishment shall, so far the conduct of that trade or business is concerned, be exempt from the operation of this section. 1. Substituted by Act 2 of 1975.

8. Prohibition Of Sales Before Opening And After Closing Hours :-

1[Save as otherwise provided in this Act, or under any other enactment, no person shall carry on the sale of any goods in any place, whether a shop or not before the opening or after the closing hours fixed under Section 7 : Provided that nothing in this section shall apply to hawkers on footpath or market street upto 11 p.m. Provided that nothing in this section shall apply to the hawking of

the newspapers.] 1. Substituted by Act 2 of 1975.

9. Hours Of Work In Establishments :-

1[No employee in any establishment shall be required or allowed to work in such establishment for more than 9 hours in a day and or more than 48 hours in a week, exclusive of interval allowed for rest or for meals which together shall not be less than one hour in any day : Provided that during any period of stock taking or making of accounts or any other purpose as may be prescribed any person, other than a child or a young person, may be allowed or required to work in such establishment for any period in excess of hours fixed under this section subject to payment of over-time wages at the rate fixed in Section 21, but the total number of hours of work, including overtime, shall not exceed 10 hours in any day and 54 hours in any week and the aggregate hours of overtime work shall not exceed 150 hours in a year : Provided further that advance intimation of at least 3 days in this respect has been given in the prescribed manner to the Chief Inspector or any other officer authorised by the State Government.] 1. Substituted by Act 2 of 1975.

10. Interval For Rest :-

1[No employee in any establishment shall be required or allowed to work in such establishment for more than five hours continuously in any day unless he has had an interval for rest of at least half an hour : Provided that there shall not be more than one such interval for rest during the whole of the working period of any employee on any day.] 1. Substituted by Act 2 of 1975.

11. Spreading Of Periods Of Work :-

The periods of work and intervals of rest of an employee in an establishment shall not be together spread over more than -- (i) in the case of child, eight hours in any day; (ii) in the case of a young person, ten hours in any day; 1[(iii) in the case of any other employee twelve hours in any day.] 1. Substituted by Act 2 of 1975.

12. Weekly Holidays In Establishments :-

1[(1) Every establishment shall remain entirely closed on one day of the week : Provided that an employer may keep the establishment open on weekly holiday if it falls on the opening day of the financial year. (2) The day on which an establishment shall remain entirely closed in each week shall, subject to the provisions of sub-section (3), be specified by the employer in a notice (in

hindi in devanagiri script and, if necessary, in a language and script understood by the majority of the employees) displayed at some conspicuous and convenient place at or near the main entrance of the establishment and shall be mentioned in a clean and legible condition and the day so specified shall not be altered more often than once in three months and a copy of such notice shall be delivered at the office of the Inspecting Officer and the day specified in the notice shall not be altered without the prior approval of the Inspecting Officer. (3) Subject to such directions as may be issued by the State Government in this connection from time to time, the Chief Inspecting Officer, may, if he thinks fit so to do in the public interest, by notification, specify the day on which all or any classes of establishment in a particular area shall remain entirely closed under sub-section (1) and thereupon, the day so specified shall be deemed to be the day specified under sub-section (2) by the employer. (4) Every employee in an establishment shall be allowed in each week holiday of one whole day : Provided that nothing in this sub-section shall apply to any employee whose total period of employment in the week, including any day spent on authorised leave is less than six days or shall entitle such employee who has been allowed a whole holiday on the day on which the establishment has remained closed in pursuance of sub-section (1) to an additional holiday. (5) No deduction shall be made from the wages of any employee in an establishment on account of any day on which it has remained closed as a holiday under sub-section (1) or on which an employee has been on his weekly holiday under sub-section (2) and if an employee is employed on daily wages, he shall nonetheless be paid the daily wages of the day on which such establishment remains closed or on which the employee is on his weekly holiday unless he is absent on the day preceding such day.]

1. Substituted by Act 2 of 1975.

12A. Other Holidays :-

- 1[Every employee in an establishment shall be allowed -- (a) a holiday on full pay on the Independence Day, the Republic Day and Mahatma Gandhis Birthday each year; and (b) such other holidays on full pay upto five days in a year, in connection with such festivals as the State Government may declare from time to time under this Act : Provided that an employee required to work on any such holiday shall be paid remuneration at double the rate of his normal wages calculated by the hour.] [For list of holidays under clause (b) see Noti. S.O. No. II/S6-10102/72 L&S 2183, dated 30.10.1972, given after the Act.] 1. Inserted by Act 2 of 1975.

12B. Every Employee To Be Furnished With Service Card :-

- 1[Every employee in an establishment shall be furnished by his employer with a

service card in such form as may be prescribed. 1. Renumbered by Act 2 of 1975.

CHAPTER 3

Employment of children and young persons

13. No Child To Work In An Establishment :-

No child below the age of twelve years shall be required or allowed to work as an employee in any establishment to which this Act applies.

14. Children, Young Persons And Women To Work Only Between 7 A.M. And 10 P.M. :-

No child, young person or woman shall be required or allowed to work whether as an employee or otherwise in any establishment to which this Act applies before 7 a.m. or after 10 p.m.

15. Daily And Weekly Hours Of Work For Young Persons :-

(1) Notwithstanding anything contained in this Act -- (a) no child or young person shall be allowed to work as an employee in any establishment to which this Act applies for more than -- (i) five hours in any day or thirty hours in any week in the case of a child; and (ii) seven hours in any day or forty-two hours in any week in the case of a young person; (b) no child or young person shall be required or allowed to work in such establishment for more than four hours continuously in any day unless he has an interval for rest and meals of at least one hour. (2) No child shall be required or allowed to work in any establishment on any day, on which he has already been working in another establishment.

CHAPTER 4

Leave with wages

16. Annual Leave With Wages :-

(1) Every employee who has worked for two hundred and forty days or more in an establishment during a calendar year and who has not been involved in an illegal strike, shall be allowed, during the subsequent calendar year, leave with wages for a number of days calculated at the rate of : (i) if a child, one day for every fifteen days of work performed by him during the previous calendar year. (ii) in any other case, one day for every twenty days of work performed by him during the previous calendar year. Explanation. -
-For the purpose of this sub-section -- (a) any day of lay off, by agreement or contract or as permissible under the standing orders and any days of lock-out; (b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks; and (c) the leave earned in the year prior to that in which

the leave is enjoyed; shall be deemed to be days on which the employee has worked in an establishment for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days. (2) (i) The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave. (ii) An employee whose service commence, otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (i) or as the case may be, clause (ii) of sub-section (1) if he has worked for two third of the total number of days in the remainder of the calendar year. (3) An employee who has been employed for a period of not less than one hundred and twenty days shall be entitled to leave with wages at the rate prescribed in clause (i) or clause (ii), of sub-section (1), as the case may be, if the ratio of the number of days of his employment is not less than the ratio which 240 bears to 365, and the employer shall pay to him the amount payable under Section 17 in respect of the leave with wages to which he is deemed to have become entitled. (4) In calculating leave under this section, fraction of leave of half-a-day or more shall be treated as one full days leave, and fraction of less than half-a-day shall be omitted. (5) If an employee does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him under that sub-section in the succeeding calendar year : 1[Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed forty five days.] 2[* * *] (6) An employee may at any time apply in writing to the employer, not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during that calendar year under sub-section (1) or sub-section (3), as the case may be : Provided that the number of instalments in which the leave is proposed to be taken shall not exceed three. (7) An application for leave which does not contravene the provisions of sub-section (6) shall not be refused without sufficient cause to be recorded in writing : Provided that an employee aggrieved by such refusal may appeal in the prescribed manner to the prescribed authority who shall, if he is satisfied after hearing the parties that such refusal was without sufficient cause, award such compensation to the employee as such authority may consider fair and equitable. 3[(8) When earned leave is refused to an employee having to his credit such leave for forty-

five days, he shall be entitled, in respect of the period covered by the refusal, to an amount which would have been payable to him as wages for the period in case he had been on leave during that period. The amount payable under this sub-section shall be in addition to the normal wages payable for the period. On an employee receiving the said amount the leave to his credit shall be reduced by the number of days in respect of which such amount is received.] 4[(9) If the employment of an employee who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the employer before he has taken the entire leave to which he is entitled or if, having applied for and having not been granted such leave, he quits his employment before he has taken the leave, the employer shall pay him the amount payable under Section 17 in respect of the leave not taken, and such payment shall be made before the expiry of the second working day after the day on which his employment is terminated and to an employee who quits his employment on or before the next pay day. Explanation 1.--"Illegal strike" means strike which is held by the State Government to be illegal within the meaning of Section 24 of the Industrial Disputes Act, 1947 (XIV of 1947), or of any other law for the time being in force relating to industrial disputes. Explanation 2.--"Calendar year" shall mean a year from the first day of January to the thirty-first day of December. (10) If an employee wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave if the application for leave is not made within the time specified in sub-section (6) and in such a case wages as admissible under Section 16 shall be paid not later than fifteen days. (11) The unavailed leave of an employee shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.] 1. Substituted by Act 2 of 1975. 2. Second proviso omitted by Act 2 of 1975. 3. Inserted by Act 2 of 1975. 4. Sub-Secs. (8), (9), (10) re-numbered as sub-Secs. (9), (10), (11) by Act 2 of 1975.

16A. Other Kinds Of Leave :-

1[(1) Every employee in an establishment shall in addition to the leave, admissible under Section 16, be entitled to -- (a) Casual leave with full pay for 12 days in a Calendar year; and (b) Sick leave on half pay for 12 days in a Calendar year on production of a medical certificate : Provided that the casual leave or the sick leave shall not be accumulative. (2) Care-takers, guards and watch men, who have been in continuous employment of a period of 12 months or more shall, beside being entitled to leave provided for in Section 16, and sub-section (1) of this section, be entitled to 45 days leave with full pay for every completed 12 months of continuous

service.] 1. Inserted by Act 2 of 1975.

17. Wages During Leave Period :-

(1) For the leave allowed to him under Section 16, an employee shall be paid at a rate equal to the daily average of his total full time earnings, exclusive of any overtime earnings and the yearly bonus, but inclusive of attendance bonus, efficiency bonus and other incentive bonuses and dearness allowance and the cash equivalent of any advantage accruing by the sale of foodgrains and other articles at concessional rates, for the days on which he worked during the month immediately preceding his leave.] (2) The State Government may prescribe -- (a) the manner in which the cash equivalent of the advantages accruing through the concessional sale to employees of food-grains and other articles shall be calculated; and (b) the registers that shall be maintained in an establishment for the purpose of securing compliance with the provisions of this section. 1[(3) An employee proceeding on earned leave shall on demand be given advance payment of the wages for half of period of leave and the wages for the wage period immediately preceding such leave. The wages for the remaining half period of such leave shall be payable to him along with wages for the first wage period after he resumes duty. The wages for the period of sick leave shall be payable to the employee along with his wages for the first wage period after he resumes duty. 1. Inserted by Act 2 of 1975.

18. Power To Increase The Amount Of Leave :-

1[Notwithstanding anything contained in Sections 16 and 16-A, the State Government may by notification increase the total amount of leave and the minimum number of days up to which such leave may be accumulated in respect of such establishments or class of establishments as may be specified in the notification.] 1. Substituted by Act 2 of 1975.

18A. Power To Exempt Establishment :-

Where the State Government is satisfied that the leave rules applicable to employees in an establishment provide benefits which in its opinion are not less favourable than those for which this Chapter makes provision it may by written order, exempt the establishment from all or any of the provisions of this Chapter subject to such conditions as may be specified in the order.

CHAPTER 5

WAGES

19. Responsibility For Payments Of Wages :-

Every employer shall be responsible for the payment to his

employees of all wages required to be paid under this Act.

20. Fixation Of Wage Period :-

(1) Every employer shall fix period in respect of which such wages shall be payable. (2) No wage period shall exceed one month.

21. Extra Pay For Overtime :-

(1) Where an employee is required to work in an establishment for more than nine hours in any day or for more than forty-eight hours in any week, he shall be entitled in respect of the overtime to wages at the rate which shall be twice the ordinary rate of his wages. Explanation. --For the purpose of this section, the expression "ordinary rate of wages", in relation to an employee means the basic rates of wages and such allowances as the employee is for the time being entitled to but does not include a bonus. (2) The State Government may prescribe the registers that shall be maintained in an establishment for the purpose of securing compliance with the provision of this section.

22. Payment, When To Be Made :-

An employee, who has been allowed leave for not less than five days in the case of a child and four days in any other case, shall before his leave begins, be paid the wages due for the period of the leave allowed.

23. Time Of Payment Of Wages :-

(1) Wages of every employee shall be paid before the expiry of the seventh day after the last day of the wage period as respect of which the wages are payable : Provided that if any employee be absent until the last day permissible under this sub-section the wages shall be paid before the expiry of three working days from the day on which he attends for work again or demands payment. (2) Where the employment of an employee is terminated by or under the order of the employer, the wages earned by such employee shall be paid before the expiry of the second working day from the day on which his employment is terminated. (3) All payments of wages shall be made on a working day at or near the place of work and during working hours. (4) The State Government may by general or special order exempt an employer from the operation of this section in respect of the wages of any employee or class of employees, to such extent and subject to such conditions as may be specified in the order.

24. Wages To Be Paid In Current Coins Or Currency Notes :-

All wages shall be paid in current coins or currency notes or in both.

25. Deductions Which May Be Made From Wages :-

No deductions other than those which may be prescribed shall be made by the employer from the wages of this employee.

26. Notice Of The Dismissal Or Discharge :-

1[(1) No employer shall dismiss or discharge or otherwise terminate the employment of any employee who has been in his employment continuously for a period of not less than six months, except for a reasonable cause and after giving such employee at least one months notice or one months wages in lieu of such notice : Provided that such notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government, supported by satisfactory evidence recorded at an enquiry held for the purpose : Provided further that an employee who has been in continuous employment for a year or more and whose services are dispensed with otherwise than on a charge of misconduct shall also be paid compensation equivalent to fifteen days average wages for every completed year of service and any part thereof in excess of six months before his discharge in addition to the notice or pay in lieu of notice as prescribed above.] 1[(2) Every employee, dismissed or discharged or whose employment is otherwise terminated, may make a complaint in writing in the prescribed manner, to a prescribed authority within 90 days of the receipt of the order of dismissal or discharge or termination of employment on the one or more of the following grounds, namely :-- (i) there was no reasonable cause for dispensing with his services; or (ii) no notice was served on him as required by sub-section (1); or (iii) he has not been guilty of any misconduct as held by the employer; or (iv) no compensation as prescribed in sub-section (1) was paid to him before dispensing with his service.] (3) Notwithstanding anything contained in sub-section (2), where the order of dismissal or discharge was received by an employee at any time before the commencement of the Bihar Shops and Establishments (Amendment) Act, 1959, he may make a complaint in writing in the prescribed manner before a prescribed authority within sixty days of the commencement of the said Act : Provided that such complaints, if any, pending before an authority prescribed prior to the commencement of the said Act shall be deemed to have been duly filed before the authority prescribed after such commencement and the said authority shall dispose the same in accordance with

the provisions of this Act. (4) The prescribed authority may condone delay in filing such a complaint if it is satisfied that there was sufficient cause for not making the application within the prescribed time. (5) (a) The prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence adduced by the parties, hear them and after making such enquiry as it may consider necessary pass orders giving reasons therefor. (b) In passing such order the prescribed authority shall have power to give relief to the employee by way of reinstatement or money compensation or both. (6) The decision of the prescribed authority shall be final and binding on both the employer and employee. 1. Substituted by Act 2 of 1975.

27. Notice Of Termination Of Employment By Employee :-

(1) No employee shall terminate his employment unless he has given to his employer a notice of at least one month. (2) Where an employee contravenes the provision of sub-section (1), his employer may forfeit any unpaid wages for a period not exceeding fifteen days.

28. Claims Arising Out Of Deductions From Wages Or Delay In Payment :-

of wages and penalty for malicious or vexatious claims (1) Where contrary to the provisions of this Act any deduction has been made from the wages of an employee, or any payment of wages has been delayed, or any sum is otherwise due from the employer to the employee, such employee, or any legal practitioner or any authorised agent or any officer of a registered trade union or any Inspecting Officer may make an application in such manner, within such time, and to such authority as may be prescribed for a direction under sub-section (2). (2) When an application under sub-section (1) is entertained, the prescribed authority shall hear the application in the prescribed manner and may, without prejudice to any other penalty to which an employer is liable under this Act, direct the refund of the amount deducted, or payment of the delayed wages or any sum to the employee together with the payment of a compensation not exceeding ten times the amount deducted in the first case and not exceeding ten rupees in other case : Provided that no direction for the compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to -- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or (b) the occurrence of an emergency, or the existence of exceptional

circumstances, such that the person responsible for the payment of the wages was unable though exercising reasonable diligence to make prompt payment, or (c) the failure of the employed person to apply for or accept payment. (3) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding twenty-five rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application. (4) Any amount directed to be paid under this section shall be recovered in the prescribed manner. (5) A single application may be presented under this section on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (2) shall be ten rupees per head. Explanation. -- Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage period or periods have remained unpaid after the day fixed by Section 23. (6) The authority may deal with any numbers of separate pending applications, presented under this section in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (5) and the provisions of that sub-section all apply accordingly. (7) An appeal against an order dismissing either wholly or in part an application made under sub-section (1) or against a direction made under sub-section (2) or sub-section (3) may be preferred in such manner, within such time and to such authority as may be prescribed and such authority shall consider and dispose of such appeals in the prescribed manner. (8) Save as provided in sub-section (7), any order dismissing either wholly or in part of an application made under sub-section (2) or sub-section (3) shall be final. (9) Every authority appointed under this section shall have all the powers of a civil Court under the Code of Civil Procedure, 1908 (V of 1908) for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil Court for all the purposes of Section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).¹ 1. Now Cr PC, 1973.

28A. Appearance By Legal Practitioner :-

A legal practitioner may, in any proceeding under this Act, appear, plead or act on behalf of any party on such conditions as may be prescribed.

28B. Power Of The State Government To Make Rules For Regulation Of Business And Transfer Of Case :-

Where the authority prescribed under sub-section (2) of Section 26, or sub-section (1) or sub-section (7) of Section 28, is more than one, the State Government may make rules -- (i) to regulate the distribution of business between them; and (ii) for the transfer of a case or an appeal, from one authority to the other.

CHAPTER 6

INSPECTION AND PENALTIES

29. Appointment Of Inspecting Officer :-

(1) The State Government may, by notification in the Official Gazette, appoint such persons on such class of persons as it thinks fit to be Inspecting Officers for the purposes of this Act within such local limits as it may assign to them respectively. (2) The State Government may, by notification in the Official Gazette, appoint any person to be the Chief Inspecting Officer who shall, in addition to such powers as may be prescribed for the Chief Inspecting Officer, exercise the powers of an Inspecting Officer throughout the State. (3) Every District Magistrate, the Additional District Magistrate of Saharsa, the Additional Deputy Commissioners of Dhanbad and Singhbhum and every Sub-divisional Magistrate shall be an ex officio Inspecting Officer within the limits of his respective jurisdiction. (4) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be Additional Inspecting Officers for all or any of the purposes of this Act, within such local limits as it may assign to them respectively. (5) In any area where there are more Inspecting Officers than one, the State Government may, by notification as aforesaid, declare the powers which such Inspecting Officers shall respectively exercise and the Inspecting Officer to whom the prescribed notices are to be sent.

30. Powers And Jurisdiction Of An Inspecting Officer :-

(1) Subject to any rules made by the State Government in this behalf, an Inspecting Officer may within the limits of his jurisdiction -- (a) enter, during such hours as may be prescribed and with such assistance, if any, as may be necessary, any premises which is, or which he has reasons to believe is, an establishment; 1[(b) inspect or take extracts from any prescribed registers, records and notices maintained under this Act or the rules made thereunder or seize such records, registers or notices as he may consider relevant in respect of an offence under this Act which he has reason to believe to have been committed by an employer;]1 (c) take on the spot or

otherwise the statement of any person which he may consider necessary for carrying out the purposes of this Act : Provided that no persons shall be compelled to answer any question or give any evidence tending to incriminate himself; and (d) exercise such other power as may be prescribed for carrying out the purposes of this Act. (2) The Inspecting Officer shall for the purposes of any inquiry under this Act have same power regarding the summoning and attendance of witnesses and compelling the production of documents as a civil Court has under the Code of Civil Procedure, 1908 (V of 1908). 1. Substituted by Act 2 of 1975.

31. Inspecting Officers To Be Public Servant :-

Every Inspecting Officer appointed under Section 29 shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (XLV of 1860).]

32. Penalty For Obstructing Inspecting Officer, Etc. :-

Any person who voluntarily obstructs an Inspecting Officer in the exercise of any power conferred on him by or under this Act or any person lawfully assisting an Inspecting Officer in the exercise of such power or who fails without sufficient cause to comply with any lawful direction made by an Inspecting Officer shall be punishable with imprisonment which may extend to six months or with fine which may extend to two hundred and fifty rupees, or with both.

33. Maintenance Of Registers And Records And Display Of Notices :-

Every employer of an establishment shall maintain such records and registers and display such notices and in such manner as may be prescribed. (2) Every employer shall on demand produce for inspection of Inspecting Officer all registers, records and notices required to be kept under and for the purposes of this Act.

34. Penalties :-

Any employer who contravenes any provisions of this Act or any rule or order made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to two hundred and fifty rupees for the first offence and to five hundred rupees for every subsequent offence after the first conviction.

35. Penalty Whether The Employer Is A Firm Or Company :-

If the person contravening any provision of this Act or a rule or order made thereunder is a company or a partnership firm every director, partner, manager or secretary thereof shall, unless he

proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

36. Cognizance Of Offences :-

1[(1) No Court shall take cognizance of any offence punishable under this Act or any rule or order made thereunder except on a complaint in writing of the facts constituting such offence made by Inspecting Officer or any person authorised in this behalf by the State Government within six months of the date on which the offence is alleged to have been committed : Provided that the Court may by reasons to be recorded in writing take cognizance of the offences for the breach of the provisions of Sections 16, 16-A, 26 and 28 after the expiry of the said period of six months, if it is satisfied that the complainant was prevented by sufficient cause from filing the complaint within the said period. (2) No Court inferior to that of a Magistrate of the first class shall take-cognizance or try an offence punishable under the Act.] 1. Substituted by Act 2 of 1975.

CHAPTER 7

MISCELLANEOUS

37. Protection Of Persons Acting Under This Act :-

No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

37A. Presumption :-

1[Whenever an establishment is found open it shall be presumed that it is open for the service of customers or for the business, trade or profession normally carried on the establishment.] 1. Inserted by Act 2 of 1975.

38. Power Of Government To Suspend Provision Of This Act During Public Holidays :-

The State Government may by notification, suspend in any area, in respect of all establishments or any class of establishments the operation of all or any of the provisions of this Act for such period and subject to such conditions as may be prescribed on account of public holidays or occasions or for any other reason of whatever kind.

39. Workmens Compensation Act, 1923 To Apply To An Employer And An Employee To Whom This Act Applies :-

1[The provisions of the Workmens Compensation Act, 1923 (VIII of

1923), and of rules made thereunder, shall mutatis mutandis, apply to every employer or employee to whom the provisions of this Act apply.] 1. Substituted by Act 2 of 1975.

39A. Maternity Benefits Act, 1961 (53 Of 1961) To Apply To Establishment And Persons To Whom This Act Applies :-

1[The provisions of the Maternity Benefits Act, 1961 (53 of 1961), and of rules made thereunder shall mutatis mutandis, apply to every establishment and every person to whom the provisions of this Act apply.] 1. Substituted by Act 2 of 1975.

40. Power To Make Rules :-

(1) The State Government may make rules to carry out the purposes of this Act. (2) In particular and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely : 1[(a) the registration and renewal of establishments and the amount, and manner of payment of fees under Section 6;] (b) the registers to be maintained in an establishment under sub-section (2) of Section 17 or sub-section (2) of Section 21; (c) the misconduct of an employee for which his services may be dispensed with without a notice under sub-section (1) of Section 26; and the authority to which and time within which appeals under sub-section (2) of that section may be filed; (d) the authority before whom, the time within which and the manner in which the employee or any legal practitioner or authorised agent or an officer of a registered trade union or an Inspecting Officer shall make an application under sub-section (1) of Section 28; (e) the manner in which applications shall be heard by the prescribed authority under sub-section (2) of Section 28; (f) the manner in which any amount referred to in sub-section (4) of Section 28 or any compensation awarded under subsection (7) of Section 16 or sub-section (5) of Section 26 shall be recovered; (g) the authority before whom and the time within which an appeal shall be preferred under sub-section (7) of Section 28 and the manner in which such appeal shall be considered and disposed of; (h) the powers of the Chief Inspecting Officers under sub-section (2) of Section 29; (i) the powers of the Inspecting Officers and the registers, records or notices that need to be examined by them under Section 30; (j) the maintenance of records and registers and display of notices under Section 33; (k) the period during which and the conditions subject to which all or any of the provisions of the Act may be suspended by the State Government under Section 38; (l) the health, safety and welfare of employees; (II) the conditions subject to which parties may be represented by legal

practitioners in proceedings under this Act before the Prescribed Authority; and (m) any other matter which is required to be or may be prescribed. (3) The rules may provide that any contravention thereof shall be punishable with fine which may extend to fifty rupees. (4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication. (5) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or in the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 1. Substituted by Act 2 of 1975.

41. Weekly Holidays Act, 1942, Not To Apply To Establishment On Commencement Of This Act :-

On and from the date on which any of the provisions of this Act comes into operation in any area or in respect of a shop or establishment, the Weekly Holidays Act, 1942 (XVIII of 1942), shall cease to apply to such area or shop or establishment.: Provided that anything done under the said enactment which could have been done under this Act if it had then been in force shall be deemed to have been done under this Act.