

*** The Factories (Second Amendment) Bill @ Holidays with Pay for Factory Workers**

The Honourable Dr. B. R. Ambedkar (Labour Member):
Sir, I move:

“That the bill further to amend the Factories Act, 1934, (Second Amendment) be referred to a select Committee consisting of Nawab siddique Ali Khan, Khan Bahadur Shaikh Fazl-i-Haq Piracha, Mr. R. R. Gupta, Mr. A. C. Inskip, Sir Vithal N. Chandavarkar, Rao Bahadur, N. Siva Raj, Mr. N. M. Joshi, Mr. D. S. Joshi and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

The provisions of the Bill fall into two parts and I think it will be desirable from the point of view of simplicity in the matter of presentation if I explained to the House the provisions of the Bill in two separate forms.

Part I of the Bill deals with compensatory holidays for the loss of compulsory holidays. Members will realise that in section 35 of the Factories Act it is obligatory upon the owner or manager of the factory to give one compulsory holiday to every adult worker in the factory. This provision which is contained in section 35 is subject to the provisions contained in sections 43 and 44. Section 43 and 44 provide that the Inspector of factories may permit exemptions being granted to the manager of the factory or factory owner from the obligations imposed by section 35. The view that is taken is this that when such exemptions should be granted, they ought to be compensated by other holidays, equivalent in number. Health and efficiency of the worker requires that he should have the requisite number of holidays which are prescribed by law. The Act, as it stands, makes no such provisions for compensatory holidays. Consequently, clause 2 of the Bill has been introduced for the purpose of removing this lacuna. It will now be open for the Provincial Governments to make rules subject to certain

*Legislative Assembly Debates (Central), Vol. IV, 1st Nov. 1944, pp. 89-91.

@ Titles for paragraphs are taken from the Indian Information, 15th November 1944, pp. 600-01.

adjustments that wherever exemptions have been granted under section 35, compensatory holidays of the equivalent amount shall be granted to the workmen. This is the first part of the provisions of the Bill.

Labour Convention

Coming to the second part of the Bill, the provisions contained therein deal with the question of holidays with pay. It might be desirable at the outset to state to the House the origin of this part of the Bill. Many members of the House will recall that in 1936 the International Labour Conference passed a convention relating to the holidays with pay. The Government of India, which was represented at that International Labour Conference, was not prepared to accept the convention and to ratify it. A Government Resolution was moved in the Assembly on the 26th July, 1937, proposing the non-acceptance of the convention. The Resolution was carried. But while the Government did not find itself in a position to ratify the convention, the Member in charge of the Resolution said that the government would explore and examine the possibilities of giving effect to the convention, if not wholly, at any rate, in part and undertook to have consultation with the Provincial Governments and all the Associations representing the employers and employees to find out to what extent there was a general agreement in the matter of this convention. Part II of the provisions which relate to holidays with pay are the result of this examination and exchange of views which have been going on over a considerable number of years.

Perennial Factories

Turning to the Bill itself, it will be seen that the Bill applies to factories and it applies not to all the factories, but to perennial factories only. The Bill undoubtedly is limited in its scope as compared to the provisions contained in the convention which was adopted in 1936. With regard to the other provisions, I think it will be better if I divide my observations in four parts so as to cover separately the four points which legislation concerning holidays with pay must necessarily deal with.

1. Length of holiday. 2. Qualifying conditions for a right to a holiday. 3. Limiting conditions. 4. Pay during holiday. With regard to the first point, namely length of a holiday, this is a matter which is dealt with

in the new section 49-B which the Bill proposes to add to the Factories Act. According to this section, the total holiday is to be on seven consecutive days for a worker who has put in a continuous service for one year. It might be asked as to why we have taken seven days and not more. The reply to that is that in fixing this period of seven days, we have followed the provisions contained in the Geneva convention of 1936 which laid down six days as the limit of the holiday. To that we have added a seventh day which is a compulsory weekly rest granted to a worker under section 35 of the Factories Act.

With regard to the question of qualifying conditions laying down as to when a worker will be entitled to claim a seven days holiday, the provisions contained in the Bill are as follows. As a matter of fact, there is really only one condition and that is that the worker must have put in a period of twelve months continuous service. There is no other condition. With regard to the question as to what is continuous service of twelve months, the bill provides for what are called interruptions and declares that certain interruptions shall not invalidate the claim for holidays with pay. The interruptions which are mentioned in the Bill are interruptions arising out of sickness, accident, authorised leave, lock-out period and a strike period provided the strike is legal.

Involuntary Unemployment

There is also another provision in the bill which relates to the same subject and that is the question of involuntary unemployment caused by the desire of the factory owner to close the factory. We have limited that to a period of 30 days. If the involuntary unemployment caused by the factory manager does not extend beyond 30 days, then that would not invalidate the claim of the worker for his right to holidays with pay. It might be necessary perhaps to mention why we have prescribed only 30 days. The explanation is this. Holidays with pay must necessarily take into account the ability of the manager or the factory owner to pay and the view that is taken in the Bill is that if the manager or the factory owner is obliged to close his factory for more than 30 days, then I think it is legitimate to presume that he has really not been prospering as well as he ought to and that he is, therefore, not in a position to pay the cost for holidays with pay. But if the involuntary period does not exceed 30 days, then the presumption is that he is still

able to bear the cost and should bear. The Bill also provides for limited condition with regard to holidays with pay and that limited condition relates to the question of accumulation of holidays. The Bill provides that a worker who has been qualified to earn his holidays may be entitled to accumulate holidays for two years and that is for a total period of 14 days.

Pay during Holidays

Coming to the question of pay during holidays, there are several points to which I should like to draw the attention of the House. The first is that although the total period of the holiday is seven, only six are declared to be paid holidays. The seventh, as I said, is really a day of weekly rest provided under section 35. With regard to the seventh day, the Bill does not make it obligatory upon the employer to pay for it. But at the same time the bill does not take away the right of the employee to demand payment, if as a result of his contract of service that holiday was due to him as a paid holiday. It is really left to be governed by the contract of service.

The third point is with regard to the payment to be made for these six holidays. The rule that we have adopted in the Bill is a rough, and I believe, an equitable rule and it is this : that a worker is to be paid at a rate equivalent to the average of his earnings during the three preceding months barring overtime. I believe that is an equitable principle. The Bill also provides that in order to enable a workman to take his holiday, some facilities should be given him in order to have some cash with him on the day on which he proposes to start on his holiday. Consequently provision is made in the Bill that half the dues which are to be paid to the workman going on holiday shall be paid to him at the start.

Another matter which is relevant to this, and is also important, is this. The Bill proposes to exempt certain factories from its operation if it is found that a factory has a system of holidays with pay which is substantially similar to the one provided in the Bill and about whose satisfactory character the Provincial Government is able to certify. The object underlying this clause is that if there is a voluntary arrangement between the employer and the worker whereby the worker is given the same privileges which we are providing in the law, the view taken by

the Bill is that in so amicable an arrangement it is unnecessary for the law to enter.

Sir, these are the main provisions of the Bill. There are two other matters to which I should like to make a reference before I sit down. The first is the question of a discharge of a workman by the employer to prevent him from earning his holiday. The second question is the employer inducing a workman not to take his holiday although he has earned it. These are questions which I frankly admit are not being provided for in the Bill. Not that Government are not aware that such questions may arise, but the view of Government is that at the present stage, at any rate, there is no reason to suppose that such contingencies will arise. If experience shows that such cases do become usual it would be time then to amend the Act to stop their recurrence. For the moment the view I hold is that the provisions of the Bill are sufficient for the purposes which it has in view, namely, to grant holidays with pay to factory workers.

Sir, I move.

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The Honourable Dr. B. R. Ambedkar : My task has been considerably lightened by the fact that there has been general support given to the motion which I have made in regard to this Bill and therefore in the course of the reply which I propose to make to the debate, I shall be very brief.

I had better say something straightaway with regard to the speech of my Honourable friend Dr. Sir Zia Uddin Ahmad. What I propose to say is this—that I really do not propose to say anything about what he has said and I hope we would not take it as an act of discourtesy to him, because what he has said, if I may say so, has really very little to do with the Bill which is under discussion. He has propounded a novel theory of solving the labour problem—namely, partnership. I am sure that we are greatly benefited by the elucidation which he has given of this new ideology, and I can assure him that when the problem of our constitutional structure comes before us for discussion what he has said undoubtedly would be a matter of great use and benefit not only to myself but to all those who will be engaged on that problem.

* Legislative Assembly Debates, Vol. IV, 7th November 1944, pp. 372-75.

Coming to the other speakers. I first propose to deal with the observation which fell from my friend Sir Vithal Chandavarkar. He referred to the Resolution which was moved by Sir Frank Noyce in this House with regard to the International Convention dealing with holidays with pay. I did not, if I may say so, succeed in catching exactly the point that he wanted to make by reference to that speech but I understood him to convey the fact that the Government of India had changed front.

Sir Vithal N. Chandavarkar : No, no.

The Honourable Dr. B. R. Ambedkar : That in 1936 they were opposed to it, while now they are prepared to give recognition to the principle contained in that Convention. I do not think that there has been any change in the position of the Government of India. I have read the debate with some care and attention and I am quite satisfied that the reason which led the Government of the day to oppose the Convention was because of the understanding that if a convention has to be recognised it must be recognised as a whole. It could not be recognised in part and the Government of India, as it was then advised, felt that it was impossible, having regard to the circumstances of this country, to accept the convention as a whole and although therefore they were prepared to accept the principle and also prepared to investigate the possibilities of applying it in some limited manner they could take no other course than the one which was open to them under the circumstances which then prevailed.

Now, my friend Mr. Joshi has made some points in the course of his speech. Two of his points, I must admit, are points of substance. The first point that he made was that although we were limiting the scope of the Bill we have limited it to a factory and we have not agreed to extent the principle at least to an industry. As I said, I admit that this is a point of substance but I must at the same time point out that to have applied it to an industry means that it would be necessary for us to devise some method by which we could pool the resources of those concerns which come under one particular industry. Now, although as I said, I have the fullest sympathy with the point which he has made, it is not possible for us at the present moment, without any experience behind us, to work out a pool system by which all factories within a particular industry could be made to share the cost

of broken holidays earned by different employees in different factories arising out of broken periods of service in different factories. And this is the reason why it has not been possible to make the thing applicable to industry as a whole.

The second point which Mr. Joshi made was the complaint that the holiday period provided in the Act is too short. I also admit that there is considerable force in that 7 days is in fact too short a holiday but there again I am confronted with another difficulty, which difficulty is a difficulty which I am sure both Mr. Joshi as well as Sir Vithal Chandavarkar have to admit. The difficulty arises on account of the desultory character of our labour. Labour, as Mr. Joshi and Sir Vithal Chandavarkar both know, take long holidays for a variety of reasons and consequently the absenteeism which is prevalent on account of this habit does really complicate the matter very much. If our labour was induced or was trained to give continuous service in a factory for a large number of days than they have been doing now, I should be quite prepared to admit that the case for extension of the holiday beyond the period that we have fixed would undoubtedly be very strong but I hope that the fact that we have given seven days holiday would have its indirect effect on the labouring and working classes of this country who will realise that if they did render more continuous service than they have been doing, they would be making strong the case for the extension of the holiday beyond the period of seven days but as the situation stands, I think it would not be justifiable to go beyond the prescribed period of seven days which, if I may say so, is also the period which was recommended by the Convention.

Then, Sir, another point that was made with regard to the same question was with relation to the application of the Act to non-perennial factories, a point that was made by my Honourable friend Prof. Ranga on the other side. To that point also my reply is the same, namely, that the provision for 7 days paid holiday is made to those workmen who are not getting a sufficiently long rest, if I may use that phrase. Now, a non-perennial factory is a factory where people do get long period of rest. It may be that it is a case of involuntary employment, but I am not looking at it from the point of view of employment or unemployment. So far as the Bill is concerned, we are looking at it from the point of view of rest and so far as the non-perennial factories

are concerned, the workmen certainly get a sufficiently long period of rest so that it cannot be said that in their case there is as much necessity for a paid holiday of 7 days as it is in the case of the perennial factories.

Then, Sir Vithal Chandavarkar raised a point with regard to the words 'at least' in one of the amending clauses. He expressed the fear that having regard to the use of the words 'at least' in one of the amending clauses it would be possible for Provincial Governments to direct that the factory-owners may be compelled to give more than 7 days. Now, I would like to convey the assurance that has been given to me by my legal advisers that under the amended section, as it stands, it would not be possible for the Provincial Governments to compel an employer to give more than 7 days' holiday. Another point which was made by Sir Vithal Chandavarkar was that this was a premature measure and that, in his opinion, this measure should come last ; certainly it should come, according to his judgment, not before the Sickness Insurance Act which Government is contemplating and thinking about. I personally beg to differ from and if I had time I would have given some arguments in support of my contention. I would invite him to read the observations of Professor Adarkar in his report on health insurance for industrial workers which occur on page 112 where he will find some very strong arguments which he has produced in order to show that the holidays with pay is a measure which is so integrally connected with sickness insurance if an order of precedence was to be framed it would be necessary to give priority to the measure relating to holidays with pay before social insurance. As I said, the report is now available to the Members of the Legislature and I will not take the time of the House in repeating what has been said by Professor Adarkar on this point.

Then, Sir, another point which has been raised on both sides is the question whether a measure like this should be compulsory or voluntary. So far as the Bill is concerned, I think it strikes a very happy mean inasmuch as the Bill, while making obligatory by law to provide holidays with pay for workmen who render a certain length of service, has left it open for voluntary agreement between the employers and the employees. As Honourable Members must have seen, there is a clause in the Bill which says that if Government is satisfied that a measure of holidays with pay substantially similar to the one which has been contained in the provisions of this Bill is introduced

voluntarily by an employer and the Government is satisfied of its efficacy, Government has been giving power to exempt a factory from the obligations in this Act. I find that the position in Great Britain is also similar in this matter. Under the British system, there is a Holidays with Pay Act of 1938 and 2,300,000 people are covered by it. The rest of them, namely, 5 millions, get it under voluntary agreement, not under the Act and 4,000,700 get under what is called a long-standing custom.

Sir Cowasjee Jehangir : Where is the provision whereby an employer can postpone giving that leave ?

The Honourable Dr. B. R. Ambedkar : I am coming to that. Now, Sir, one other point I wanted to deal with, as I said, was this compulsory versus voluntary.

The other point that was raised by my friend Prof. Ranga and also by Mr. Chettiar was that we have made no specific provision against an employer entering into an unfair practice whereby he would discharge an employee in order to prevent him from earning his holiday. To that point I had referred in my opening speech when I made the motion and I said that while Government is aware that certain practices may develop, Government does not think that they ought to take any action straightway. Government would prefer to wait and watch and see which side resorts to what sort of stratagem in order to over-reach the other side. But, as I said if there is a strong feeling on the point and those who represent labour are able to convince the Select Committee that it is necessary straightway to have a provision entered into the Act itself to prevent any such practices, it will be open to them to move and get it through. Government does not regard that as a matter of principle and will not stand in the way of the thing being done in the Select Committee.

The other point which has been raised is whether this question of leave should be entirely made dependent upon the wishes of the employee, namely, that the employee should have a right to determine from what date and at what time he should exercise his holiday. Now, we have deliberately made no provision in the Bill for that and we have left it to the Provincial Governments to make rules to regulate what should be done with regard to that particular point. I think it would be desirable in an experiment of this kind not to tie down everything

by statute. It would be better if the matter was left to be regulated by rules for which the Bill authorises the Provincial Governments to make, because, as the House knows, it is much easier to change a rule than to change a statute. But as I said, if the parties to this Bill who are concerned and affected do desire that this should be made the subject matter of a statute, it will again be open to the Select Committee to do so.

I do not think there is any point raised by any Honourable Member which I have not covered and I therefore do not propose to say anything more in support of the motion I have made.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is :

“That the Bill further to amend the Factories Act, 1934 (Second Amendment) be referred to a Select Committee consisting of Nawab Siddique Ali Khan Bahadur Shaikh Fazl-i-Haq Piracha, Mr. R. R. Gupta, Mr. A. C. Inskip, Sir Vithal N. Chandavarkar, Rao Bahadur N. Siva Raj, Mr. N. M. Joshi, Mr. D. S. Joshi, and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

The motion was adopted.

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