

* The Payment of Wages (Amendment) Bill

The Honourable Dr. B. R. Ambedkar (Labour Member):
Mr. Deputy President, I move :

“That the Bill further to amend the Payment of Wages Act, 1936, be referred to a Select Committee consisting of Seth Yusuf Abdoola Haroon, Mr. Muhammad Hussain Chaudhury, Mr. Lalchand Navalrai. Mr. A. C. Inskip, Sir Vithal N. Chandavarkar, Mr. N. M. Joshi, Dr. Sir Ratanji Dinshaw Dalal, 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.”

Sir, the Payment of Wages Act, to which the present Bill proposes to make certain amendments, was passed in the year 1936. This Bill, at the time when it was passed, was recognised as an experimental measure for the simple reason that when the Bill was drafted we had not before us any model piece of legislation on which we could have modelled the measure which is embodied in this Act. We have had now an experience of practically six years of this measure and in the course of the working it has been discovered that the Bill suffers from many defects. If I may tell the House, it has been pointed out that there are practically 30 or 40 amendments which it is necessary to make to improve the Payment of Wages Act. The government of India realise that at present they have not got the time to devote to all the amendments to the measure which different parties have suggested and consequently they do not propose to engage themselves upon improving the Act and to remove all the defects that have been suggested. What the Government of India proposes to do through the present amending Bill is to take certain defects which are of such administrative importance that unless and until those defects are removed, it will be difficult to administer the measure with the intention which lay behind the act when it was passed.

*Legislative Assembly, Debates, Vol. V, 16th November 1944, pp. 889-92.

Sir, taking the Bill clause by clause : Clause 2 of the Bill seeks to make certain amendments in the definition of the word “wages”. I do not wish to weary the House by repeating seriatim the defects which different parties to the Bill have suggested that they have found in the present definition of the word ‘wages’ as it stands. But I might mention some important ones. It has been said in a judicial decision given by the High Court of Bombay that the present definition of “wages” is so drafted that it is possible for a workman not only to claim wages which he has earned but also wages which might be called potential wages—wages which he might earn. That certainly was not the intention of the original measure. Another defect which has been suggested with regard to this definition is that it allows a workman employed on the outturn basis to claim wages irrespective of his outturn. It has been suggested that there is a confusion in the definition which does not quite distinguish the case of a workman employed on a time basis and a workman employed on outturn basis. It has also been suggested in certain quarters that some of the words which now occur in the definition are superfluous, that they need not be there and that their presence only causes confusion. I might refer to the words “includes any bonus or additional remuneration of the nature aforesaid which would be so payable”. It has been suggested to us that these words may not have any meaning other than the one which is already included in the previous part of this definition. It has also been suggested that while the definition of “wages” was adequate before the system of dearness allowance brought about by the war came into existence, the definition today is inadequate because it is open for an employer to argue that the dearness allowance is not part of wages.

Now, the definition that we have suggested in the amending Bill seeks to remove all these difficulties. It seems to make the definition simple. I ought to tell the House that I am myself not very confident that the draft, as it stands in the amending Bill, carries out the intention which lies behind this original Act. I do not regard the definition which we have proposed as sacrosanct and if the members of the Select Committee are able to suggest a better one I should certainly raise no objection to the further amendment of the definition as it now stands in the amending Bill.

Coming to clause 3, it is a clause which makes two amendments to the present section 5. As the Honourable Members will remember, section 5 is a section which prescribes the period during which wages must be paid ; and for the purpose of prescribing the period for the payment of wages, the section divides factories into two categories. In one category are placed factories which employ workmen whose number is less than 1,000. In the second category are placed factories which employ more than 1,000 employees. After making this division, the section provides that in the factories which come into category No. 1, payment must be made within 7 days, while in the case of the latter the limit of the period is prescribed to be 10 days. In actual practice it has been found difficult to observe the terms of this section, and the reason for that is very simple. The division of the factories is based upon the number of employees. As the House will realise, the number of workmen is never a constant figure ; it always changes. For instance, if the number of employees goes down by one, the category automatically shifts from category No. 1 to category No. 2. Similarly, if the number of employees is increased by one, category No. 2 goes into category No. 1. It is believed—and I think very rightly—that this discriminating principle is neither very just nor administratively feasible. Consequently what the amendment seeks to do is to abolish this distinction whereby the factories have been divided into two categories and adopt the general principle that in all factories, irrespective of the number of employees that are working there, there shall be a uniform rule, namely, that the payment must be made within ten days. The second amendment which clause 3 seeks to make is also, as the House will see, very necessary. In section 5, provision is made for the payment of an employee who is discharged from service. The section as it stands today provides that the payment to a discharged employee should be on the second working day. Now, Sir, if the Payment of Wages Act was only applicable to perennial factories which are working throughout the day, there can be no difficulty arising from the section as it stands now. But in the case of seasonal factories, the difficulty that would arise is absolutely genuine because, supposing an employee was discharged on the last working day of the factory and the factory being a seasonal factory was closed down thereafter, then the second working day would come after a long interval which it would

be difficult for anybody to imagine or to stipulate. Consequently the payment of wages to a discharged employee working in a seasonal factory would be indefinitely postponed if the provision as it now stands was not amended in the way suggested in the Bill. What we have therefore done by the amending Bill is to take away the word 'working' and substitute for the word 'second' the word 'third', so that where the factory is a seasonal factory or where the factory is a perennial factory every discharged workman will be paid on the seventh day and would not have to wait as he would have to in case the factory was seasonal factory and the Act stood as it is now.

Now, I come to clause 4 of the Bill. As Honourable Members will see clause 4 proposes to make certain amendments in section 7 of this Act. Section 7 is a section which lays down what deductions can be made from the wages of a workman. Honourable Members will see presently that the section as it stands now does not cover all legitimate cases of deductions. I will draw the attention of Honourable Members to what are the omissions in the present Act. For instance, the act as it stands now, or the section of the Act, does not cover the case of an employee who has left his employment, taken his provident fund and his gratuity and has lost the privileges which he would otherwise get if he had continued to be in service. It may be that for certain reasons, he had to resort to the expedience of obtaining a discharge from service in order to get his provident fund and his gratuity to meet certain economic demands that may be very pressing upon him. After that, he is re-employed and obviously he is anxious to get back all the privileges which he enjoyed before his discharge and his privileges depend upon whether or not he is prepared to return the provident fund which he had obtained and the gratuity which he got. The workman is willing and prepared for such deductions being made, but the law does not permit this. I think it will be agreed that such deduction should be allowed because it is in the interest of the employee himself. But as I said such a provision does not find a place in the act, as it now stands. Then, Sir, there are certain deductions which may be beneficial to the employee and the employee may be willing that the deductions may be made in order to cover such beneficial purposes. Again, there is no provision for allowing the workman voluntarily to agree to make deductions which he thinks are beneficial to himself. The law is made

by the amendment in order to the conclusion that the purposes are beneficial really. There are other omissions in section 7 as it stands and those omissions relate to cases of workmen who are employed in what are called incremental scales. This is a new thing in the bill and I wish to explain to the House not only what the provisions are but the circumstances which have led us to bring forward this amendment. The sub-section (3) of section 4 deals with three cases. It deals with the case of withholding of increment of an employee who is employed on an incremental scale. It deals with the case of demotion from a higher grade to a lower grade with consequent deduction in salary. Thirdly, it deals with the case of retention of an employee in a grade, the deduction of salary being due to loss of efficiency. The reason why it has become necessary to bring forward these amendments embodied in sub-section (3) of section 4 is that it has its origin in a decision given by the Judicial Commissioner of Sind. It was a case in which an employee who is, I believe an Engine driver, was concerned. His grade was maintained, but his salary was reduced. He went to a court of law for redress and pleaded that the reduction of his salary, while he was continued in the grade, was a deduction unauthorised by law. The Judge upheld the contention and said that was an unauthorised deduction. But the Judge observed that if there was a new contract entered into with an employee telling him that as his efficiency was not of the required level and standard to discharge his duties that are incumbent upon an officer holding that particular grade, and if the new contract was accepted by him, then the deduction would be justifiable. Now, what I have done in the Bill is to accept the suggestion made by the Judge, namely, that whenever there is a case of an officer whose grade is not reduced, but whose salary is reduced on account of the fact that he is not found to be as efficient as the responsibilities of the post require, the deduction shall not come into existence unless the period of notice that his service requires shall be fulfilled. Now, Sir, the object of that provision is really to give him one month's notice. The completed or simplified procedure would be to give him a legal notice and to say. "We are not prepared to pay you the same salary that we paid before ; if you like, continue on the new basis ; if you do not like it, discontinue and go out of service". Instead of having that elongated process of two equations, notice and reply, offer and rejection, we have combined the

process by delaying the operation of the reduction decision by the period of notice, so that before the period of notice expires if he tells his employer that he is not prepared to accept, he would be at liberty to go out. I should like to make this point clear because it might be argued that in bringing forward these amendments we have really tried to counteract or set at naught or nullify the decision of the Additional Judicial Commissioner and I want to tell the House that I am doing nothing of the kind but am merely following the decision of the Judicial Commissioner in the amendments which we have proposed.

With regard to the other two amendments, viz., the withholding of increments and demotion from a higher grade to a lower grade, there can be no matter of controversy, for the simple reason that a person is promoted from a lower to a higher grade only when the employer is satisfied that by the experience that he has had in the grade in which he has been serving he will be able to acquire such greater experience and greater efficiency that he can be legitimately expected to discharge the responsibilities of the higher grade. When, for instance, he has not been promoted there is no grievance, for the simple reason that he has not earned something which is sought to be taken away.

Similarly with regard to the other provision, viz., demotion from a higher to a lower grade, I do not think there can be any legitimate grievance in this kind of deduction, for the simple reason that when a man has lost so much efficiency that an employer does not think that he can be retained in the same grade, I think it is justifiable to reduce him because the reduction in salary is also accompanied by reduction of responsibility.

Now coming to clause 5 of the Bill it is a very simple clause. It seems to amend sub-section (7) of section 8. Sub-section (6) of section 8 deals with the question of the time within which the fine imposed by an employer may be recovered. The question that arises is, when does the time run? Does it run from the date when the offence was committed or does it run from the date when the employer came to know that a certain act or omission was done? Obviously it is not always possible for an employer to know at the very time when an act was committed that it had been committed; it often happens that an act is committed and knowledge of it comes to the employer after a very long time. Consequently, it is felt necessary that the point of time from which

limitation should run should not be the date of the offence but the date of the knowledge ; and I should like to tell the House that in amending this provision we are not introducing anything that is novel. As lawyer Members of the House would know, there are many provisions in the law of limitation where the time in some cases runs from the date of the act and in some cases from the knowledge of the act.

Coming to clause 6, this seeks to amend section 9 of the Act. Section 7 (2) (b) permits deductions being made on account of absence from duty. Unfortunately there is no definition given in the Act itself as to what is meant by 'absence from duty'. This clause removes this lacuna and adds a second explanation to section 9 where the expression 'absence from duty' is not sought to be defined. Clause 7 amends section 13, and that again is purely consequential; it is not a substantial provision. It makes section 13 applicable to the two of the new deductions contained in clause 4 of the Bill. As Honourable Members know, section 13 makes deductions permissible subject to such conditions as the Provincial Government may impose. We also want that the new deductions which the new amendment permits shall also be subject to the same proviso.

The last clause amends section 17 of the Act which regulates the right of appeal. As it stands the section gives a right of appeal to an employed person but does not give it to the Inspector who is the administrative authority for administering this particular Act. It is felt that it would be advisable in the interest of all, and particularly in the interest of the employees, for the Inspector also to have the right to make an appeal.

These, Sir, are the provisions of the Bill. I submit they are non-controversial and I believe and hope that the House will be able to accept my motion.

Sir, I move.

Mr. Deputy President (Mr. Akhil Chandra Datta): Motion moved :

"That the Bill further to amend the Payment of Wages Act, 1936, be referred to a Select Committee consisting of Seth Yusuf Abdoola, Haroon, Mr. Muhammad Hussain Chaudhury, Mr. Lalchand Navalrai, Mr. A. C. Inskip, Sir Vithal N. Chandavarkar, Mr. N. M. Joshi, Dr. Sir Ratnji Dinshaw Dalal, 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.”

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Mr. N. M. Joshi : Sir, the Hon'ble Member has also introduced certain other amendments, one of them regarding permitting certain deductions for absence.

***The Honourable Dr. B. R. Ambedkar :** I have only given the definition of absence. I have not permitted deductions : they are already there.

Mr. N. M. Joshi : I know. The Honourable Member is a very simple man. He has changed the definition of absence with the result that certain deductions may be permitted. The original Act permits deductions for absence up to a certain point. The deductions may be made for the actual time lost or work not done. But if this Amendment is made, and if I understand it rightly, it is quite possible for an employer to impose double fine on the employee.

The Honourable Dr. B. R. Ambedkar: That is not correct.

Mr. N. M. Joshi: All right. We shall discuss it at the proper time. What may happen is this : an employee is absent for an hour. He cannot turn out work for that hour and therefore if he is paid on piece rate his wages are automatically reduced. Besides receiving less wages, it is quite possible that if this Amendment is made, the man's wages may be deducted still further.

The Honourable Dr. B. R. Ambedkar: No, no.

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@ The Honourable Dr. B. R. Ambedkar : Mr. Deputy President, if it can help to curtail the debate, I should like to state at this stage that I am prepared to accept the amendment.

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†The Honourable Dr. B. R. Ambedkar : Sir, as I have said, I am prepared to accept the motion made by my friend Mr. Joshi. In that event, it is unnecessary for me to make any speech. All that I would

*Legislative Assembly Debates (Central), Vol. V, 16th November, 1944, pp. 896.

@ *Ibid.*, p. 901.

†*Ibid.*, p. 902.

like to say is this that I cannot agree that any strong case has been made out for circulation. As I said just now, I made myself very clear that the amendments which I have put forth were administrative in the sense that they will remove the difficulties that exist in the administration of the law. I have not seen that any of the amendments which are contained in this Bill were, if I may say so, beyond the capacity and the intelligence and the knowledge and the information of Honourable Members of the Select Committee. I, Sir, was surprised to see that my Honourable friend Mr. Joshi did not do enough credit to himself. If I circulate the Bill, and I am asked to circulate the Bill in order to canvass the opinion of the working classes, I wonder whether who would be the advocate that would be employed by the working classes except Mr. Joshi himself or my Honourable friend Mr. Lalchand Navalrai. It was in order to get the benefit of their representative character, their knowledge and information that I have taken care to include them in the Select Committee. However, Sir if they feel that they cannot repose confidence in their ability to deal with what I regard as non-controversial points. I am quite prepared to fall in line with them and accept the amendment.

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

“That the Bill be circulated for the purpose of eliciting public opinion thereon by the 28th February, 1945.”

The motion was adopted.

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