



Bangalore Chamber of Industry and Commerce

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Labour

Circular No.71

10.05.2010

All Members

Dear Sirs,

We enclose herewith the following Circular issued by the Ministry of Labour & Employment, New Delhi for your reference and record.

1. The New Amnesty Scheme- 2010 (i.e. 1st March, 2010 to 28th February, 2011), for withdrawal of criminal cases filed against the Insured persons and Employers under Sec. 84, 85 and 85 A of ESI Act 1948 and settlement of cases filed by employers under Sec 75 of ESI Act 1948 – dated 28th February, 2010
2. Workmen's Compensation (Amendment) act, 2009 - [Act No. 45 of 2009] – dated 22nd December, 2009
3. Payment of Gratuity (Amendment) Act, 2009 - (No.47 of 2009) – dated 31st December, 2009.
4. The Payment of Gratuity (Amendment) Bill, 2010 - Bill No.49 of 2010 – dated 8th April, 2010

Thanking you,

Yours faithfully

T.S. Sampath Kumar
Secretary General

No. P-11/4/32/2009-Rev. II, Dated 2/03/2010

The New Amnesty Scheme- 2010, for withdrawal of criminal cases filed against the Insured persons and Employers under Sec. 84, 85 and 85 A of ESI Act 1948 and settlement of cases filed by employers under Sec 75 of ESI Act 1948.

The Corporation in its 149th meeting held on 19/02/10 has approved launching of New Amnesty Scheme 2010 to reduce the number of litigation and to unlock the dues stuck up in court cases.

The new Amnesty scheme provides withdrawal of cases subject to following terms and conditions.

A. SCHEME TO WITHDRAW COURT CASES FILED u/s 84, 85& 85-A OF ESI ACT- 1948

- (a) Case filed against the Insured Person under section 84 of ESI Act .
 - i. The amount paid in excess to the Insured Person is refunded in full by him/her to the Corporation.
 - ii. No interest will be claimed.
 - iii. An undertaking is also given by Insured Person to the effect that he/she would not give wrong declaration in future.
- (b) Cases filed against the employers under section 85 and 85-A of the ESI Act:-

All the prosecution cases filed against the employers under Section 85 and 85-A of the ESI Act up to 28 February, 2010 may be withdrawn subject to the following conditions:-

- i. The employer shall pay both the Employees and Employer's share of contribution in full as per his records, which he shall produce before the assessing officers if the contribution has been assessed on assumed wages.
- ii. In case the relevant records are not available with the employer, he shall produce alternative records such as Income Tax Returns etc., and shall pay the contribution as per that record. However, if the employer is not able to produce any records, he shall pay contribution on the basis of following, in the same order. (i.e. only in cases where records as per option 'a' is not available, down below alternatives in the same order is to be exercised for assessing dues.)

(a) The rate of monthly contribution paid for the month prior to the month from which default started.,

Or

(a) Monthly wages declared in form-01.,

Or

(b) Monthly wages reported by I.I. in the Survey Report.,

Or

(c) Minimum wages applicable in the State/ Region.

iii. The employer pays the interest due for the period of prosecution in full.

iv. No damages shall be levied.

v. The employer shall also furnish an undertaking to the Corporation to the effect that he/she shall be regular in compliance with the provisions of ESI Act in future or else he/she shall forfeit the right to avail of such Amnesty Scheme.

B. SETTELLEMENT OF CASE FILED U/S 75 OF ESI ACT- 1948.

This Scheme shall also include cases filed upto 28.2.2010, in which the employer has disputed the determination or recovery of contribution in the Employees' Insurance Court, u/s 75 of the ESI Act, subject to fulfillment of the following conditions:-

i. The employer shall file a petition before the court where he has raised the dispute and seek the permission of Hon'ble Court for out of settlement of matter under litigation. If court allows, then the matter shall be settled as per this scheme. The employer/IP shall apply for the scheme in the enclosed proforma of Annexure 'A'.

ii. The employer shall pay both the Employees' and Employers share of contribution in full as per their records , which he shall produce before the assessing officers if the contribution has been assessed on assumed wages and he shall comply with other provisions of the Act.

iii. In case the relevant records are not available with the employer, they shall produce alternative records such as Income Tax Record etc., and shall pay the contribution accordingly as per that record.

- iv. However, if the employer is not able to produce any records and the assessment has been made in respect of wages other than the wages shown in Reg. 32 register, he shall pay the contribution which shall not be less than the 30% of the assessed amount of contribution. However, cases where assessment has already been made as per Hqrs instruction No. P.11/13/97/-Ins.-IV dated 26.05.2003 or where the contribution has been assessed on actual basis will not fall under the purview of this scheme.
 - v. The employer pays the interest in full.
 - vi. No damages shall be levied.
 - vii. The employer shall also furnish an undertaking to the Corporation to the effect that he/she shall be regular in compliance in the provisions of ESI Act in future or else he/she shall forfeit the right to avail of such amnesty scheme.
- C. All cases are required to be settled as per this scheme, within 3 months from the date of filing of application by the Principal Employer/Insured Person.**
- D. The Scheme will also be available to those employers/ insured persons who have already availed of the benefits of earlier Amnesty Schemes.**
- E. The New Amnesty Scheme –2010, will be in force from 1st March 2010 till 28th February 2011.**
- F. The Regional Directors/Joint Directors I/c of the Regional /Sub-Regional Office/ Divisional Office are fully empowered to accord sanction for withdrawal/ settlement of cases referred as per Para (A) and (B) on receipt of compliance as per the scheme.**
- G. The details of cases withdrawn against the Insured Persons may be submitted as per Annexure- B on monthly basis. Monthly position of the cases withdrawn against the employer may be submitted at Annexure - C in the similar manner. Consolidated position of cases withdrawn during the period of Amnesty in respect of prosecution cases filed both against Insured Person and Employer may be submitted in 'E' and 'F' respectively. In respect of cases settled against the matter pending in Employees Insurance Court information may be submitted in Annexure - 'D', while consolidated position of such cases may be submitted in Annexure - 'G'.

The Regional Director /Joint Director I/c are requested to give wide publicity to the scheme through advertisement/press release in

leading local newspapers and by holding continuous interaction/meeting with Employer and Trade Union etc.. The contents of the new amnesty scheme 2010 must also be posted on the Regional Web site. The members of Regional Board/Local Committee/Worker Union and Employer Association must also be informed about launch of New Amnesty Scheme 2010.

- H. RD/JD I/c's need not refer any case to Hqrs.
- I. **Keeping in view benefits available to the employer concerned in the current Amnesty Scheme, it is expected that all out efforts as envisaged above shall be made for making the scheme achieve its objective in totality both with settlement of Court cases as well as Revenue income for the Organisation.**
- J. The receipt of this communication may be acknowledged.

**Sd/-
(Arun Kumar)
Director (Rev.)**

Annexure – A

PROFORMA FOR WITHDRAWAL OF COURT CASES

- I. Name and address of the Insured person/employer
- II. Employer Code No./Insurance No.
- III. Date of Institution of case
- IV. Name of the Court/Forum in which case is pending
- V. Section of ESI Act 1948 under which the case was filed
- VI. Present status of the case and the issues involved
- VII. Details of amount involved with period.

- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of long title

In the long title to the Workmen's Compensation Act, 1923 (8 of 1923) (hereinafter referred to as 'the principal Act'), for the word "workmen", the word "employees" shall be substituted.

3. Amendment of preamble

In the principal Act, in the preamble, for the word "workmen", the word "employees" shall be substituted.

4. Amendment of section 1

In section 1 of the principal Act, in sub-section (1), for the word "Workmen's", the word "Employee's" shall be substituted.

5. Substitution of references to certain expressions by certain other expressions

Throughout the principal Act, for the words "workman" and "workmen", wherever they occur, the words "employee" and "employees" shall respectively be substituted, and such other consequential amendments as the rules of grammar may require shall also be made.

6. Amendment of section 2

In section 2 of the principal Act, in sub-section (1),—

- (i) after clause (d), the following clause shall be inserted, namely:—
“(dd) “employee” means a person, who is—
- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or
 - (ii) (a) a master, seaman or other members of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,

- (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.
 - (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or
- (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been” injured shall, where the employee is dead, include a reference to his dependants or any of them;”;
- (ii) clause (n) shall be omitted.

7. Amendment of section 4

In section 4 of the principal Act,—

- (a) in sub-section (1),—
- (i) in clause (a), for the words “eighty thousand rupees”, the words “one lakh and twenty thousand rupees” shall be substituted;
 - (ii) in clause (b), for the words “ninety thousand rupees”, the words “one lakh and forty thousand rupees” shall be substituted;
 - (iii) after clause (b), the following proviso shall be inserted, namely:—

“**Provided** that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).”;

- (iv) after clause (b), the *Explanation II* shall be omitted;
- (b) after sub-section (1A), the following sub-section shall be inserted, namely:—

“(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.”;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.”;

(d) in sub-section (4),—

(A) for the words “two thousand and five hundred rupees”, the words “not less than five thousand rupees” shall be substituted;

(B) the following proviso shall be inserted, namely:—

“**Provided** that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.”.

8. Amendment of section 20

In section 20 of the principal Act, in sub-section (1), after the words “appoint any person”, the words “who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personnel management, human resource development and industrial relations” shall be inserted.

9. Insertion of new section 25A

After section 25 of the principal Act, the following section shall be inserted, namely:—

“25A. *Time limit for disposal of cases relating to compensation* – The Commissioner shall dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.”.

10. Amendment of Schedule II

In Schedule II to the principal Act,—

- (i) for the word, figures, brackets and letter “section 2(1)(n)”, wherever they occur, the word, figures, brackets and letters “section 2(1)(dd)” shall be substituted;
- (ii) in item (i), for the words “employed, otherwise than in a clerical capacity or on a railway”, the words “employed in railways” shall be substituted;
- (iii) in item (ii), the words “otherwise than in a clerical capacity” shall be omitted;
- (iv) in item (iii), the words “wherein or within the precincts whereof twenty or more persons are so employed” shall be omitted;
- (v) in item (v), the words “other than clerical work” shall be omitted;
- (vi) in item (vi),—
 - (a) clause (b) shall be omitted;
 - (b) in clause (c), the words, brackets and letter “or sub-clause (b)” shall be omitted;
- (vii) in item (x), the words “otherwise than in a clerical capacity” shall be omitted;
- (viii) in item (xiv), the words “otherwise than in a clerical capacity” shall be omitted;
- (ix) in item (xvi), the words “in which on any one day of the preceding twelve months more than twenty-five persons have been employed” shall be omitted;
- (x) for item (xviii), the following item shall be substituted, namely:—
“(xviii) employed on any estate which is maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea; or”;
- (xi) in item (xix), the words “otherwise than in a clerical capacity” shall be omitted;
- (xii) in item (xxvi),—
 - (a) in clause (a), the words “and in which on any one day of the preceding twelve months ten or more persons have been so employed” shall be omitted;

- (b) in clause (b), the words “in which on any one day of the preceding twelve months fifty or more persons have been so employed” shall be omitted;
- (xiii) in item (xxx), the words “otherwise than in a clerical capacity” shall be omitted;
- (xiv) in items (xi) and (xli), the words “in which on any one day of the preceding twelve months more than twenty-five persons have been employed” shall be omitted;
- (xv) the *Explanation* occurring after item (xlix), at the end shall be omitted.

31st December, 2009

Payment of Gratuity (Amendment) Act, 2009
(No.47 of 2009)

An Act to further amend the Payment of Gratuity Act, 1972.

Be it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. Short title and commencement

- (1) This Act may be called the Payment of Gratuity (Amendment) Act, 2009.
- (2) It shall be deemed to have come into force on the 3rd day of April, 1997.

2. Amendment of section 2

In the Payment of Gratuity Act, 1972 (39 of 1972) (hereinafter referred to as ‘the principal Act’), in section 2, for clause (e), the following clause shall be substituted, namely:—

‘(e) “employee” means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include

any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;’.

3. Insertion of new section 13-A

After section 13 of the principal Act, the following section shall be inserted, namely:—

“13A. Validation of *payment of gratuity* – Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April, 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment *vide* number S.O. 1080, dated the 3rd day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly:

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the non-payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.”.

The Payment of Gratuity (Amendment) Bill, 2010 Bill No.49 of 2010

A

BILL

Further to amend the Payment of Gratuity Act, 1972

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows :-

1. (1) This Act may be called the Payment of Gratuity (Amendment) Act, 2010

- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In section 4 of the Payment of Gratuity Act, 1972, in sub-section (3), for the words “three lakhs and fifty thousand rupees”, the words “ten lakh rupees” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

1. The Payment of Gratuity Act, 1972 provides for payment of gratuity to the employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.
2. Sub-section (3) of section 4 of the Act provides that the amount of gratuity payable to an employee shall not exceed three lakh and fifty thousand rupees. This amount was fixed with effect from the 24th September, 1997 by amendment to the Payment of Gratuity Act, 1972. There have been representations from trade unions and individuals to remove or enhance the ceiling on the maximum amount of gratuity payable under the Act.
3. Based on the representations and wide consultation with all stakeholders, it is now proposed to enhance the ceiling of three lakh and fifty thousand rupees on the maximum amount of gratuity payable under sub-section (3) of section 4 of the Act to ten lakh rupees.
4. The Bill seeks to achieve the above objectives.

Mallik Arjun Kharge

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