

# The Bihar Shops & Establishments Act, 1953]<sup>1</sup>

[ BIHAR ACT VIII OF 1954 ]

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.

## CHAPTER I

*Preliminary.*

### Comments & Case-law

[Where order of termination has not been passed on ground of misconduct, the Act does not insist on rule of “Audi Alteram Partem” being followed. It will not be fair for courts to import an additional condition not envisaged under the Bihar Shops and Establishments Act and insist that the rule of “Audi Alteram Partem” be extended to cases of order of termination being passed by employer who are not “State” for a reasonable cause and not on ground of misconduct. *Biscomaun Ltd. v. State of Bihar*, 1993 (1) PLJR 333.]

Where Enquiry Report has not been served on the delinquent employee, the whole proceeding gets vitiated and order imposing punishment following the domestic enquiry cannot be sustained. *Union of India v. Md. Ramzan Khan*, AIR 1991 SC 471.

Where appointment of a person had been made purely on an adhoc basis and is contractual in nature, if it comes to an end by efflux of time, the employee concerned can have no right to continue on the post even in a case where he has continued in employment from time to time on adhoc basis for more than one year. *Director v. Smt. Pushpa Srivastava*, AIR 1992 SC 2070.]

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 date 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).

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1. It received the assent of the President on 17.3.1954 and is in force from 15.2.1955 vide notification no. 1/S6-108.55L-1794 L dated 15.2.1955.

### Comments & Case-law

[The provisions of the Bihar Shops and Establishments Act will have no application, if the relationship between the disputing parties is that of a contractor. *Nand Kumar Tewari v. Ali Hassan*, AIR 1966 Pat. 127: 1965 BLJR 702 : (1966) 2 LLJ 124.

The provisions of the Bihar Shops and Establishments Act can be applicable even to establishments registered as a factory under the Bihar Factories Act, 1948. *State of Bihar v. Madhav Prasad*, 1968 BLJR XVI (Summ).

Once it is found that the legal-course was not adopted for dispensing with the services of an employee, it will be quite unjust to deny the employee the relief by way of order for reinstatement. *Indian Tube Company Ltd. v. Pratap Mishra*, 1969 BLJR 589: 1970 (1) LLJ 322.

This Act is a beneficent legislation which must be liberally construed. *Badri Pd. Gupta v. State of Bihar*, 1968 PLJR 246 (FB) : 1986 BRLJ 63 : AIR 1986 Pat. 186.

This Act is not ultravires. *Jugal Kishore Bhadani v. Labour Commissioner*, 1958 BLJR 223 : 1958 PLP 93 : 1958 (2) LLJ 234.

The Shops Act is complimentary to Industrial Disputes Act. It does not exclude the applicability of any other Act. *Delhi Consumer Co-op. Wholesale Store Ltd. v. Secretary (Labour)*, 1983 Lab. IC 1652.

Where there is repugnancy between State Shops and Establishments Act and the (Central) Industrial Disputes Act, the State Act will be excluded to the extent it is repugnant to the Central Act. However, where no repugnancy between the two Acts is found, provisions of both Acts will apply and whatever was more beneficial to the employees would be applicable. *National Engineering Industries Ltd. v. Kishan Bhageria*, 1988 (2) SLJ 23.

Courts should make efforts to reconcile the two laws, in case of repugnancy between State and Central Laws, rather than declare one ultravires merely on the ground of repugnancy. *Raptakos, Brett & Company Ltd. v. Bihar State Agricultural Marketing Board*, 1988 PLJR 830.

Laws imposing taxes can amount to restrictions on trade, commerce and inter-State intercourse, if their imposition hampers the free flow of trade and these are not what can be termed to be compensatory taxes or regulatory measures. *West Bengal Hosiery Association v. State of Bihar*, 1988 PLJR (SC) 96 : 1988 BRLJ 119.

An administrative order which is against rules or provisions of Statute creates no vested right. *S.K. Chakraborty v. Union of India*, 1989 (1) SLJ 106.

The provisions of the Bihar Shops and Establishments Act do not apply to the Bihar State Marketing Board and Market Committees established under the Bihar Agricultural Produce Market Act, 1960, as these are not engaged in any commercial activity as such and their dominant purpose is only to render services of an entirely different kind. Earning of profit or profit earning motive is not even the remote intention for their creation. *Bihar State Marketing Board v. Chief Inspecting Officer*, 1986 BLJR 100.

The Bihar Shops and Establishments Act has been enacted for the benefit of employees working in shops and establishments coming within the ambit of the provisions of the Act. The Court is entitled to "Tear the veil" to see whether there has been any abuse of the provisions of this Act or if any exploitation of labour employed in a shop or an establishment had occurred. *Tata Robins Fraser Co. Ltd. v. Presiding Officer*, 1989 PLJR 1153 : 1989 BLJR 555.

The Bihar Shops and Establishments Act has been enacted not only in terms of Entry Nos. 22, 23 and 24 of List III of the Seventh Schedule of the Constitution but also under Entry No. 26 of List II of the Seventh Schedule. Therefore, the expression “business” for the purposes of this Act has to be read as synonymous to “trade”. An activity which is extra commercial cannot be said to be a “business” in the context of such a Statute. *Beldih Club v. Presiding Officer*, 1991 (1) PLJR 81 : 1990 (2) BLJR 808.

Legislature is competent to give retrospective operation to a statute. Courts, however, will not ascribe retrospectivity to new legislation affecting existing rights of citizens unless by express words or necessary implication it is manifest that the Legislature intended that the new laws be given retrospective effect. *State Bank of India v. State of Bihar*, 1990 (2) PLJR 336.

Subordinate legislation must confine itself to the terms of its delegated or derived authority. *ibid.*

The right of appeal is a creature of statute and there is no reason why the Legislature while granting the right cannot impose conditions for exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory. *Seth Nand Lal v. State of Haryana*, 1980 (Supp) SCC 574 : (1980) 3 SCR 1181.

Where two views are possible, that construction of penal provision which is less stringent should be preferred. *Sachidanand Singh v. Tarewati Mishrain*, AIR 1992 Pat. 164.

The mechanical approach to construction of statutes is altogether out of step with the modern positive approach. The modern approach is to have a positive construction in order to effectuate the object and purpose of the statute. *Administrator Municipal Corporation v. D. Dahankar*, AIR 1992 SC 1846.

**Alternative remedy** — Where adequate remedy can be read in the statute, resort to writ remedy under Articles 226 and 227 of the Constitution must be discouraged. *Shyam Kishore v. Municipal Corporation*, (1993) 1 SCC 22 : AIR 1992 SC 2279.

Under the General Clauses Act, singular includes plural, that is the term “act” includes “acts”. *State of Punjab v. Ram Singh*, AIR 1992 SC 2188.]

Enforcement of the provisions of this Act in the State of Bihar :

Municipal limits of :

- <sup>1</sup>[(a) Patna, Gaya, Ranchi, Jamshedpur, Bhagalpur, Muzaffarpur.
- <sup>2</sup>[(b) Jugsalai N.A.C., Doranda N.A.C., Dinapur Nizamat Municipality, Khagaul.
- <sup>3</sup>[(c) Rajgir N.A.C., Tekari, Jagdishpur, Dumraon, Revelganj, Raxaul N.A.C., Lalganj, Dumra N.A.C., Rosera, Jainagar N.A.C., Shiekhpora N.A.C., Barhaiya N.A.C., Banka N.A.C., Sultanganj N.A.C., Madhupur, Jasidih N.A.C., Mihijam N.A.C., Chatra, Garhwa N.A.C., Seraikella, Kharasawan N.A.C., Murliganj N.A.C., Supaul N.A.C.

1. Vide notifn. no. I/S6-108/55L - 1794 dated 15.2.1955 (w.e.f. 15.2.1955).

2. Vide notifn. no. I/S6-108/55L - 7882 dated 26.5.1955 (w.e.f. 1.6.1955).

3. Vide notifn. no. II/S6-104/60L - 2032 dated 23.2.1960.

- <sup>1</sup>[(d) Arrah, Chapra, Darbhanga, Motihari, Monghyr, Hazaribagh, Purnea, Chaibasa.
- <sup>2</sup>[(e) Barh, Biharshariff, Dinapur Cantonment Board, Mokameh N.A.C., Daudnagar, Nawada N.A.C., Sasaram, Buxar, Bhabua, Dehri, Dalmia N.A.C., Siwan, Gopalganj N.A.C., Bettiah, Nautanha N.A.C., Hajipur, Sitamarhi, Samastipur, Madhubani, Colgong, Naugachia N.A.C., Jamalpur, Lakhisarai N.A.C., Begusarai N.A.C., Khagaria N.A.C., Dumka, Deoghar, Sahebganj, Katihar, Kishanganj, Forbesganj, Saharsa N.A.C., Lohardaga, Giridih, Jhumritelaiya N.A.C., Daltonganj, Chiakradharpur, Dhanbad, Sindri N.A.C., Jharia Mines Board of Health, Rajgir N.A.C., Tekari, Jagdishpur, Dumraon, Revelganj, Raxaul N.A.C., Sultanganj N.A.C., Lalganj, Dumra N.A.C., Rosera, Jainagar N.A.C., Sheikhpura N.A.C., Barhaiya N.A.C., Madhupur, Jasidih N.A.C., Mihijam N.A.C., Chatra, Garhwa N.A.C., Saraikella N.A.C., Kharsawan N.A.C., Murliganj N.A.C., Supaul N.A.C.,
- <sup>3</sup>[(f) Gumla N.A.C., Pakur N.A.C., Madhepura N.A.C., Mirganj N.A.C., Aurangabad N.A.C.,
- <sup>4</sup>[(g) Bairagania Market, Mahanar Market, Jahanabad Market, Ramgarh Cantt. Market.
- <sup>5</sup>[(h) Dalsinghsarai N.A.C.
- <sup>6</sup>[(i) Jamshedpur N.A.C.
- <sup>7</sup>[(j) Warsaliganj, Nokha, Sahpur Patori, Mahuddinagar, Rajnagar, Sonapur, Marhowrah, Motipur, Chanpatia, Narkatiaganj, Bermo, Jamtara, Barauni, Jharia, Gogri, Kharagpur, Asarganj, Jogbani, Banmankhi, Behariganj.
- <sup>8</sup>[(k) Husainabad N.A.C., Rajmahal N.A.C., Adityapur N.A.C., Jammui N.A.C., Araria N.A.C., Nirmali N.A.C.,
- <sup>9</sup>[(l) Maharajganj, Mairwa, Pupri, Fatuah, Bihta, Masaurhi, Hilsa, Hasua, Nassriganj, Bikramganj, Piro, Behea, Jhanjharpur, Chas.
- <sup>10</sup>[(m) Jahanabad N.A.C.
- <sup>11</sup>[(n) Barauli, Dighwara, Sahebganj, Barachakia,
- <sup>12</sup>[(o) Fatuah N.A.C., Bikramganj N.A.C., Mairwa N.A.C., Jamui, Araria, Mahanar N.A.C., Aurangabad, Chanpatia N.A.C., Jogbani N.A.C., Bihariganj N.A.C., Jahanabad, Mokameh, Dehri, Dalmianagar, Lakhisarai, Begusarai, Khagaria, Saharsa, Supaul, Banka, Rafiganj N.A.C., Godda N.A.C., Simdega N.A.C.,
- <sup>13</sup>[(p) Paliganj Bazar, Vikram Bazar, Khusrupur Bazar, Parwalpur Bazar, Fatehpur Bazar, Barbigha Bazar, Barharwa Bazar, Bahadurganj Bazar, Khunti Bazar,

1. Vide notifi. no. I/S6-106/57 L-3644 dated 28.5.1957 (w.e.f. 1.4.1957).
2. Vide notifi. no. II/S6-1036-58 L-10883 dated 25.6.1958 (w.e.f. 15.7.1958).
3. Vide notifi. no. II/S6-206/64 L&E-1202 dated 3.2.1964 (w.e.f. 1.3.1964)
4. Vide notifi. no. II/S6-206/64 L&E-1201 dated 3.2.1964 (w.e.f. 1.3.1964)
5. Vide notifi. no. II/S6-206/64 L&E-8411 dated 8.9.1964 (w.e.f. 15.9.1964)
6. Vide notifi. no. II/S6-1070/64 L&E-1149 dated 18.12.1964 (w.e.f. 15.1.1964)
7. Vide notifi. no. II/S6-204/64 L&E-5556 dated 7.6.1966 (w.e.f. 1.8.1966)
8. Vide notifi. no. II/S6-204/66 L&E-5557 dated 7.6.1966 (w.e.f. 1.8.1964)
9. Vide notifi. no. II/S6-2014/67 L&E-9957 dated 11.8.1967 (w.e.f. 1.11.1967)
10. Vide notifi. no. II/S6-2014/67 L&E-9990 dt. 11-8-1967 ( w.e.f. 1-11-167)
11. Vide notifi. no. II/S6-207/68 L&E-1182(1) dated 2-8- 1968 (w.e.f. 1-9-1968)
12. Vide notifi. no. II/S6-1027/73 L&E-903(2) dated 4-4-1973 ( w.e.f. 1.5-1973)
13. Vide notifi. no. II/S6-1030/73 L&E-4753(2) dated 27-8-1973 (w.e.f. 15-8-1973)

Sherghati Bazar, Dhanwar Bazar, Garkha Bazar, Ekma Bazar, Masrakh Bazar, Ghorasahan Bazar, Madhepur Bazar, Chhoti Balia, Domchanchi, Sakri Bazar, Pandaul Bazar, Bokaro Steel City, Hatia, Barauni].

<sup>1</sup>[(q) Saria Bazar (Giridih).

### NOTIFICATIONS

**S.O. 69, dated the 9th January, 1978.**—In exercise of the powers conferred by sub-section (3) of section 1 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954) and in partial modification of the notifications mentioned in column 2 of the Schedule hereto annexed, the Governor of Bihar is pleased to direct that all the provisions of the said Act will be deemed to have come into force in the areas mentioned in column 5 of the annexed Schedule from the same dates from which they were brought into force in the areas mentioned in column 4 of the Schedule by virtue of the notifications specified in column 2 against them.

Sl. No.	Notification No.	Date of Enforcement	Old Area	New Area
1	2	3	4	5
1.	I/S6-108/55L-7882, dated 26th May, 1995.	1-6-1995	Jugsalai Notified Area, Doranda Notified Area.	Jugsalai Municipality (Dist. Singhbhum), Doranda Municipality (Dist. Ranchi).
2.	II/S6-1036/58L-10883, dated 25th June, 1958.	15-7-1958	Nawada Notified Area, Gopalganj Notified Area. Jhumritelaiya Notified Area.	Nawada Municipality (Dist. Nawada), Goplaganj Municipality (Dist. Gopalganj), Jhumritelaiya Municipality (Dist. Hazaribagh).
3.	II/S6-104/60L-2032, dated 23rd Feb, 1960.	1-6-1960	Raxaul Notified Area, Sheikhpura Notified Area, Barhaiya Notified Area.	Raxaul Municipality (East Champaran District), Sheikhpura Municipality (Dist. Monghyr), Barhaiya Municipality (Dist. Monghyr).
4.	II/S6-206/64L&E-1202, dated 3rd Feb, 1964.	1-3-1964	Gumla Notified Area, Pakur Notified Area, Madhepura Notified Area.	Gumla Municipality (Dist. Ranchi), Pakur Municipality (Dist. Santhal Parganas), Madhepura Municipality (Dist. Saharsa).

1. Vide S.O. 691 dated 7.4.1979 ( w.e.f. 1.1.1979).

1	2	3	4	5
5.	II/S6-204/66 L&E-5555, dated 7th June, 1966.	1-8-1966	Warasaliganj.  Narkatiaganj Market.  Jhajha.  Banmankhi.	Warsaliganj Notified Area Committee (Dist. Nawada).  Narkatiaganj Notified Area Committee (Dist. West Champanan).  Jhajha Notified Area Committee (Dist. Monghyr).  Banmankhi Notified Area Committee (Dist. Purnea).
6.	II/S6-2014/67 L&E-9987, dated 11th August, 1967.	1-11-1967	Hilsa Market.  Piro Market.  Behea Market.	Hilsa Notified Area Committee ( Dist. Nalanda).  Piro Notified Area Committee (Dist. Bhojpur).  Behea Notified Area Committee (Dist. Bhojpur).
7.	II/S6-207/68 L&E-1182 dated 2nd August, 1968.	1.9.1968	Barauli Market.	Barauli Notified Area Committee (Dist. Gopalganj).
8.	II/S6-1030/73 L&E-1758 dated 27th June, 1973.	15-8-1973	Khusrupur Market.  Barbigaha Market.  Bahadurganj Market.  Khunti Market.  Sherghati Market.	Khusrupur Notified Area Committee (Dist. Patna).  Barbigaha Notified Area Committee (Dist. Monghyr).  Bahadurganj Notified Area Committee (Dist. Purnea).  Khunti Notified Area Committee (Dist. Ranchi).  Sherghati Notified Area Committee (Dist. Gaya).

**S.O. 691, dated 7th April, 1979.**— In exercise of the powers conferred by sub-section (3) of Section 1 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), the Governor of Bihar is pleased to appoint the 1st of January, 1979 as the date on which all the provisions of the said Act shall come into force in the place as mentioned in column 2 of the Schedule hereto annexed.

**SCHEDULE**

Sl. No.	Place	Revenue Thana	Pargana	District
1	2	3	4	5
1.	Saria Bazar	44	Rampur	Giridih

**S.O. 1725, dated 22nd December, 1979.**— In exercise of the powers conferred by sub-section (3) of Section 1 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954), the Governor of Bihar is pleased to appoint the 1st January, 1980 as the date on which the provisions of the said Act shall come into force in the places as mentioned in column 2 of the Schedule hereto annexed.

**SCHEDULE**

Sl. No.	Place	Revenue Village/ Panchayat Thana No.	Boundary	District
1	2	3	4	5
1.	Thakurganj Bazar	Gothra-16 Kanakpur-17	North - L.R.P. Road Purnea. Chouhadi Gothra. South - Boundary of Village Kanakpur. East - Burhi Dangi River, village Kanakpur. West - L.R.P. Road, Village Gothra.	Purnea
2.	Tribeniganj Bazar	Latona-273 Thalha Garia-269	North - Kathakholwa South - Mora East - Duparakha West - Babhangama.	Saharsa
3.	Dhaka Bazar	Dhaka Chainpur Panchayat. Dhaka Ramchandra Panchayat.	North - Pipra Wazid. South - Dhaka Lahan 106. East - Barharwa, Siwan. West - Sitalpatti.	East Champaran

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**The 18th September 1985**

**S.O. 939, dated the 30th September, 1985.**— In exercise of the powers conferred by sub-section (3) of section 1 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954) and in partial modification of notification no. II/S6-1036/58-10883, dated the 25th

June 1958, the Governor of Bihar is pleased to appoint the date on which the name of the Jharia Mines Board of Health was changed to Coal Mining Area Development Authority, Dhanbad to be the date on which all the provisions of the said Act shall come into force.

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**The 13th April 1985**

**S.O. 1154, dated the 7th November, 1985.**—In exercise of the powers conferred by sub-section (3) of section 1 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954) and in continuation of Labour Department, Bihar notification no. I/S6-108/55L-1794, dated the 5th February, 1955, so far it relates to Ranchi, the Governor of Bihar is pleased to appoint the date of issue of this notification as the date on/ from which all the provisions of the said Act shall come into force in all such areas of Ranchi Municipal Corporation which fall beyond the areas of the Ranchi Municipality.

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**The 12th April 1985**

**S.O. 1156, dated the 7th November, 1985.**— In exercise of the powers conferred by sub-section (3) of section 1 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954) and in partial modification of the notifications mentioned in column 1 of the Schedule hereto annexed relating to the respective area noted in column 2 of the said Schedule, the Governor of Bihar is pleased to appoint the date, on which the municipal corporations mentioned in column 2 of the Schedule came into existence to be the date on/ from which all the provisions of the said Act shall be deemed to have come into force in all those areas.

**SCHEDULE**

Column 1.	Column 2.
No. L/S6-108/55-1974, dated the 5th February, 1956. And I/S6-106/57L-3644, dated the 28th February, 1957.	1. Bhagalpur Municipal Corporation. 2. Gaya Municipal Corporation. 3. Darbhanga Municipal Corporation.

**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;
- (1A) “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;
- <sup>1</sup>[(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 employer’s family. It also includes person employed in a factory who are not worker within the meaning

1. Subs. by Act 2 of 1975.



- 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;
- <sup>1</sup>[(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, brother’s son, sister’s son, daughter’s son and son’s 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;
- (10A) “Opened” means opened for the service of any customer or for any business connected with the establishment;
- (10B) “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 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;
- <sup>1</sup>(21A) “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.

### Comments & Case-Law

#### Sec. 2 (4)

[Mode of payment cannot decide the issue of relationship of master and servant. The mere fact that a person was paid on piece rate will not take him out of the definition of a “person employed” if there are other circumstances which indicate of his regular employment. *Whitway Dresses v. Addl. Labour Court*, 1988 (2) LLJ 345.

The person claiming to be an employee must be one wholly or principally employed in and in connection with any establishment. *Canara Bank v. Appellate Authority*, 1981 Lab. IC 1043.

The following were held employees —

Sales Officers of an industrial undertaking. *Avery India Ltd. v. Commissioner for Workmen Compensation*, 6 FJR 432.

Field Workers employed for guiding, supervising and controlling the growth (or production) and supply. *State of U.P. v. M.P. Singh*, 1960 (1) LLJ 270.

Accountant dealing with cash. *Motipur Sugar Factory v. Rikhdeo Pd.*, CWJC No. 629 of 1971 decided on 14-4-1975.

A goldsmith appointed by a Bank as an appraiser, though may not be called an employee in the literal meaning of the term but is entitled to the benefits of the Act. *Canara Bank vs. Appellate Authority*. 1978 (1) LLJ 324.

Factory workers attached to such parts of establishment which comes under this Act, and not guided by Factories Act. *Motipur Sugar Factory P Ltd. vs. Sri Rikhdeo Prasad*, 1969 PLJR 270; *Rohtas Industries Ltd. vs. Ram Lakhhan Singh*, 1978 BBCJ 498C.

But the following are not employees —

Person employed as canvasser. *Avery India Ltd. vs. Addl. Commissioner for Workmen Compensation*, 1978 (1) LLJ 92; *M/s. United Wireropes Ltd. vs. Addl. Commissioner for Workmen Compensation*. 1976 (1) LLJ 226.

Person employed as a domestic servant at officer’s residence. *Ganesh Flour Mills Co. Ltd vs. Labour Court*, 1971 (1) LLJ 287 : 1971 Lab. IC 225.

Working journalists. *Samachar Bharti vs. Kedar Nath*, 43 FJR 30.

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1. Ins. by Act 12 of 1961.

The term ‘employee’ does not include a person holds a civil post under the State or Central Government. Such a person is a person serving or employed under the State and he comes under the administrative control of the State. *Rohtas Industries vs. Ram Lakhan Singh*, AIR 1978 SC 849 : (1978) 2 SCC 140. See also *Dr. S. L. Agarwal vs. General Manager, Hindustan Steel Ltd.*, AIR 1970 SC 1150.

Mere assignment of duty to check and report the faults of other workmen, will not make the employee concerned a supervisor or manager. *National Engineering Industries Ltd. vs. Kishan Bhageria*, 1988 (2) SLJ 23.

Members of a co-operative society formed with the principle object of providing employment to its members, are not employees even if remuneration is paid to them. *E. S. I. Corpn. vs. Laxmi Power Loom Weavers Co-opt. & Sales Society*, 1986 Lab. IC 370.

On a plain reading of the provisions of section 2 (4) it is clear that even persons employed in factories are intended to be included within the meaning of the definition of the term “employee” in the Bihar Act, by virtue of the inclusive clause contained therein. However, there are two exceptions, namely, (a) those persons who are not “Workers” within the meaning of Factories Act; and (b) those persons who are not working in managerial capacity. *M/s. I.T.C. Ltd. vs. State of Bihar*, 1996 (1) PLJR 297.

‘Causal worker’ not employed but engaged for specific item of work are not employees. *Regional Director, E.S.I. Corpn. vs. P.R. Narhari Rao*, 1986 Lab. IC 1981.

—Section 2(4)—on a plain reading it would reveal that even persons employed in a factory by the inclusive clause in the second sentence of the definition are employees within the meaning of the Act—but it has to be noticed that two exceptions have been carried out from the category of such persons, namely,

- (i) who are not workers within the meaning of Factories Act; such workers do not come within the exclusive definition of the term “employees”; and –
- (ii) who are not working in managerial capacity. *M/s. I.T.C. Ltd. vs. State of Bihar*, 1996 (I) PLJR 297.

—Section 2(4) read with Factories Act, 1948, Section 2 (1)—reading both the provisions together, there would be no doubt that the “worker” as defined in the Factories Act, should be a person employed in the premises or precincts of the factory and it is not necessary that such worker must be directly connected with the manufacturing process, but those who are off on any other work connected with or his work is incidental to the manufacturing process in a factory are included. *M/s. I.T.C. Ltd. vs. State of Bihar*, 1996 (I) PLJR 297.

—Sections 2(4) and 6 read with Section 2(1) and (m) of Factories Act, 1948—since the workers of the cigarette factory engaged in its Printing Press are not employed as covered under Section 2(4) and 6 of the Bihar Shops and Establishments Act, it is not required to be registered under the provisions of Rule 3 of the Bihar Shops and Establishments Rules. *M/s. I.T.C. Ltd. vs. State of Bihar*, 1996 (I) PLJR 297.

### Sec. 2 (5)

[The phrase “in the immediate charge of the general management or control of such establishment” qualify and control and the three expressions preceding therein, i.e. *Manager, agent or any person*. *V. Poddar vs. State of Bihar*, 1978 BBCJ 498.

Manager of a Bank is also an employer. *G. S. Joshi vs. State of Mysore*, 40 FJR 29.

Owner of a restaurant at railway station is an employer. *State of Bihar vs. J. P Singh*, 1964 BRLJ 1 : 1963 BLJR 782.

The manager of a factory which is under the ultimate control of a corporation though may be in charge of general management and disbursement, is not an employer. *Bihar State Leather Ind. Dev. Corpn. vs. Chiraguddin Ahmad*, 1981 BBCJ 111.

A person who does not own or exercise control over the affairs of an establishment, cannot be said to be the 'Manager' and therefore is not liable to be prosecuted, in absence of specific averment that he was the person in immediate charge of management. *Ravindra Nath Dutta vs. D. K. Barmun*, AIR 1969 Pat. 371 : 1969 BLJR 510.

Where a worker or group of workers are engaged to produce goods or services and these goods or services are for the business of another person, that person is the 'employer'. The employer is required only to have control over the employees' skill and continued employment. *Hussain Bhai vs. Alath Factory Tez Hilali Union*, AIR 1978 SC 1410: (1978)4 SCC 257.

—Sections 2(5) and 26(2)—complainant employed as Asstt. Administrative Officer on probation period which was extended twice and he was allowed to continue even after last extension and thereafter his service terminated with one month's pay for the notice—the Tribunal should have applied proper test before holding that his complaint before it was maintainable—his appointment letter shows that he was appointed in the organisation which term includes, both factory and head office—he was mostly employed in the factory and the nature of his job was Supervisory—mere extensions of his service and continuing him beyond last extension did not amount to his automatic confirmation and therefore, terms of contract of appointment still applied—however, a person on probation cannot be removed before the expiry of the period of probation except in cases of unsatisfactory service or misconduct—moreover, the High Court cannot interfere with the findings of Tribunal unless it is clear that the findings under review are perverse—Tribunal having awarded only compensation and not his reinstatement, the High Court would not interfere. *Bihar Air Products Limited vs. Presiding Officer*, 1999(1) PLJR 883.]

### Sec. 2 (6)

[To bring an establishment within the ambit of this Act it has to be seen whether the concern undertakes habitually the production and distribution of goods or renders any services with the help of employees. As such the 'commercial nature' of the establishment is the essential requirement for bringing the establishment within the meaning of Sec. 2 (6) of this Act.

The State Government's power to issue notification including some other establishments is confined to something which is similar to or analogous to what precedes the word "such". The word used is "such" and not "any". Therefore, had the power been to declare something else or something dissimilar to what is mentioned earlier, the word "any" would have been there and not the word "such". *State of Maharastra vs. Smt. Dhanlaxmi V. Meisheri*, 1981 Lab. IC 907.

For purpose of classifying a premises as an establishment under the Act, the dominant factor is the presence or absence of the element of business or trade. *Bihar State Marketing Board vs. Chief Inspecting Officer*, 1985 PLJR (NOC) 50 : 1985 BRLJ 154: 1985 Lab. IC 1820.

Municipal Board is an establishment as it engages labour and effort of persons. *Municipal Board vs. Addl. Labour Commissioner*, 1986 Lab. IC 1528.

The following are establishments—

A club, whether it makes a profit or not. *United Club vs. Jt. Commissioner*, 1986 PLJR (NOC) 59.

A financial institution rendering service to its customers by advancing moneys to purchase vehicles on hire-purchase basis. *M/s. Sundaram Finance Ltd vs. State of Tamil Nadu*, 1981 Lab. IC (NOC) 108.

Restaurant situated in railway premises. *State of Bihar vs. J. P Singh*, 1964 BRLJ I : 1963 BLJR 782.

Registered office of India Chamber of Commerce. *Chief Commissioner vs. Federation of India Chamber of Commerce and Industry*, AIR 1974 SC 1527: 1974 (2) LLJ 271 : 1974 Lab. IC 1007.

A photographer's Studio. *State of U.P. v. Manmohan Nautyal*, 42 FJR 252.

Banks, *Canara Bank v. Appellate Authority*, 1978 (1) LLJ 324; *South India Bank Ltd. v. T D. Pichuthayappan*, 1954 (1) LLJ 289; *Commercial Bank Ltd. v. Authority under Payment of Wages Act*, 1958 (2) LLJ 31; *Canara Bank v. Appellate Authority*, 1981 Lab. IC 1034.

Bihar State Electricity Board. *Electrical Executive Engineer v. S.P. Pankaj*, 1966 BLJR 120 : 1967 (1) LLJ 602. See also *Madras State Electricity Board v. Commissioner*, 1961 (1) LLJ 297.

Canteens run by employer for employees but also thrown open to public. *Nagpur Corpn. (Civil) Canteen v. P.P. Kulkarni*, 1975 Lab. IC 1382.

Where the doctor runs several services in the premises with the help of others and such services can be had by any one though he is not the patient, on payment of charges, it would not be rendering professional service but would be in the nature of running a business or trade. Consequently, such an establishment would come within the purview of a business or trade for profit. Therefore, where a physician apart from rendering medical advice or treatment to his patients admittedly provided three other services viz. (1) a Pathological Laboratory, (ii) X-ray facilities and (iii) arrangements for indoor patients; and all these services were available also to persons who were not his patients and were the patients of other doctors, it is apparent that the place was run and operated upon by the physician not merely as a doctor's clinic. In absence of any averment that these services were being rendered as a charitable institution or on "no profit-no loss basis", the establishment would be deemed to be of commercial nature covered under the Act. *Vinai Kumar Gupta v. Asstt. Labour Commissioner*, 1981 Lab. IC 1433.

But the following are not establishments :—

Transport Undertakings covered by Motor Transport Workers Act. *Bihar State Road Transport Corpn. v. Orang Bahadur*, AIR 1968 Pat. 200; *Amarnath Singh v. Presiding Officer*, 1969 BLJR 1078 : 1969 PLJR 466 : *S.K. Agarawal v. Asstt. Inspector of Labour*, 42 FJR 332; *Narayan Sharaf v. S.S.P. Sinha*, 1970 Lab. IC 1651; *Cheram Transport Ltd. v. Addl. Commr.*, 1979 (1) LLJ 233.

Office of a chartered Architect. *L.M. Chitale & Sons. v. Commissioner of Labour*, 1963 (2) LLJ 747.

Hostel attached to educational institution working on no profit no loss basis. *National Institute of Engineering Society v. Labour Inspector*, 1975 Lab. IC 1134.

Establishment of a Contractor. *K.P. Poulouse v. Asstt. Labour Officer*, 47 FIR 153.

Office of an Advocate. *Sakharam Narayan Kherdekar v. City of Nagpur Corpn.*, AIR 1964 Bom. 200: 1964 (1) LLJ 156, see also *V. Sasidharan v. M/s Peter & Karunakar*, AIR 1948 SC 1700 : 1948 Lab. IC 1587.

If the nature of work is such that it cannot be operated from a permanent location. *Radha Kant Singh v. State of Bihar*, 1977 BBCJ 351.

Private dispensary of a Doctor. *Dr. Debendra M. Suri v. State of Gujrat*, AIR 1969 SC 63 : 1969 BRLJ 67. See also *Vinai Kumar Gupta v. Asstt. Labour Commissioner*, 1981 Lab. IC 1433.

A maternity home established and run by a doctor. *State of Maharashtra v. Smt. Dhanlaxmi v. Meisheri*, 1981 Lab. IC 907.

Tee Depot. *Ramchandra v. State of Punjab*, AIR 1963 Pun. 148 : 1963 (1) LLJ 620.

Establishment of a Chartered Accountant. *Merchant N. E. v. Bombay Municipal Corpn.*, AIR 1968 Bom. 283: 1968 (1) LLJ 187.

Stall and space of hawkers. *Abdul Ghani Abdul Shakoor v. State*, 1961 (1) LLJ 696.

Canteens run by employers. *Hotel Mazdoor Sabha v. Alvares*, AIR 1965 Bom. 13 : 1964 (2) LLJ 1.

Godown (unless specially notified by the State Govt.) *Lipton India Ltd. v. Secy. to Govt. A.P.*, 1978 (1) LLJ 247; *State of Mysore v. Brooke Bond India (P) Ltd.*, 1968 (2) LLJ 309.

Bihar State Village and Khadi Industries Board. *Member Security. B.S. K. & V. I. B. v. D. Prasad*, 1966 BLJR 381.

Establishment of the treatment or care of infirm, sick, destitute or the mentally unfit. *Jagdish Vastralay v. State of Bihar*, AIR 1964 Pat. 180: 1964 BLJR 672.

The existence of any 'employee' on an establishment is not a condition precedent to the application of the Act to the said establishment. *Corporation of the City of Nagpur v. Dattatraya Balkrishna Naniwadekar*, 1979 Lab. IC 337.

The words "to which the Act applies" do not mean "to which the provisions of this Act could apply". These words are included in the sub-section because even in respect of certain shops, or commercial establishments and other type of establishments properly coming within the ambit of the Act, the provisions of the Act may not apply because of the exemptions granted by the State Government. *ibid.*

The definition of the term "employer" is without any reference to "employee". A person who owns an establishment is an "employer" though there may not be any employee at all in the establishment. The same would be the position where the workers working in the establishment are the members of the employer's family. *ibid.*

A business being run for gain or profit on a regular and systematic way is a "commercial establishment". Therefore a social organisation giving on hire for marriage and other ceremonies, premises, utensils, pandals and other articles, on a regular and systematic manner is a "commercial establishment". *ibid.*

The commercial activity of a "Club" must mean dealing by the "Club" with non-member or outsiders. However dealing with its own members or the guests of the members on the part of any "club" will not amount to commercial activity unless such dealings are held to be a camouflage. *Beldih Club v. Presiding Officer*, 1991 (1) PLJR 81 : 1990 (2) BLJR 808.

The word “Industry” as defined in section 2 (j) of the Industrial Disputes Act, 1947 is of wider amplitude than the word “establishment” defined under section 2 (6) of the Bihar Shops and Establishments Act. A “club” which does not carry out any commercial activity is not an “establishment”. *ibid.*

The use of the words “means” and “includes” in respect of any definition clause makes the definition exhaustive. *ibid.*]

### Sec 2 (8)

[Sundays and other paid holidays should also be taken into account for the purpose of reckoning the total number of days on which the employee could be said to have actually worked. *Workmen of A.E.I.B. Corpn. v. Mgt. of A.E.I.B. Corpn.*, 1986 Lab. IC 98 (SC)]

### Sec. 2 (16)

[To constitute a concern a ‘shop’ within the meaning of this Act, it has to be ascertained whether the concern sells any goods or renders any services, AIR 1955 SC 62.

Element of premises must be satisfied. *Babubhai Prabhudas Modi v. Adelajikaluji*, 1970 LLJ 225.

Premises used for earning profits or gains – a shop. *Khan Mohd. v. State of A.P.*, 1973 Lab. IC 239.]

**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.

### Comments & Case-law

[The proviso to section (2) does not confer power on the State Government to issue a notification amending the “Schedule” appended to the Act, with retrospective effect. The word “deemed” in the aforesaid cannot be construed so as to confer such power on the State Government, which is only a “subordinate authority”. *State Bank of India v. State of Bihar*, 1990 (2) PLJR 336.

The provisions of sub-section (2) of section 4 (as amended) contain a non-obstante clause and by virtue of the deeming provision contained therein have come into effect immediately on enactment and are to affect all proceedings pending on 13.8.1985. In view of this as a result of Notification No. 10/86, issued by the State Government, from the date of publication of the Notifications the provisions of this Act will not be applicable to all establishments and branches of Public Sector Banks situated in the State of Bihar. *State Bank of India v. State of Bihar*, 1995 (1) PLJR 81.

Section 4 of the Act deals with the establishments which are exempted from any one or more of the provisions of the Act. *Popular Nursing House v. State of Bihar*, 1995 (1) PLJR 750]

**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.

#### Comments & Case-law

[The onus of proving lies on the employee where he claims to be entitled to better benefits than those given in this Act and where he succeeds in proving it, the determination of benefits will not be done in accordance with the provisions of the Act but in accordance with such contract, custom or usage as may be proved by the employee. *Ram Narayan Mishra v. D. Das & Bros.*, 1980 Lab. IC 75.

The power to suspend an employee is not an implied term in an ordinary contract of employment between the “master and servant”. Such a power can only be the creature of a statute governing the contract or of an express term in the contract of employment itself. No implied term can be inferred authorising the employer to suspend the workman who is governed by the provisions of the Act during the pendency of a criminal case against him. *Inter-State Transport Agency v. Frabhat Kumar Sinha*, AIR 1966 Pat. 230.]

## CHAPTER II Establishments

**<sup>1</sup>[6. Registration of establishments and renewal thereof.**—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.]

#### Comments & Case-law

[In view of the fact that workers of the cigarette factory engaged in its Printing Press are not shown to be “employees” within the meaning of section 2 (4) and 6 of the Bihar Shops and Establishments Act, it has to be held that the Firm is not required to be registered under the provisions of Rule 3 of Bihar Shops and Establishments Rules, 1955. *M/s. I.T.C. Ltd. v. State of Bihar*, 1996 (1) PLJR 297.]

**7. Opening and closing hours of establishments.**— <sup>1</sup>(1) No establishment shall on any day be opened earlier than <sup>2</sup>[8 A.M. and closed later than <sup>2</sup>[10 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.

[For notification regarding changing opening & closing times, see NOTIFICATION in this book.]

1. Subs. by Act 2 of 1975.

2. Subs. for the figures “8 & 9” respectively by Act 25 of 2007.



### Comments & Case-law

[Restrictions imposing opening and closing hours are not unreasonable. Art. 32 of the Constitution is not attracted. *Ramdhan Das v. State of Punjab*, AIR 1961 SC 1559: 1961 (2) LLJ 102.

“Open” means opened for carrying out the purposes for which the establishment exists. *State v. S. R. Choudhary*, 1961 (1) LLJ 673.

“Closed” means closed for customer’s service. *D. V Pathak v. Ramchandra*, 1961 (2) LLJ 57.

It is essential to establish that the customer’s service was affected even after the prescribed hours to constitute an offence. Mere opening of the doors does not constitute an offence. *Puttiah v. State of Mysore*, 1961 (2) LLJ 589.

But a restaurant which served refreshment through window to persons standing outside after prescribed hours, held, no offence was committed. *Redbridge London Borough Council v. Wests Illford Ltd.*, 1958 Lab. IC 993 (Q.B.)

The police has not been delegated power under this Act to inspect and institute a case. Accordingly, police official (unless specifically authorised under this Act) cannot enforce the closing hours of the shop or institute a case for such a violation. *M/s Benedicts Laboratory v. State of Bihar*, 1984 BRLJ 38 : 1984 PLJR 206.]

**<sup>1</sup>[8. Prohibition of sales before opening and after closing hours.** — 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.]

**<sup>1</sup>[9. Hours of work in establishments.**— 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 overtime 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. ]

**<sup>1</sup>[10. Interval for rest.**—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.]

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1. Subs. 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;
- <sup>1</sup>[(iii) in the case of any other employee, twelve hours in any day. ]

**12. Weekly holidays in establishments.**— <sup>2</sup>[xxx]

(4) Every employee in an establishment shall be allowed in each week holiday of one whole day :

<sup>2</sup>[xxx]

(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.)

#### Comments & Case-law

[The cognizance of the offence u/s 12 (1) can be taken only if the complaint is filed within six months on the date on which the offence has been committed. If period of six months expires on a holiday, the complaint must be filed on the re-opening day. *Sitaram. v. State of Bihar*, 1977 BBCJ 694.

Opening of shop for work on a closed day is an offence. *Khan Mohd. v. State of A.P.*, 1973 Lab. IC 239. See also 1961 (2) LLJ 67 : 1961 (2) LLJ 57.

The restriction imposed is not unreasonable. *Shambhu Pd. v. State of U. P.*, 1960 (1) LLJ 431. See also 1959 (2) LLJ 257.]

<sup>3</sup>[**12A. Other holidays.**—Every employee in an establishment shall be allowed—

- (a) a holiday on full pay on the Independence Day, the Republic Day and Mahatma Gandhi's 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 NOTIFICATION at the end of this Act.]

<sup>4</sup>[**12B. Every employee to be furnished with service card.**— Every employee in an establishment shall be furnished by his employer with a service card in such form as may be prescribed.

1. Ins. by Act 2 of 1975.

2. Sub-Sections (1), (2), (3) and proviso of sub-section (4) of Section 12 repealed by Act 25 of 2007.

3. Ins. by Act 2 of 1975.

4. Renumbered by Act 2 of 1975.

### CHAPTER III

#### Employment of children and young persons

**13. No child to work in an establishment.**—No child below the age of <sup>1</sup>[fourteen years shall be required or allowed to work as an employee in any establishment to which this Act applies.

<sup>2</sup>**14. Young person and women.**—No young person or women shall be required or allowed to work whether as an employee or otherwise in any establishment to which this Act applies before 8 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 <sup>3</sup>[xxx] young person shall be allowed to work as an employee in any establishment to which this Act applies for more than —
  - (i) <sup>4</sup>[xxx]
  - (ii) seven hours in any day or forty-two hours in any week in the case of a young person;
- (b) no <sup>3</sup>[xxx] 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) <sup>4</sup>[xxx]

### CHAPTER IV

#### 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) <sup>5</sup>[xxx]
- (ii) <sup>5</sup>[xxx] 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.

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1. Subs for the word “twelve” by Act 25 of 2007.
  2. “Section 14” Subs. by *ibid*.
  3. Words “child or” repealed by *ibid*.
  4. Sub-Section (1) of Section 15(a)(1) and Sub-Section (2) repealed by *ibid*.
  5. Clause (i) of Sub-Section (1) of Section (16) and Words ‘in any other case’ used in clause (iii) deleted by Act 25 of 2007.

(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 commences, 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 day's 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 :

<sup>1</sup>[Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed forty-five days.]

<sup>2</sup>[xxx]

(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 installments 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.

<sup>3</sup>[(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 he 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.]

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1. Subs. by Act 2 of 1975.  
2. Second proviso omitted by *ibid*.  
3. Ins. by Act 2 of 1975.

<sup>1</sup>[(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.]

<sup>2</sup>[**16A. Other kinds of leave.**— (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.

**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 foodgrains 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.

<sup>2</sup>[(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

1. Sub-secs. 8, 9, 10 re-numbered as sub-secs. 9, 10, 11 by *ibid.*

2. Ins. by Act 2 of 1975.

immediately preceding such leave. The wages for the remaining half period of such leave shall be payable to him alongwith wages for the first wage period after he resumes duty. The wages for the period of sick leave shall be payable to the employee alongwith his wages for the first wage period after he resumes duty.

### Comments & Case-law

[Absence from duty would mean that the employee had not worked during the period of absence. The principle that has to be applied in such a case is no work, no pay and not that the contract pay salary is indivisible. *V. Ramachandran v. Indian Bank*, 1979 (1) LLJ 122.

“Place of work” does not refer to premises. *ibid.*]

**[18. Power to increase the amount of leave.**— Notwithstanding anything contained in sections 16 and 16A, 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.

**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 V

### 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.

### Comments & Case-law

[‘Overtime’ in the context of working hours means the period in excess of prescribed working hours. *M/s Phillips India Ltd. v. Labour Court*, AIR 1985 SC 1034 : 1985 Lab. IC 854.

A workman must be paid overtime wages if he is detained beyond the prescribed hours of work. Even if a worker serves on a waiting customer for fifteen minutes beyond the prescribed period, he must be paid overtime charges for fifteen minutes and failure to pay it, is an offence. AIR 1952 Mad. 43.

1. Subs. by *ibid.*

Where duties, responsibilities etc. are the same for both categories of employees, there is no justification to grant lesser pay to one group as compared to the other. *M.P. Singh v. Union of India*, 1988 (2) SLJ 95.

Where an employer prescribes normal working hours which are less than the maximum permitted by statute and later on seeks to take work in excess of his own prescribed hours of work, the employer renders himself liable to pay overtime wages at rate higher than the ordinary rate of wages. Anything in excess of normal time of work is overtime work. *Haryana Apex Co-operative Bank v. Registrar*, 1989 (1) SLJ 124.]

**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 subsection 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.

### Comments & Case-law

[ Where there is a dispute between the employer and employee on the period of leave : the payment of leave salary for the period by the employer as per his stand does not amount to deduction from wages. The employee is not entitled to any compensation in such a case. *Ram Narayan Misra v. D. Das & Bros.*, 1980 Lab. IC 75.]

**26. Notice of the dismissal or discharge.**— <sup>1</sup>[(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 month's notice or one month's 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:

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1. Subs. by Act 2 of 1975.

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.]

<sup>1</sup>[(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.

### Comments & Case-law

[A complaint under section 26(1) filed by a person who is a worker within the meaning of section 2 (h) of the Motor Transport Workers Act, 1961 is not maintainable. *Raj Narayan Singh v. Presiding Officer*, 1986 PLJR 1000.

Labour Court is a quasi-judicial authority and must exercise its power in a quasi-judicial manner. The High Court will exercise its powers of superintendence under Article 226 to interfere with order of Labour Court condoning long delay of years in the filing of complaint against wrongful dismissal passed without sufficient cause being shown. *Biscomaun Ltd. v. Presiding Officer*, 1984 PLJR 291 : 1984 BBCJ 267.

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1. Subs. by Act 2 of 1975.



This section deals with the notice of dismissal or discharge. It lays down the provisions when the notice is not required.

The Act facilitates the employees to redress their grievances on ground of wrongful dismissal or discharge. The decision of the appellate authority in cases of dismissal or discharge shall be final and shall be binding on both the parties.

Section 26 makes no distinction between various classes of employees. One has to be only an employee under section 2 (4) of the Act. *Krishna Kumar Sharma v. State of Bihar*, 1984 BRLJ 78 : 1984 PLJR 832.

Accordingly this section will be very much available to muster-roll daily rated workmen, provided they have been continuously employed for a period of not less than six months. *ibid.*

This section can be pressed in service only when the employer by positive act dismissed, discharged or otherwise terminated the employment of the employees. Termination of employment as a result of bonafide closure does not attract the provisions of this section. *Rajeshwar Prasad Jaiswal v. Bikram Singh*, 1977 BBCJ 711.

There must be first an action on the part of the employer, like dispensing with the services of an employee, and if that action is absent, there is no question of an employee's filing an appeal. Thus, where an employee sent his resignation letter, and requested the employer to relieve him on that date itself and the employer accepted the resignation and relieved the employee from his duties, it cannot be said that the employer has dispensed with the services of the employee and hence appeal by employee is not maintainable. *G.R. Ramaswami v. M/s Needle Industries (I) Ltd.*, 1981 Lab. IC 765.

The expression "employer shall dispense with the services of a person employed" does not comprehend the case of an employer relieving an employee on the basis of the letter of resignation submitted by him, if he subsequently contends that the letter of resignation was obtained from him under coercion or threat. *ibid.*

The provisions of the Act are covered by items 23 and 24 of the concurrent list in the Constitution i.e. Social Security and Social Insurance, Employment and Unemployment, and Welfare of Labour including conditions of work, Provident funds, Employee's liability, Workmen's Compensation, Invalidity and Old age pension and Maternity benefits.

In *Jugal Kishore Bhandari v. Labour Commissioner*, 1958 BLJR 223, it was held that section 26 (2) of the Act is ultravires as it infringes the right guaranteed under Art. 19 (1) (g) of the Constitution.

The defect, however, stands now cured after the amendment of Section 26 (2) by Act 26 of 1959. Now the provisions of this section read with the rules do not infringe the right guaranteed under Art. 19 (1) (g) of the Constitution. *Jagdish Vastralaya v. State of Bihar*, 1964 BLJR 672 : AIR 1964 Pat. See also 1966 BLJR Lvi and 1966 BLJR 620.

The scheme of section 26 and rule 24, particularly in cases of persons in continuous employment for not less than six months, contemplates bringing about disengagement only by a written order of termination. The words "receipt of the order of dismissal or discharge or termination" in section 26 (2) read alongwith the prefix of section 26 "Notice of the dismissal or discharge" exclude termination of the service of such persons by an oral order. If the termination of such an employee is brought about by an oral order, no memorandum of complaint challenging the grounds of the order of dismissal can possibly be made. Further, it would bring about uncertainty as to the date wherefrom the period of limitation is required to be reckoned. It is, therefore, manifest that the termination of service of a person

continuously working for not less than six months can only be effected by a written order, duly communicated. *Krishna Kumar Sharma v. State of Bihar*, 1984 BRLJ 78:1984 PLJR 832.

While giving the above opinion the Court also looked into the difficulty of service of notice on muster-roll daily rated workman and suggested the posting or putting up of the notice or termination order on the notice board. *ibid.*

The provisions of this Act are not repugnant to the provisions of I.D. Act, I.E. (Standing Order) Act and Payment of Wages Act. *ibid.* See also *Indian Oil Corporation v. C.D. Singh*, 1972 (2) LLJ 395.

The proviso to sub-section(1) does not suffer from the vice of excessive delegation. *Caltex (India) Ltd. v. Presiding Officer*, 1967 BRLJ 65.

The list of acts shown in rule 20 (1) for which no notice is necessary are major misconducts which justify termination of service. The last clause has been framed in a flexible manner in order to deal with any case which may justify an order of dismissal/discharge but not provided for in other clauses. *ibid.*

The requirement of one month's notice shall not be necessary "where the service of an employee is dispensed with on a charge of such misconduct which may be prescribed by the State Government supported by satisfactory evidence recorded on an enquiry held for the purpose." This provision does not suffer from excessive delegation and is not unconstitutional. *Caltex (India) Ltd. v. Presiding Officer*, 1967 BRLJ 65. See also *Calcutta Chemical Co. Ltd. v. D.K. Barman*, 1969 BLJR 510 : AIR 1969 Pat. 371 : 1969 Lab. IC 1498.

Before terminating the services of a workman it is necessary for the employer to give either one month's notice or wages in lieu thereof. The failure to comply with this requirement makes the termination order invalid and the workman illegally terminated is liable to be paid back wages with compensation and reinstatement. However, where the employer has no work left and it is not possible to reinstate the workman, all that can be done is that instead of first reinstating him and then giving a month's notice or a month's salary in lieu, the employer can give one month's notice pay with all back wages instead of reinstating him. *Manager, Allahabad Bank v. Presiding Officer*, 1980 BRLJ 223 : 1980 BBCJ 505: 1981 Lab. IC (NOC) 4.

Where the termination of service is by virtue of a term in a contract, sub-section (1) of this section does not apply. AIR 1964 Pat. 180.

It is always open to the employer to pass an order of dismissal on the ground of misconduct or an order of termination simpliciter and such order can only be challenged on the ground of malafide. *S.C. Das. v. State of Bihar*, 1984 BRLJ 238 : 1984 PLJR 997.

There is no bar laid down under this Act on the employer and employee entering into a contract of service in which it is laid down that the service can be terminated without assigning any reason but with one month's notice or pay in lieu thereof. *ibid.*

In a contract, where the employee's misconduct was noticed by the employer and he started an enquiry but did not charge the employee on the basis of the enquiry report and terminated the service of the employee on the basis of the contract of service, it was held that the termination order does not suffer from any vice and it was not open to the Labour Court to look into the propriety of such a termination. *ibid.* But see also *West Bengal State Electricity Board v. Desh Bandhu Ghose*, 1985 PLJR (SC) 9 where termination of service without assigning any reason but on payment of three month's notice or pay has been held violative of Art. 14 and 16 of the Constitution of India.

An order of discharge of a probationer on the ground of unsuitability in accordance

with the terms of appointment is not an order of punishment. No domestic enquiry before such discharge is necessary. *Bank of Madura Ltd. v. Additional Commissioner*, 1983 Lab. IC (NOC) 19.

Termination of employment as a result of bonafide closure does not attract the provisions of this section. *Rajeshwar Prasad Jaiswal v. Bikram Singh*, 1977 BBCJ 711.

Any termination of service in contravention of section 40 of the Act will be legal, unenforceable and invalid but not null and void and non est. *National Insurance Co. Ltd. v. M. Vishwanath*, 1979 (1) LLJ 16.

The service of an employee cannot be dispensed with except for a reasonable cause or for misconduct. Mere payment of one month's wages in lieu of notice or one month's notice is not sufficient. *N.M. Mehra v. Coromandal Fertilisers Ltd.*, 1977 (1) LLJ 151. See also *S.S. Rly Co. v. Workers Union*, AIR 1969 SC 513 : 1969 (1) LLJ 734.

Where an employee underwent cataract operation and after the operation his services were terminated by the management on the basis of the Ophthalmologist's certificate that the employee would have great difficulty in doing normal clerical work, it was held, that the certificate by itself without any corroborative evidence as to how the employee's poor eyesight had adversely effected his working capacity to the detriment of management, did not constitute "reasonable cause" for the purpose of termination. The termination was held not sustainable. *Secretary, M/s Spencer and Co. Ltd. v. Additional Commissioner*, 1982 Lab. IC 1676.

In case of discharge of an employee on ground of continued ill health, it is necessary to find out before discharge whether continued ill health has made the employee unfit to perform his duties for which he is employed. *Iqbal Narain Saxena v. Presiding Officer*, 1982 Lab. IC 79.

There is no comparison between section 26 of this Act and Section 33A of the Industrial Disputes Act. The competent authority under section 2 does not have a limited jurisdiction as in the case of section 33A. The words "any misconduct" used in sub-section (2) show that sub-section (2) is not confined only to misconduct set out in Rule 20. *Chairman, Brooke Bond India (P) Ltd. v. Chandra Nath Choudhary*, 1969 PLJR 5A.

The termination order passed without a proper enquiry cannot be upheld as an order made for a reasonable cause. *M/s United Wire Ropes Ltd. v. Commissioner for Workmens Compensation*, 1976 (1) LLJ 226.

The personal enquiry conducted by the Hony. Secretary of the Co-operative Bank is not an enquiry in law. *Sitamarhi Central Co-operative Bank Ltd. v. State of Bihar*, 1973 (1) LLJ 179.

The non participation of employee in enquiry despite notices requesting participation, issued by the Enquiry Officer does not vitiate the enquiry as violative of principles of natural justice. *S. Gopal Kamath v. Thayath Raghavan*, 1979 Lab. IC (NOC) 92.

The appointment of Legal Adviser of the Company by the employer does not vitiate enquiry. *ibid.* [1971 Lab IC (SC) 1 and 1979 Lab. IC 79 (Ker) Relied on.]

The enquiry is valid if it makes a bonafide attempt to ascertain the correct facts, after giving the employee an opportunity to place his case and if the employee has not suffered a substantial prejudice in placing and proving facts for his innocence. *Manindra Nath Ganguly v. Presiding Officer*, 1979 BBCJ 245.

The appellate authority can apply the principles of natural justice and declare such enquiries as invalid which were conducted merely as an empty formality. *Kavita Movi House v. L.M. Mary*, 1979 (I) LLJ 10.

There is no provisions of suspension of a workman in the Act. *Inter-State Transport Agency v. P.C. Sinha*, 1965 BRLJ 934.

Section 26 (2) of the Act and Rule 21 provide the limitation of thirty days for preferring an appeal or complaint against the orders of discharge or dismissal. The period of limitation starts from the date of order was communicated to the employee by his employer, in writing.

The delay in filing an appeal can be condoned by the prescribed authority in case where there is sufficient cause for not filling an application in time. Section 5 of the Limitation Act will apply to all cases under this Act, as this provision corresponds with Section 5 of the Limitation Act.

The question of limitation, however, should be determined only after giving notice to both the parties. *Jagdish Vastralaya v. State of Bihar*, AIR 1964 Pat. 180 : 1964 BRLJ 674.

A muster-roll daily rated workman was not allowed to make attendance after he had served for three years. The notice of termination of his service was served on him after 18 months. He filed a complaint before the Labour Court the very next day but the Labour Court dismissed it by taking the period when he was not allowed to sign the attendance into account for the purpose of limitation. The High Court on appeal set aside the Labour Court's judgment and held that where there is no written order of dismissal or discharge nor the dismissal or discharge has been notified or communicated and received by the workman, there is no question of any limitation arising in respect of the petition of complaint to be entertained by the Labour Court. *Krishna Kumar Sharma v. State of Bihar*, 1984 BRLJ 78 : 1984 PLJR 832.

An employee of a co-operative society, dismissed from service, can invoke the provisions of sec. 26 (2). There being no provision in the Bihar and Orissa Co-operative Societies Act to deal with such matters. The Labour Court has definitely the jurisdiction to entertain such a case. *Salendra Narain Singh v. Presiding Officer*, 1981 Lab. IC (NOC) 20. See also *Bhilwar S.U.W. Bhandar Ltd. v. Prescribed Authority*, 1983 Lab. IC 987.

A person appointed to be a Presiding Officer by a notification has the jurisdiction to entertain the complaint. *East India Pharmaceutical Works v. G.S. Verma*, 1973 BRLJ 150 : 1973 Lab. IC 1501.

The Labour Court, the prescribed authority under this Act, is a court sub-ordinate to the High Court and hence its decision under section 25 can be the subject matter of revision under section 125 of C.P.C. *India Tube Co. v. Pratap Mishra*, 1969 BLJR 589 : 1970 (1) LLJ 328.

The appellate authority cannot dismiss an application for default of applicant or his representative. *Munniruddin v. Pierce Leslie & Company*, 1966 (1) LLJ 271.

An appellate authority has no power or jurisdiction to wave its earlier condition fixed in earlier order. Doctrine of substantial compliance is not applicable. *P.M. Geogre v. Dy. Labour Commissioner*, 1976 (2) LLJ 14.

The appellate authority has no jurisdiction to proceed with the appeal filed by an employee against his dismissal if the employee subsequently (before appeal has been taken up) withdraws the dismissal order. *President, Eraveli Co-op. Consumer's Stores Limited v. Dy. Labour Commissioner*, 1978 (1) LLJ 265.

Under section 26 (2) a workman can challenge the validity of the order of discharge/ dismissal on the ground that no notice was served on him as required by section 26 (1). *Md. Fakhruddin v. Presiding Officer*, 1980 BRLJ 142 : 1980 BBCJ 463.

Where a complaint is lodged under section 26 (2) of the Act and where any ground is taken by the complainant about non-service of notice as required by section 26 (1), it is the mandatory duty of the Labour Court to give a finding on this point, specially when the fact is in dispute between the parties. The factum of payment of one month's wages in lieu of notice becomes specially important when the fact is not at all mentioned in the order of discharge. *ibid.*

In a complaint case under section 26 (2), the proceeding before the Labour Court is in the nature of an original trial. That is the reason why section 26 (5) has been enacted. It is for the Labour Court to enquire whether one month's wages in lieu of notice has been given to the employee or not. For this the Labour Court is competent to record the evidence adduced by the parties, and after making an enquiry it should pass orders after giving reasons therefor. The Labour Court is also required to give a finding about the correctness and legality of the enquiry as envisaged by the provision to section 26 (1). *ibid.*

In an appeal, the appellate authority may confine itself to the records of the domestic enquiry and the evidence adduced in that enquiry. If it finds that the enquiry was not fair and proper or violated the principles of natural justice, it may set aside the enquiry proceedings. It is also open to it to disagree on merits with the findings of the domestic enquiry. In either case it is open to it to afford a chance to the management to substantiate the charges at a *de novo* enquiry before it and reach a conclusion in accordance with the provisions of the Act. *S Gopal Kamath v. Thayath Raghavan*, 1979 Lab. IC (NOC) 92. See also *Kavita Movi House v. M.A Abdul Khader*, 1979 Lab. IC 763.

It is incumbent on the appellate authority to consider only the remaining charges whether they are substantiated fully and are grave to the extent of punishment awarded; while finding that few of the charges are vague or indefinite so that they are not to have been taken in account. *ibid.*

Section 2 does not empower a Labour Court to impose a punishment on the basis of a complaint made by a person aggrieved by the action of the employer. *Usha Sales Ltd. v. Presiding Officer*, 1983 PLJR 398.

The finding recorded by Labour Court in an application u/s 26 of this Act shall operate as resjudicata in a reference made u/s 10 of I.D. Act on the same matter before the same Labour Court. *B. Choudhary v. Presiding Officer*, 1983 PLJR 419: 1983 Lab. IC 1755.

The dispute about the payment of gratuity is also a dispute which may be referred to the Tribunal. Reference of such case under section 2A of the Industrial Disputes Act is valid. *Joseph Niranjana Kumar Pradhan v. Presiding Officer*, 1977 (1) LLJ 36.

It is not necessary that the appellate authority while accepting that the dismissal order is unjustified must also order for reinstatement. Authority may order for only compensation and back wages. *Hydrose Haji v. K. M. Bara*, 1978 (2) LLJ 534.

But the Patna High Court held that to deny the person who has been illegally dismissed the relief of reinstatement would be quite unjust. *Indian Tube Company Ltd. v. Pratap Mishra*, 1969 BLJR 589. See also *Mgt. of Deshbandhu Cinema v. Presiding Officer*, 1968 IMFJ Pt. 1191. For the circumstances in which reinstatement can be denied—see *Manager, Allahabad Bank v. Presiding Officer*, 1980 BRLJ 223: 1980 BBCJ 505: 1981 Lab. IC (NO) 4 : *M/s Spencer & Co. Ltd. v. L. Lakshminarayana*, 1983 Lab. IC 596.

While passing an order for reinstatement of an employee the Court must also consider the case of the employee for back wages and cannot deprive the employee of his back wages. *Ganesh Flour Mills Co. Ltd. v. Labour Court*, 1971 (1) LLJ 287. See also *Rikhdeo Prasad v. Presiding Officer*, CWJC no. 986 of 1971 decided on 15.4.1975.

Remand order is not fit to be set aside if it was for the purpose of finding out whether the respondent has committed any act in his capacity as an employee that would entail his discharge from service while writing offending letter as a share holder of the company. *Rallis India Ltd. v. G. Lakshmi Kanthan*, 1969 (1) LLJ 7.

A statutory entitlement cannot be denied to a person on the solitary ground that there has been a misdescription as to the nature of the relief which he would be otherwise entitled to in law. Where the employee asks for long leave on the ground of illness and his service is terminated on the plea that the post on which he serves is of such a nature that it cannot be kept vacant even for a short period and the termination as held valid by the Labour Court under the Shops & Establishments Act, it cannot be said that the order of the Labour Court barred an employee from proceeding to claim reliefs available to him under other Legislations for example retrenchment compensation under Industrial Disputes Act. *Raghavachari v. Madras Printers & Lithographers Association*, 1980 Lab. IC 116.

Where the appellant was pursuing concurrent remedy of reference by Government to Labour Court under the Industrial Disputes Act, in the application for condonation of delay in filing appeal under Act, it was held that this by itself could not be a ground for condoning the delay. *M. Thirunavukharasu v. Mgl. of Indian Bank*, 1982 Lab. IC (NOC) 96.

Even an employee appointed on temporary basis, can be dismissed or discharged only for a reasonable cause and after being given at least one month's notice or one month's wages in lieu thereof. The employer must establish that the services were terminated for a reasonable cause irrespective of any condition imposed to the contrary in the letter of appointment. The Labour Court has jurisdiction to go into all the circumstances which led to the order of termination. Where the order of termination is founded on misconduct by the employee, the non-holding of domestic enquiry to prove the charges levelled against the aforesaid employee will be contrary to the provisions of section 26 (as amended by Amendment Act 8 of 1975.) *Shri S.C. Das, Chairman, H.S.E. C.C. S. v. State of Bihar*, 1988 PLJR (NOC) 15.

Where order of dismissal which followed the earlier order of suspension of the workman, is late set aside the employee concerned will be entitled to compensation in lieu of back wages from the date of suspension itself. *Harish Kumar v. State of Bihar*, 1988 LLJ (NOC) 13.

Where the employee has chosen wrong form for redressal of his grievance, and the Labour Court while deciding the issue has also pointed out about the wrong form, the employee may not be prevented from taking further steps under the provisions of the Bihar Shops and Establishments Act. The findings of the Labour Court cannot be said to be binding on the employee if he takes further steps under the Bihar Shops and Establishments Act. *M/s Instrumentation Ltd. v. Presiding Officer*, 1988 PLJR 145: 1988 BRLJ 19.

Principle of natural justice cannot be stretched in all cases, just as a matter of routine. Unnatural expansion of principle of natural justice without reference to the administrative realities and other factors of a given case, can be exasperating. If the totality of the circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the court should decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures. *ibid.*

Power of substantial review must be expressly conferred upon the Court or Tribunal or Authority by reason of statute. The power of review can be exercised only when the same is conferred specifically or by necessary implication. Where power of review has not been vested, any order passed in exercise of such power must be held to be bad in law. *Bal Govind Yadav v. Ramcharitra Dubey*, 1988 PLJR 1070 : 1989 BLJ 133.

Once the period of absence is treated as leave of any kind whatsoever, the fact that the delinquent employee remained absent without prior permission does not survive. The absence will be deemed to have been condoned. *State of Punjab v. Chanan Singh*, 1988 (3) SLJ 216.

Suspension in absence of any *prima facie* case for imposing any penalty is penal in nature. Such suspension for a long period amounts to imposition of penalty without following mandatory procedure. *O.P. Gupta v. Union of India*, 1988 (1) SLJ 121.

Where there was sufficient material to prove otherwise also, the charges against the employee, the taking into account of extraneous factors does not vitiate the finding of enquiry. *R.S. Mehta v. N.I.A. Co. Ltd.*, 1988 (2) SLJ 89.

The fact that the domestic enquiry is found to be vitiated will not have the effect of obliterating whatever was done in the course of the enquiry. What transpired therein can be used in an enquiry held later. *Workmen, represented by General Secretary v. Labour Court*. 1988 (2) SLJ 222.

In exercise of its writ jurisdiction the High Court cannot go into the question of sufficiency of evidence once it finds that it was not a case of “no evidence at all” in course of enquiry. *ibid.*

Even a daily-rated worker cannot be removed for misconduct without giving him a show cause notice. *Kuldip Singh v. State of H.P.* 1988 (2) SLJ 109.

Termination of services of adhoc or temporary employee due to her pregnancy is violative of Articles 14, 15 and 19 of the Constitution of India. *Mrs. Savita Ahuja v. State of Haryana*, 1988 (3) SLJ 175.

Termination order based upon a case of no evidence before the Enquiry Officer is illegal. *State of Punjab v. Balbir Singh*, 1988 (3) SLJ 210.

In an application for condonation of delay, there must be some attempt to explain the cause for such delay. *Union of India v. Tata Yodogawa Ltd.*, 1989 PLJR (SC) 5.

Where there is wide discretion, the procedural safeguards should be more rigidly followed. *Ranjit Thakur v. Union of India*, 1989 (1) SLJ 109.

The penalty imposed should not be disproportionate to the nature of the offence. *ibid.*

Section 26 contemplates the filing of complaint by an employee challenging the validity of the order of termination of his services. No provision has been made in the Act for determining the jurisdiction of the Labour Court, which may entertain the complaint filed under section 26. In the absence of any provision in the Bihar Shops and Establishments Act, the procedure laid down in section 20 of the Code of Civil Procedure shall be applicable. *TISCO Ltd. v. Presiding Officer*, 1989 PLJR 650 : 1989 (2) BLJR 276.

While deciding a complaint, under section 26 the Labour Court’s jurisdiction is confined to the question raised therein and it cannot come to a finding that the employee’s earlier supersession (not part of the complaint) was bad in law. *ibid.*

The Labour Court is competent to go into the question as to whether the “resignation” submitted by the employee was voluntary, or the resignation as well as its acceptance was illegal and inoperative. *ibid.*

The compliance of the provision of sub-section (1) of section 26 is not mandatory where the employee has been found guilty of misconduct in a domestic enquiry. Although the question whether the domestic enquiry was defective or not may itself be subject matter

for determination in a complaint petition under section 26(2), but only because there is some procedural defect in the enquiry, the same will not vitiate the finding arrived at. *Sri Sao. vs. Presiding Officer*, 1989 PLJR 810.

An employee claiming that his resignation was not voluntary but had been obtained by coercive methods is required to be pleaded and proved, before an inference of his services having been "Otherwise terminated" in terms of section 26(2) can be legitimately drawn by the Labour Court. Mere assertion on the part of the employee will not be enough. Finding arrived at on mere conjecture by the Labour Court cannot be relied upon. *Tata Robins Fraser Co. Ltd. vs Presiding Officer*, 1989 PLJR 115: 1989 BLJR 555.

"Labour Court", the prescribed Authority under the Bihar Shops and Establishments Act, is a "Court". *Abdul Rahim vs. Telco Ltd.*, 1990(2) PLJR 161 (FB).

Since there is no provision in the Act for filing any appeal against order of Labour Court u/s 26 before the High Court, therefore since the Labour Court is not a Court "subordinate" to the High Court, no revision application under section 115 of C.P.C. will be maintainable against an order of Labour Court passed under section 26 of Bihar Shops and Establishments Act. Forum for filing appeal from order under section 26 is the Industrial Tribunal. *ibid.*

Labour Court can be said to retain its jurisdiction to hear a pending appeal by the employee under section 26 in spite of the Commercial Banks being taken away from the ambit of the provisions of the Act during the pendency of the proceedings. The amendment of the schedule appended to the Act is not to give retrospective effect. *State Bank of India vs. State of Bihar*, 1990 (2) PLJR 336.

The plea of non-service of the order of termination cannot be allowed to be raised belatedly for the first time before the High Court, although it is essential for the order of termination to be served on the employee whose services are being dispensed with. *Sri Sao vs. Presiding Officer*, 1989 PLJR 810.

Even if the issues have not been properly framed, but the parties have not been prejudiced because of it, no illegality can be said to attract to that findings. *ibid.*

Where an aggrieved employee has two remedies available; one to invoke the provisions of section 26 of the Act and the other to take recourse to section 10 of the I.D. Act, ordinarily he cannot invoke the writ jurisdiction of the High Court without exhausting the alternative remedy available. *Bachchu Prasad Singh vs. Bharat Wagon and Engineering Co. Ltd.*, 1990 (1) PLJR 536 : 1990 (1) BLJR 215.

High Court will not ordinarily interfere with order of the Authority under the Act condoning the delay in filing of application under section 26 (2). *State Bank of India vs. State of Bihar*, 1990 (2) PLJR 336.

Order of compulsory retirement of an employee may be set aside by the Labour Court on allowing an application filed by the aggrieved employee under section 26 (2) of the Bihar Shops and Establishments Act. *Central Coalfields Ltd. vs. Presiding Officer*, 1992 (2) PLJR 315.

Inference of malice in fact can be drawn only on the basis of factual matrix and not merely on the basis of insinuation, conjectures and surmises. *M. Sankaranarayanan vs. State of Karnataka*, (1993)1 SCC 54.

The provisions of section 26 make a clear distinction between a case of dismissal on charge of misconduct and a case where employment is terminated for reasonable and sufficient cause. Dismissal on charge of misconduct will be valid only after misconduct is



established after holding domestic enquiry in accordance with principles of natural justice. Where a person has been in employment continuously for six months or more, the Employer is required to give one month's notice or one month's salary in lieu of notice. The Act does not envisage the application of Rule of "audi alteram partem" where the employer is not "State". *Biscomaun vs. State of Bihar*, 1993 (1) PLJR 33.

High Court may decline to interfere with order of Labour Court dismissing complaint filed by aggrieved employee challenging order of dismissal, where the impugned order was passed after proper consideration of evidence adduced by the parties. *Abdul Rahim vs. Presiding Officer*, 1994 (2) PLJR 238.

A complaint under the Act is to be adjudicated upon the basis of the legal status of the employer on the date when the cause of action for filing the complaint arose or in any event when the complaint was filed. Any attempt on the part of the Employer, thereafter, to change its legal status unilaterally cannot have any legal effect on pending proceeding. *Popular Nursing House vs. State of Bihar*, 1995(1) PLJR 750.

Provisions of Section 26 of the Act make a clear distinction between cases of dismissal or discharge on a charge of misconduct and cases of termination of service for a reasonable cause. In the case of dismissal or discharge for misconduct, the Disciplinary Authority is required to be satisfied that the order is supported by evidence adduced in the domestic enquiry. This corollary of "Audi Alteram Partem" principle is not necessary to be followed where order of termination of service has not been passed on account of misconduct of employee. *Bihar State Co-operative Marketing Union Ltd. vs. State of Bihar*, 1993 (1) PLJR 333.

The Bihar Shops and Establishments Act is a local statute applicable only in the State of Bihar. Provisions of section 26 are applicable only in cases of dismissal, discharge or termination of services of employee of an establishment coming under the ambit of the provisions of the Bihar Act. Where the appointment was contractual in nature and the period of continuous employment was less than six months, the provisions of section 26 are not attracted. *Narendra Kumar Singh vs. Kendriya Vidyalaya Sangathan*, 1993 (2) PLJR 10.

Where the delinquent employee had been found guilty of several charges of misconduct in domestic enquiry and the complaint under section 26 against the order of dismissal by the aggrieved employee had been dismissed by the Labour Court after hearing the parties, the Court may decline to interfere in exercise of its writ jurisdiction. Requirements of natural justice under Article 314 of the constitution are not applicable. *Abdul Ratim vs. Presiding Officer*, 1994. BRLJ 126 : 1994 (2) PLJR 238.

—Section 26—Labour Court setting aside order of termination of services of employee of TRF Ltd.—Labour Court coming to a finding that order of termination was illegal as concerned employee had not been proved guilty of alleged misconduct—Labour Court directing reinstatement with full back wages and in the alternative Employer given option to pay fifty months wages as compensation in lieu of reinstatement—in cases of wrongful dismissal or discharge, the normal rule is to award reinstatement—however, where a case falls in any of the exceptions to the general rule of reinstatement, industrial adjudicator has discretion to award reasonable and adequate compensation in lieu of reinstatement—compensation in such a case is the solatium for unjustified and premature termination of employment—award of Labour Court set aside by High Court and directions given for payment of salary from date of illegal termination of services to the date of order of reinstatement became final and one month's salary in lieu of notice and further one year's salary by way of compensation for loss of the benefit of reinstatement. *Management of Tata Robin Fraser Ltd. vs. Presiding Officer*, 1996 (1) PLJR 502.

—Section 26(2)-during the pendency of application u/s 26(2), a notification u/s 4(2) amending schedule was issued by which the provisions of the Act ceased to apply to the branches of State Bank situated within Bihar—such a notification will have retrospective effect in relation to cases u/s 26(2) pending before its issuance and therefore Labour Court cannot adjudicate in such cases. *State Bank of India vs. State of Bihar*, 1999(1) PLJR 274.

—Section 26—where the Presiding Officer, Labour Court is of the opinion that there has been no proper enquiry and also that the charges as levelled against the workmen amounts to misconduct, it is incumbent for him to come to his own findings on the evidence which was to be led before him before ordering reinstatement—matter remitted back for decision by the Presiding Officer—Workmen directed to be paid Rs. 30,000 as compensation payment in the meanwhile. *Peerless G.F. & Inv. Co. Ltd. vs. Presiding Officer*, 2000 (1) PLJR 926.

—Section 26(2)—direction for reinstatement of petitioner in service with full back wages and other consequential benefits—petitioner merely claiming back wages and alleging disobedience of the order passed by writ court to this effect—there being no specific direction for payment of back wages till its payment, the opposite party may not be faulted up for committing contempt of High Court; but the order of High Court had not been complied within its spirit —petitioner shall be entitled to and be paid back wages from the date of termination of service till the date of disposal of writ petition. *Shyamal Kumar Gupta v. State of Bihar*, 2004 (3) PLJR 263.]

**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.

#### Comments & Case-law

[The provisions of section 27 have been ingrafted for the protection of the interest of the employer and there is no law which debar the employer from waiving his rights conferred by the provisions of section 27. *Tisco Ltd. v. Presiding Officer*, 1989 PLJR 650 : 1989 (2) BLJR 276.]

**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 shall 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)]<sup>1</sup>

### Comments & Case-law

[The compensation of ten rupees in sub-section (2) does not apply to “deduction” or payment of “delayed wages”. *Shatrughanji Sahay v. Industrial Tribunal*, 1983 BRLJ 63 : 1983 PLJR 186: 1983 BBCJ 89.

The employee, by virtue of his reinstatement would be entitled to all increments that would accrue during the tenure of his employment (during the period of his retrenchment) and he would further be entitled to leave salary for not availing leave. *ibid.*

Some claims clearly come within the definition of “wages” and the court is fully competent to grant the same under this section. *ibid.*

The words “ten times the amount deducted in the first case” will also mean ten times of the amount, the payment of which has been delayed. *ibid.*

1. Now Cr.P.C., 1973.

The quantum of compensation payable, will depend upon objective consideration of the circumstances of each case. *ibid.*

Reading sub-section (7) and rule 24 it is manifest that an appeal lies before the appellate authority only when a direction has been made under sub-section (2) or (3). In absence of direction the appeal is incompetent. *United Province Commercial Corpn. v. K.N. Mishra*, 1962 BLJR 111 : 1962 (2) LLJ 338.

The appellate authority u/s 28 (2) is a Court and the High Court has the power of judicial revision or superintendence over it. *Imperial Tobacco Co. v. Asstt. Labour Commissioner*, AIR 1967 Pat. 153 : 1966 BLJ 632.

An application filed before the Labour Court for which no Presiding Officer has been appointed cannot be considered as proper application before the prescribed authority. Further, the Presiding Officer, who has been appointed after the filing of the application cannot entertain it. *East India Pharmaceuticals Work Ltd., v. G S. Verma*, 1973. BRLJ 150 : 1973 Lab. IC 150.

The condonation of delay in filing an appeal under section 28 (1) is the discretion of the appellate authority. The discretion cannot be interfered with by the High Court. *Imperial Tobacco Co. v. Asstt. Labour Commissioner*, AIR 1967 Pat. 158 : 1966 BLJR 632.

The general provisions of the Code of Civil Procedure have only limited application over the provisions of this Act. An appeal under this Act cannot be dismissed for default for non-appearance of appellant. It should be disposed of on merits. *Baidyanath Pd. Sah v. Presiding Officer*, 1985 PLJR 321.

A statute should not be construed as taking away the jurisdiction of an Authority or Tribunal in the absence of clear and unambiguous language to that effect. Courts should not read something which is not specifically provided therein by introducing new procedure. *Ranjit Singh v. State of Bihar*, 1987 PLJR 230 (FB).

Even administrative actions are not out of the scope of principles of natural justice. *K.L. Sephard v. Union of India*, 1988 (1) SLJ 105.

Admission made in pleading cannot be dissected. Unlike the testimony of a witness, it may be accepted as a whole or not at all. *Governing Body v. Padmanabha Padhy*, 1988 (2) SLJ 180.

Section 28 provides for the right of an employee to prefer an application in the event the employer makes any reduction in the wages being paid to the employee or withholds the wages payable or part thereof contrary to the provisions of this Act. Such an application, however, is to be filed within such time and before such authority as may be prescribed therefor in terms of sub-section (2) of section 28. *Ranchi District Cadre Co-operative Society Ltd. v. Presiding Officer*, 1988 PLJR 59 : 1988 BLJ 91.

The provisions of section 28 are in *pari materia* with the provisions of section 15 of the Payment of Wages Act. *ibid.*

If there is a violation of the principles of natural justice, any order passed thereafter becomes a nullity. No appeal or revision lies from an order which is a nullity. The defect caused by denial of opportunity of hearing cannot, therefore, be cured by the appellate or revisional authority providing the opportunity of hearing which was denied earlier. *Ghanshyam Pandit v. Commissioner*, 1988 PLJR 140.

Tribunal should exercise its jurisdiction in matters of condonation of delay in preferring revision application before the Tribunal liberally. The High Court will not exercise its writ jurisdiction to interfere with exercise of discretion in matters of condonation of

delay by the Tribunal unless there is a jurisdictional error in passing the impugned order. *Ashok Automobiles (Ranchi) Private Ltd. v. State of Bihar*, 1989 PLJR (NOC) 71.

— Section 28—Employer taking the plea that suit is not maintainable when the same was filed by the employee seeking relief and that employee should take recourse to relief under the Act—subsequently, when the employee has sought relief under the Act, employer is stopped from taking legal plea that his establishment is not covered by the Act and therefore, the employee is not entitled to any relief under the Act—the employee cannot be unsuited in a civil proceeding and when he files a proceeding under the Act, he should face another preliminary objection that the establishment is not covered under the enactment, notwithstanding, the objection of the appellant—in generality, the appellants rendered services in a commercial establishment within the meaning of the Act—whether it comes under the expression “establishment” or a “shop”, legal ingenuity can not defeat the claim of the employee. *Popular Nursing House v. State of Bihar*, 2003(1) PLJR 303.

— Section 28—payment of delayed wage with compensation—certificate proceeding initiated against petitioner for recovery of the dues claim of the applicant employee was reality against the company and it is the company and its top officials who have a greater liability to pay the money than the petitioner who was the junior-most officer in the company—it would be appropriate for the certificate officer to proceed against the company and the other top officials of the company rather than single out the petitioner for recovery of the loan. *M/s Shakti Kumar Kar v. State of Bihar*, 2003(2) PLJR 458.

— Section 28—deduction of wage—concurrent findings of courts below that claim was unsupportable and unacceptable—further, a clear verdict negating the claim based on reasons given in the impugned order of the Single Bench—not a fit case to exercise the power under clause 10 of the Letters Patent. *M/s Rana Bahadur Singh v. State of Bihar*, 2006 (4) PLJR 628]

**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.

#### Comments & Case-law

[The power to prescribe conditions under which a legal practitioner may practice may not ordinarily include the power to completely prohibit him from practising in respect of any proceeding. The conditions mentioned in this section must be taken to be somewhat of a regulatory nature and it is well settled that power to regulate implies the continued existences of the scope to be regarded. Hence total prohibition would not come within the scope of the regulatory power. It must, therefore be held that rule 41 is no longer valid. *Shiwaji Singh v. Presiding Officer*, 1966 BLJR 418: 1966 (2) LW 128.

A lawyer's service can be obtained by an employee who is uneducated and illiterate. *M/s Kavitha Movie House v. L.M. Mary*, 1979 (1) LLJ 10.

An officer of a registered trade union can appear, even if he is a practising lawyer. *M.N. Verma v. Basu Shakur*, 1960 BLJR 784.]

**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 VI

### *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 Dhanhad and Singhbhum and every Subdivisional 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.

### Comments & Case-law

[The State Government has appointed Officers to discharge the duties of Inspecting Officer with their respective headquarters and local limits, list of which is given at the end of this Act.]

**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;
- (b) (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;<sup>1</sup>
- (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 person 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

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1. Subs. by Act 2 of 1975.

production of documents as a Civil Court has under the Code of Civil Procedure, 1908 (V of 1908).

**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.

#### Comments & Case-law

[The word ‘obstruction’ connotes some overt act in the nature of violence or show of violence. Refusing to disclose the name and address of the employer by an employee in course of an inspection by authorities under the Act, amounts only to non-co-operation and does not amount to obstruction. *Madhav Prasad Agrawal vs. State of Bihar*, 1986, PLJR 742.

—Section 32—inspecting officer asked personnel manager of the establishment to produce documents but documents not produced despite several adjournments at request of personnel manager—intimation for production of document also given to Chairman and Managing Director—inspecting officer has power to issue direction for production of documents and violation of direction itself is an offence under Section 32 of Act. *Ramanand Singh vs. State of Bihar*, 1997(1) PLJR 379.

—Sections 32 and 34—a company manufacturing medicine, registered under the Factories Act, 1948, is not covered by this Act—therefore, no cognizance can be taken for offence under sections 32 and 34, where the employer disputes the authority of inspecting officer under shops Act—no prosecution can be launched against such an employer under Shops Act because of application of Factories Act to the company. *M/s. Baidyanath Ayurved Bhawan Ltd. vs. State of Bihar*, 1998(3) PLJR 80.]

**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.

#### Comments & Case-law

[When the registers which take care of all the details like deductions, fines, additional wages of overtime, etc. under the Shops Act are maintained, the non-maintenance of registers (similar in nature) under Minimum Wages Act does not call for prosecution. *Maya Chandra vs. Inspector, Minimum Wages Office*, 1919 Lab. IC 152.]

**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.

#### Comments & Case-law

[A person cannot be convicted under this section if the nature of work was such

which possibly could not be operated from one permanent location. *Radha Kant Singh Roy vs. State of Bihar*, 1977 BBCJ 35].

It is necessary to get the clerical department of factory registered under the Shops Act even though the factory and its clerical department are located in the same premises and the factory is registered under the Factories Act. The violation attracts penal provision. *Asstt. Inspector of Labour vs. General Manager*, 1983 Lab. IC 348.

Engaging casual labour with an object to deprive workmen of their temporary or permanent status is an unfair labour practice calling for prosecution. *Prem Chand vs. State of H.P.*, 1988 (2) SLJ 17.

Disproportionate punishment attracts the provisions of Article 14 of the Constitution of India. *Shashi Kant Prasad vs. B.S.F. & C.S.C.*, 1989 BLJ 101.]

**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.

#### Comments & Case-law

[No vicarious liability can be fastened upon any employer including the manager, secretary or any other person, unless the company or the partnership firm itself has been made accused. *V. Poddar vs. State of Bihar*, 1978 BBCJ 498.

In offences by firms or companies separate prosecution of person-in-charge or officer of company without prosecuting the company or firm is permissible. *Sheoratan Agarwal vs. State of M.P.*, AIR 1984 SC 1824.

Director, Chairman or General Manager of a company or Partner of a firm is vicariously liable for the offence committed by the company or firm unless he or they establish their innocence. *Mahmood Ali vs. State of Bihar*, 1986 PLJR 123 (FB) : AIR 1986 Pat. 133.

The administration of criminal law is more a matter of substance than of form and should not be allowed to be obscured by pettifogging technicality. *ibid.* See also *Badri Prasad Gupta vs. State of Bihar*, 1986 PLJR 246 (FB) : 1986 BRLJ 63 : AIR 1986 Pat. 186.

—Section 35—every Director, Partner, Manager or Secretary of a company or partnership firm shall be liable for prosecution for contravening any provisions of Act or rule unless they prove that they exercised due diligence to prevent such contravention—specific pleading in complaint that office hearers had ultimate control over affairs of company is not required rather burden of proof lies on them to prove that offence took place without their knowledge or they exercised due diligence to prevent the same. *Ramanand Singh vs. State of Bihar*, 1997 (I) PLJR 379.

Section 35 does not require that the company or partnership firm must be arraigned simultaneously thereof for prosecution for contravention of provisions of the Act. *Badri Prasad Gupta vs. State of Bihar*, 1986 PLJR 246 (FB) : 1986 BRLJ 63 : AIR 1986 Pat. 186.

If basic liability for an offence under the Act is alleged or established against the company or partnership firm as such then by a fiction or law every Director, Partner and manager thereof is deemed as much guilty of the offence as the primal offender company or firm. Burden is on them to wriggle out of this vicarious liability. *ibid.*

Persons made vicariously liable by section 35 can be arraigned as accused even if they are not in charge of affairs of the company or firm, but materials indicating that the



accused persons actually held the posts on the date of occurrence, has to be brought on records by the prosecution. *ibid.*]

<sup>1</sup>[**36. Cognizance of offences.**—(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, 16A, 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.]

### Comments & Case-law

[Non-registration and non-maintenance of registers are continuing offences. *State of Bihar v. J.P. Singh*, 1964 BRLJ 1 : 1963 BLJR 782.

The complaint must be filed within six months of the commission of the offence if the offence is under sections 12, 37 and 33 (2). But where the offence falls under sections 16, 26, 28 the delay can be condoned if the Court is satisfied that there was sufficient cause for the delay. *Smt. Bachhi Devi v. State of Bihar*, 1979 BRLJ 113 : 1979 BBCJ 191. See also *Sita Ram v. State of Bihar*, 1977 BBCJ 694.]

## CHAPTER VII

### 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.

<sup>2</sup>[**37A. Presumption.**—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.]

**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.

<sup>1</sup>[**39. Workmen's Compensation Act, 1923 to apply to an employer and an employee to whom this Act applies.**— The provisions of the Workmen's 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.]

### Comments & Case-law

[Compensation for death due to scorpion bit while the workman was on duty is payable. *Divisional Railway Manager v. Smt. Shamsadi*, 1988 (1) SLJ 32.]

<sup>1</sup>[**39A. Maternity Benefits Act, 1961 (53 of 1961) to apply to establishment and persons to whom this Act applies.** — The provisions of the Maternity Benefits Act, 1961 (53 of 1961), and of rules made thereunder shall *mutatis mutandis*, apply to every

1. Subs. by Act 2 of 1975.

2. Ins. by *ibid.*

establishment and every person to whom the provisions of this Act apply.]

**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 —

- <sup>1</sup>[(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 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 sub-section (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;
- (m) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before the prescribed authority; and 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

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1. Subs. by Act 2 of 1975.

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.

**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.

### SCHEDULE I.

[ See Section 4(2) ]

Serial No.	Establishments, Employees or other persons	Provisions of the Act
1	2	3
1.	Establishment in which only members of employer's family are employed.	All provisions except sections 6, 7, 8 & 12(i) and and Chapters VI & VII.
<sup>1</sup> [2.	Establishments for the treatment or the care of the infirm, sick, destitute or the mentally unfit, which are not run for the profits for charitable, philanthropic, religious or educational object.	All provisions.
<sup>2</sup> [3.	Offices of or under the Central or State Government or of a Municipal Committee or District board or any other Authority entitled to the control or management of a municipal or local fund.	All provisions.
4.	Any Railway service, Postal Telegraph or Telephone service, any system of public conservancy or sanitation, and any such establishment as the State Government may by notification exempt.	All provisions.
5.	Person occupying positions of managerial or supervisory character in an establishment employing more than five persons, provided that not more than ten per centum of the total number	

1. Subs. by S.O. 1460, dated 18.12.1980.

2. Subs by S.O. 12, dated 14.1.1980.

1	2	3
	of employees in an establishment shall be so exempted: Provided that where ten per centum of the total number of employees in an establishment comes to a fraction less than one, such fraction shall be rounded off to one.	All provisions. <sup>1</sup> [ * * * * ]
6.	Fairs and hats ....	All provisions.
<sup>1</sup> [7.	Establishments dealing wholly in newspapers and periodicals, medicines, medical and surgical appliances, vegetables, flowers, pan (betel) leaves and not biri, cigarettes and other ancillary articles, meat, poultry, game, eggs, ice and fresh fruits.]	Sections 7, 8 and 12(1)
<sup>2</sup> [8.	Cinemas, theatres and other places of public amusement or entertainment.]	Sections 7, 8 and 12(1) and in case of a young person or women, also section 14.
<sup>2</sup> [9.	Clubs, restaurants, eating houses, boarding houses, residential hotels, establishments dealing in meals, refreshments, sweetmeats, milk and cooked food.]	Section 7, 8 and 12(1).
<sup>2</sup> [10.	Stalls and refreshment rooms of railway stations.	Section 7, 8 and 12(1).
<sup>2</sup> [11.	Shops for the sale of motor spirit and motor or aircraft spares and accessories.]	Section 7, 8 and 12(1).
<sup>2</sup> [12.	Government licensed establishments dealing in spirituous liquor or narcotic drugs.]	Section 7, 8 and 12(1).
<sup>2</sup> [13.	Shops dealing in articles, required for funeral, burial or cremation so far as the sale of these articles is concerned.]	Section 7, 8 and 12(1).
14.	Banks transacting Government business.	Section 7.
<sup>2</sup> [15.	Circus and Exhibitions.	Section 7, 8 and 12(1).
<sup>2</sup> [16.	Shops of barbers and hair dressers.	Section 7, 8 and 12(1).
<sup>2</sup> [17.	Establishments of the factories engaged in manufacturing of Iron and Steel.	All provisions except Sections 6, 26 and 28 and Chap. VI & VII.
<sup>2</sup> [18.	Establishment of country oil-ghanies.	Sections 7 and 8.

1. Words 'except Secs. 7, 8, 12(1), 26 & chap. VI & VII' omitted by S.O. 183, dated 27.3.1976.

2. Subs by Act 2 of 1975.

1	2	3
19.	Establishments of goshalas as defined in section 2 (d) of the Bihar Goshala Act, 1950.	Sections 7 and 8.
20.	Establishments of all vessels which ply in inland water and which are registered under Chapter IIA of the Indian Steam Vessels Act, 1917.	Ditto.
21.	Employees whose work is inherently intermittent, such as travellers, care takers, guards and watchmen.	Sections 9, 10, 11, 12(1) and 21(1).
22.	Persons directly engaged in preparatory or complementary work such as cleaning or forwarding clerk responsible for despatch of goods.	Sections 9, 10, 11, 12(2) and 21(1).
23.	Libraries at which the business of lending books or periodicals is not carried on for purpose of gains other than that of making profits for charitable philanthropic, religious or educational object.	All provisions.
<sup>2</sup> [24.	Offices of the Life Insurance Corporation of India situated in the State of Bihar.	Section 33(1).
<sup>2</sup> [25.	Banks situated in the State of Bihar.	Sections 33(1) and 12(A).
<sup>3</sup> [26.	Reserve Bank of India.	All provisions.
<sup>4</sup> [27.	Heavy Engineering Corporation, Ranchi.	All provisions except Sections 6, 26, Chapter VI and section 37.
<sup>5</sup> [28.	Establishments of M/s Metallurgical and Engineering Consultants (India) Ltd., Ranchi located at Ranchi and Bokaro Steel City.	All provisions except Section 6 and Chapter III, IV and VII.
<sup>6</sup> [29.	All establishments of Sulabh International, Patna situated in the State of Bihar.	All provisions.
<sup>7</sup> [30.	Establishments of the Food Corporation of India situated in the State of Bihar.	All provisions.

1. Subs. by Act 2 of 1975.

2. Added by Notification No. 2/36-1039/68 L&E 1727 (2) dated 26.10.1968.

3. Added by Notification No. II/S6-1014/69 L&E 1458 (2) dated 18-11-1969.

4. Added by Notification No. II/S6-2021/75 L&E 716 (2) dated 3.4.1975.

5. Added by S.O. 1075 dated 15-11-1979.

6. Added by S.O. 7 dated 4.1.1982 (Earlier entry regarding '*Radiological and Pathological and Clinics*' added by S.O. 1575 dated 15.11.1979 deleted by S.O. 1820 dated 3.12.1981).

7. Added by S.O. 1682 dated 10.12.1979 and subs. by S.O. 627 dated 6.7.1985.

1	2	3
<sup>1</sup> [31.	Establishments of the Research and Development Centre for Iron and Steel, Doranda, Ranchi.	All provisions except Section 6, Chapters III, V, VI and VII.
<sup>2</sup> [32.	Establishments of the Indian Airlines Corporation situated in the State of Bihar.	All provisions except Sections 6, 26, 28 and Chapters II I.VI, VII and VIII of Act.
<sup>3</sup> [33.	All Branches of the Scheduled Commercial Bank, including Public Sector Banks and Regional Rural Banks situated in the State of Bihar.	All provisions.
<sup>4</sup> [34.	Such Private Clinics, Pathological or Radiological Laboratories or X-ray Clinics of Doctors which are not run on commercial basis and in which only members of the employer's family are employed or in which only such Government servants are employed who have been allowed to practice during off hours.	All provisions.
<sup>5</sup> [35.	All establishments of the Bihar State Forest Development Corporation Ltd. situated in the State of Bihar.	All provisions.
<sup>6</sup> [36.	All establishments of Central Warehousing Corporation situated in the State of Bihar.	All provisions.
<sup>7</sup> [37.	Establishment of Information Technology Industry.	Sections 7, 8, 12(1) and Section 14 in case of woman worker.

### NOTIFICATIONS

**S.O. 147 dated the 3rd February, 1971.**—In exercise of the powers conferred by sub-section (1) of section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), the Governor of Bihar is pleased to appoint the Superintendent of Labour (Agriculture Labour), Bettiah, with headquarters at Bettiah to be the Inspecting Officer for the purposes of the said Act for the district of West Champaran and to direct that the said Inspecting Officer shall in addition to his own duties, also exercise his functions under this Act within the local limits of West Champaran district until further orders.

**S.O. No. II/S6-10102/72 L & E 2183 dated 30.10.1972.**—In exercise of the powers conferred by section 11-A of the Bihar Shops & Establishments Act, 1953 (8 of 1954) the

1. Added by S.O. 136 dated 4.2.1980.
2. Added by S.O. 1/134 dated 27.12.1980.
3. Added by S.O. 1751 dated 20.11.1984 subs. by S.O. 800 dated 22.8.1985 and again subs. by S.O. 419 dated 25.3.1986
4. Added by S.O. 134 dated 16.1.1984.
5. Subs. by S.O. 946 dated 8.8.1986.
6. Added by S.O. 1018 dated 2.9.1986.
7. 'Serial No. 37' added by No. 2644 L & E dated 6.9.2003.

Governor of Bihar is pleased to declare following occasions as festivals for which every employee shall be allowed holiday with full pay for five days in a year –

- |                                    |     |         |
|------------------------------------|-----|---------|
| 1. New Year day on the 1st January | ... | one day |
| 2. Holi                            | ... | one day |
| 3. Ram Navami                      | ... | one day |
| 4. Shivratri                       | ... | one day |
| 5. May day on 1st May              | ... | one day |
| 6. Buddha Purnima                  | ... | one day |
| 7. Ganga Dashara                   | ... | one day |
| 8. Mahalya                         | ... | one day |
| 9. Durga Puja                      | ... | one day |
| 10. Dipavali                       | ... | one day |
| 11. Dawat Puja                     | ... | one day |
| 12. Chhath                         | ... | one day |
| 13. Id-ul-fitr                     | ... | one day |
| 14. Id-Uz-Zoha                     | ... | one day |
| 15. Muharram                       | ... | one day |
| 16. Chehlum                        | ... | one day |
| 17. Fateha duwaj-Dahum             | ... | one day |
| 18. Sha-i-barat                    | ... | one day |
| 19. Birthday of Guru Nanak         | ... | one day |
| 20. Birthday of Guru Govind Singh  | ... | one day |
| 21. Good Friday                    | ... | one day |
| 22. X-Mas on the 24th December     | ... | one day |
| 23. X-Mas on the 25th December     | ... | one day |
| 24. Sarhul                         | ... | one day |



**S.O. 298, dated 13th April, 1987.** —In exercise of the powers conferred by Section 38 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), the Governor of Bihar is pleased to order that the operation of the provision of Sections 7, 8, second proviso to Section 9 and sub-section (1) of Section 12 of the said Act shall remain suspended during calendar year 1987 for the period mentioned in column 3 of the Schedule hereto annexed in respect of all establishments falling within the local limits of places as specified in column 4 of the Schedule, subject to the conditions laid down in the proviso to Rule 35 of the Bihar Shops and Establishments Rules, 1955.

**SCHEDULE**

SL No.	Name of the Festival	Period of suspension of Sections 7, 8, second proviso to Section 9 and Section 12(1) of the Bihar Shops and Establishments Act, 1953.	Areas to which suspension is applicable
1	2	3	4
1.	Holi	Thursday, 5th March, 1987 to Wednesday, 18th March, 1987.	Whole of Bihar.
2.	Id-ul-fitr	Thursday, 21st May, 1987 to Friday, 29th May, 1987.	Ditto.

1	2	3	4
3.	Id-uz-Zoha	Thursday, 30 July, 1987 to Friday, 7th August, 1987.	Whole of Bihar.
4.	Durga Puja and Laxmi Puja	Sunday, 20th September, 1987 to Tuesday, 6th October, 1987.	Ditto.
5.	Deepawali and Chhat	Tuesday, 13th October, 1987 to Wednesday, 28th October, 1987.	Ditto.
6.	Christmas	Thursday, 17th December, 1987 to Friday, 25th December, 1987.	Ditto.
7.	New Year's day	Wednesday, 30th December, 1987 to Friday, 1st January, 1988.	Ditto.

**S.O. 775 dated the 21st April, 1976.**—In exercise of the powers conferred by subsection (1) of section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), and in supersession of all previous notifications on the subject, the Governor of Bihar is pleased to appoint the officers specified in column 2 of the Schedule hereto annexed to be Inspecting Officers for the purpose of the said Act within the local limits of the areas mentioned against each in column 4 of the said Schedule with headquarters as shown in column 3 thereof:

#### SCHEDULE

SL No.	Designation	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Superintendent of Labour,	Patna	Patna District
2.	Superintendent of Labour, Office of the Chief Inspecting Officer, Bihar.	Patna	Whole of Bihar State.
3.	Superintendent of Labour, Nalanda.	Biharshariff	Nalanda and Nawadah districts.
4.	Suprintendent of Labour, Gaya.	Gaya	Gaya and Aurangabad districts.
5.	Superintendent of Labour, Bhojpur, Arrah.	Arrah	Bhojpur district.
6.	Superintendent of Labour, Rohtas, Dalmianagar.	Dalmianagar	Rohtas district.
7.	Superintendent of Labour, Muzaffarpur.	Muzaffarpur	Muzaffarpur and Vaishali Districts.
8.	Superintendent of Labour, Sitamarhi.	Sitamarhi	Sitamarhi district.
9.	Superintendent of Labour, Saran.	Chapra	Saran district.
10.	Superintendent of Labour, Siwan.	Siwan.	Siwan district.



1	2	3	4
11.	Superintendent of Labour, West Champaran.	Bettiah	West Champaran district.
12.	Superintendent of Labour, East Champaran.	Motihari	East Champaran district.
13.	Superintendent of Labour, Darbhanga.	Darbhanga	Darbhanga and Madhuhani districts.
14.	Superintendent of Labour, Samastipur.	Samastipur	Samastipur district.
15.	Superintendent of Labour, Bhagalpur.	Bhagalpur	Bhagalpur district.
16.	Superintendent of Labour, Saharsa.	Saharsa	Saharsa district.
17.	Superintendent of Labour, Monghyr.	Monghyr	Monghyr district.
18.	Superintendent of Labour, Begusarai.	Begusarai	Begusarai district and Khagaria subdivision of Monghyr district.
19.	Superintendent of Labour, Purnea.	Purnea	Purnea district.
20.	Superintendent of Labour, Katihar.	Katihar	Katihar district.
21.	Superintendent of Labour, Deoghar.	Deoghar	Deoghar subdivision and Jamtara subdivision of the Santhal Parganas District.
22.	Superintendent of Labour, Dumka.	Dumka	Dumka subdivision and Godda subdivision of Santhal Parganas district.
23.	Superintendent of Labour, Sahebganj.	Sahebganj	Sahebganj subdivision and Pakur subdivision of Santhal Parganas district.
24.	Superintendent of Labour, Ranchi.	Ranchi	Ranchi district.
25.	Superintendent of Labour, Hazaribagh.	Hazaribagh	Hazaribagh district.
26.	Superintendent of Labour, Giridih district.	Giridih	Giridih district.

1	2	3	4
27.	Superintendent of Labour, Bokaro Steel City.	Bokaro Steel City.	Bokaro Steel City, Project area of Dhanbad district and Chas Bazar Area.
28.	Superintendent of Labour, Dhanhad.	Dhanbad	Dhanbad district (except Bokaro Steel Project & Chas Bazar Area.
29.	Superintendent of Labour, Palamau.	Daltanganj	Palamau district.
30.	Superintendent of Labour, Chaibassa.	Chaibassa	Chaibassa Sadar Division of Singhbhum district.
31.	Superintendent of Labour, Jamshedpur.	Jamshedpur	Dalbhum & Saraikella, Kharasawan Sub- Division of Singhbhum District.



**S.O. 752, dated 9th May, 1977.** —In exercise of the powers conferred by sub-section (1) of section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), and in partial modification of the notification no. II/S6-101/76 L&E-1051 dated the 21st April, 1976 the Governor of Bihar is pleased to appoint the Officers specified in column 2 of the schedule hereto annexed to be Inspecting Officers for the purposes of the said Act within the local limits of the areas mentioned against each in column 4 of the said schedule with headquarters as shown in column 3 thereof.

#### SCHEDULE

SL No.	Designation	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Superintendent of Labour, Nalanda.	Biharsharif	Nalanda District.
2.	Superintendent of Labour, Nawada.	Nawada	Nawada District.
3.	Superintendent of Labour, Gaya.	Gaya	Gaya District.
4.	Superintendent of Labour, Aurangabad.	Aurangabad	Aurangabad District.
5.	Superintendent of Labour, Darbhanga.	Darbhanga	Darbhanga District.
6.	Superintendent of Labour, Madhubani.	Madhubani	Madhubani District.

1	2	3	4
7.	Superintendent of Labour, Muzaffarpur.	Muzaffarpur	Muzaffarpur District.
8.	Superintendent of Labour, Vaishali.	Hajipur	Vaishali District.



**S.O. 1493 dated the 2nd December, 1977.**—In exercise of the powers conferred by sub-section (5) of Section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954) and in partial modification of the notification no. II/S6-101/76 L & E 1315 dated the 6th April, 1976 the Governor of Bihar is pleased to declare that the officers as mentioned in column 2 of the schedule annexed hereto, shall exercise the powers of an Inspecting Officer within such areas of the local limits as defined in column 4 of the said Schedule of whom the prescribed notices are to be sent accordingly.

#### SCHEDULE

SL No.	Name and Designation of the Officers	Headquarters	Area of Local Limit
1	2	3	4
1.	Superintendent of Labour, Muzaffarpur	(1) Muzaffarpur	Ward Nos. 1 to 6, 8, 9, 10, 11, 12 of Muzaffarpur Municipality and Sahebganj Market.
2.	Superintendent of Labour, Muzaffarpur	(2) Muzaffarpur	Ward Nos. 13 to 18, 20, 21, 22, 24, 32 of Muzaffarpur Municipality and Motipur Market.
3.	Superintendent of Labour, Muzaffarpur	(3) Muzaffarpur	Ward Nos. 7, 19, 23 and 25 to 31 of Muzaffarpur Municipality.



**S.O. 333 dated the 5th March, 1979.**—In exercise of the powers conferred by sub-section (4) of section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), and in partial modification of Labour and Employment Department notification no. II/S6-103/74 L& E - 879 dated the 10th April, 1974, the Governor of Bihar is pleased to appoint the Officer mentioned in column 2 of the Schedule hereto annexed to the Inspecting Officer for the purposes of the said Act and to direct that the said Inspecting Officers shall exercise their functions within the local limits of their respective jurisdictions as mentioned in column 4 of the schedule with headquarters as shown in column 3 of the Schedule against the designation of Officer.

**SCHEDULE**

SL No.	Designation of Officers	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Superintendent of Labour, Hazaribagh.	Hazaribagh	Sadar sub-division of Hazaribagh district.
2.	Superintendent of Labour, Koderma.	Koderma	Chatra and Kodarma sub-divisions of Hazaribagh district.



**S.O. 526 dated 21st March, 1979.**—In exercise of the powers conferred by sub-section (1) of Section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), the Governor of Bihar is pleased to appoint the Officers specified in column 2 of the said Schedule hereto annexed to be Inspecting Officer for the purposes of the said Act within the local limits of the areas mentioned in column 4 of the said Schedule with headquarters as shown in column 3 thereof.

**SCHEDULE**

SL No.	Designation of Officers	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Shri Shailesh Kumar Jha Superintendent of Labour (under training), Monghyr	Office of the Superintendent of Labour, Monghyr.	Monghyr District
2.	Shri Mokhtar Ahmed, Superintendent of Labour (under training), Bhagalpur	Office of the Deputy Commissioner of Labour, Bhagalpur.	Bhagalpur District
3.	Shri Anjani Kumar, Superintendent of Labour (under training), Jamshedpur	Office of the Deputy Commissioner of Labour, Jamshedpur.	Singhbhum District
4.	Shri Mantra Narain Thakur, Superintendent of Labour (under training), Muzaffarpur	Office of the Assistant Commissioner of Labour, Muzaffarpur.	Muzaffarpur District
5.	Shri Rajesh Kumar, Superintendent of Labour (under training), Katihar.	Office of the Assistant Commissioner of Labour, Katihar.	Katihar District
6.	Shri Hamilton Singh, Superintendent of Labour (under training), Dhanbad.	Office of the Assistant Commissioner of Labour, Dhanbad.	Dhanbad District
7.	Shri Amar Kant Singh Superintendent of Labour (under training), Ranchi.	Office of the Assistant Commissioner of Labour, Ranchi.	Ranchi District



**S.O. 541 dated 24th March, 1979.**—In exercise of the powers conferred by sub-section (4) of Section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII, 1954), and in partial modification of Labour and Employment Department notification no. II/S6-101/76 L&E-1315 dated the 6th April, 1979, the Governor of Bihar is pleased to appoint the Officers mentioned in column 2 of the Schedule hereto annexed to be Inspecting Officers for the purposes of the said Act and to direct that the said Inspecting Officer shall exercise their functions within the local limits of their respective jurisdictions as mentioned in column 4 of the Schedule with headquarters as shown in column 3 of the Schedule against the designation of Officers.

**SCHEDULE**

SL No.	Designation of Officers	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Superintendent of Labour, Monghyr.	Monghyr	Whole Monghyr district (excluding Jamui and Khagaria sub-divisions.
2.	Superintendent of Labour, Jamui.	Jamui	Jamui sub-division.



**20th March, 1980**

**S.O. 326 dated 26th March, 1980.**—In exercise of the powers conferred by sub-section (2) of Section 7 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), the Governor of Bihar is pleased to alter the opening and closing hours prescribed under section 7(1) of the said Act for Shops and Establishments situated throughout the State of Bihar and to prescribe 8 A.M. and 8 P.M. as their opening and closing hours respectively until further orders, from the date of this notification.



**S.O. 26 dated 12th January, 1982.**—In exercise of the powers conferred by sub-section (1) of section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954) and in partial modification of notification no. S.O. 775 dated the 21st April, 1976, the Governor of Bihar is pleased to appoint the Officers mentioned in column no. 2 of the Schedule hereto annexed to be Inspecting Officers for the purposes of the said Act within the local limits of the area specified in column 4 of the said Schedule, with their headquarters as shown in Column 3 thereof, against the designation of the Officers.

**SCHEDULE**

SL No.	Designation of Officers	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Superintendent of Labour, Kishanganj.	Purnea	Whole of the Kishanganj and Araria sub-divisions.

1	2	3	4
2.	Superintendent of Labour, Purnea.	Purnea	Whole of Purnea District (except Kishanganj) and Araria sub-divisions.
3.	Superintendent of Labour, Patna.	Patna.	Whole of Patna District (except Barh subdivision)
4.	Superintendent of Labour, Barh.	Barh	Whole of Barh subdivision.



**S.O. 456 dated 20th March, 1982.**—In exercise of the powers conferred by sub-section (3) of Section 1 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), and in continuation of this Department's notification no. I/S6-108/55L-1974 dated the 5th February, 1955, the Governor of Bihar is pleased to appoint the 1st April, 1982 as the date on which all the provisions of the said Act shall come into force in all such area of Muzaffarpur Municipal Corporation which fall beyond area of the Muzaffarpur Municipality.



**S.O. 856 dated 25th May, 1982.**—In exercise of the powers conferred by sub-section (2) of Section 29 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), and in supersession of all previous notifications on the subject, the Governor of Bihar has been pleased to appoint Shri Simon Toppo, Joint Commissioner of Labour, Bihar, Patna to be the Chief Inspecting Officer for the purposes of the said Act with jurisdiction all over the State of Bihar from the date he takes over charge.



**S.O. 372 dated 7th April, 1983.**—In exercise of the powers conferred by sub-section (2) of Section 7 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954), and in supersession of the Department Notification No. II/S6-105/81-L&E-1961 dated the 6th November, 1982 on the subject the Governor of Bihar is pleased to alter the opening and closing hours prescribed under section 7 (1) of the said Act for Shops and Establishments situated throughout State of Bihar and to prescribe 8 A.M. and 8 P.M. as their opening and closing hours respectively until further orders from the date of the notification.



#### The 7th August 1986

**S.O. 1011 dated the 2nd September, 1986.**—In exercise of the powers conferred by sub-rule (1) of Rule 22 of the Bihar Shops and Establishments Rules, 1955, the Governor of Bihar is pleased to authorise the Joint Commissioner of Labour, Ranchi to hear and dispose of the applications under sub-section (1) of Section 28 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954), pending on the date of this notification in the Court of Joint Commissioner of Labour, Ranchi.



**S.O. 515 dated 25th May, 1988.**—In exercise of the powers conferred by sub-section (1) of Section 29 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954)

and in partial modification of Notification No. 2/S6-101/78-L&E-1051, dated the 22nd March, 1976, the Governor of Bihar is pleased to appoint the Officers mentioned in column 2 of the Schedule hereto annexed to be the Inspecting Officers who shall exercise their functions within the local limits of their respective jurisdictions as mentioned in column 4 of the schedule with headquarters as shown in column 3 of the schedule against the designations of Officers:

**SCHEDULE**

SL No.	Designation of Officers	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Labour Superintendent, Bermo.	Bokaro Thermal	Bermo subdivision of Giridih district.
2.	Labour Superintendent, Giridih.	Giridih	Sadar subdivision of Giridih district.



**The 12th July, 1988**

**S.O. 941, dated the 26th September, 1988.**—In exercise of the powers conferred by sub-section (4) of Section 29 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954), and in partial modification of Labour and Employment Department's notification no. 10/86-1032/88-L&E-699, dated 17th August 1985, the Governor of Bihar is pleased to appoint the Officer mentioned in column 2 of the Schedule hereto annexed to be Additional Inspecting Officer for the purposes of the said Act, and to direct that the said Additional Inspecting Officers shall exercise their functions within the local limits of their respective jurisdiction as mentioned in column 4 of the Schedule with head quarter as shown in column 3 of the schedule against the designation of Officer.

**SCHEDULE**

SL No.	Designation of Officers	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Additional Commissioner of Labour, Ranchi.	Ranchi	South Chhotanagpur, Chhotanagpur and Santhal Praganas Division.



**S.O. 943, dated 24th July, 1989.**—In exercise of the powers conferred by sub-section (1) of Section 29 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954) the Governor of Bihar is pleased to appoint the Officers mentioned in column 2 of the Schedule hereto annexed to be Inspecting Officers for the purpose of the said Act, who will exercise their function within the local limits of their respective jurisdiction as mentioned in column 4 of the Schedule with headquarters as shown in column 3 of the Schedule against the designations of Officers.

**SCHEDULE**

SL No.	Designation of Officers	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Superintendent of Labour, Dumka.	Dumka	Whole of the Dumka and Godda districts.
2.	Superintendent of Labour, Deoghar.	Deoghar	Whole of the Deoghar district.
3.	Superintendent of Labour, Sahebganj.	Sahebganj	Whole of the Sahebganj district.



**S.O. 1014/92 L&E-520 Patna, dated the 7th November, 1992.**—The Governor of Bihar in exercise of the powers conferred by Section 40 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954) intends to make amendment in the Bihar Shops and Establishments Rules, 1955, the draft of which was published as required under Sub-section (4) of the said section for the general information and persons likely to be affected thereby and notice is hereby given that any objection or suggestion may be submitted to the undersigned within two months from the date of publication. Any objection or suggestion which may be received on or before the expiry of the date of the said period will be duly considered by the State Government.

**Draft Amendments**

In the said rules for the Table appended to clause (b) of sub- rule (4) of Rule 3, the following Table shall be substituted, namely :—

**Table**

S.N.	Name of the District	Registration Marks
1	2	3
1.	Patna	P.T.
2.	Bhojpur	B.J.
3.	Buxar	B.X.
4.	Nalanda	N.L.
5.	Rohtas	R.H.
6.	Bhabhua	B.V.
7.	Gaya	G.Y.
8.	Aurangabad	A.B.
9.	Nawada	N.W.
10.	Jehanabad	J.B.
11.	Muzaffarpur	M.Z.
12.	Vaishali	V.S.
13.	Sitamarhi	S.M.
14.	East Champaran	E.C.
15.	West Champaran	WC.
16.	Saran	S.R.



1	2	3
17.	Gopalganj	-- G.J.
18.	Siwan	-- S.W.
19.	Darbhanga	-- D.B.
20.	Madhubani	-- M.B.
21.	Samastipur	-- S.T.
22.	Begusarai	-- B.G.
23.	Saharsa	-- S.H.
24.	Madhepura	-- M.P.
25.	Supaul	-- S.L.
26.	Purnea	-- P.H.
27.	Katihar	-- K.R.
28.	Araria	-- A.R.
29.	Kishanganj	-- K.N.
30.	Bhagalpur	-- B.H.
31.	Banka	-- B.K.
32.	Munger	-- M.G.
33.	Jamui	-- J.M.
34.	Khagaria	-- K.G.
35.	Dumka	-- D.K.
36.	Deoghar	-- D.G.
37.	Godda	-- G.A.
38.	Sahebganj	-- S.J.
39.	Hazaribagh	-- H.Z.
40.	Giridih	-- G.D.
41.	Dhanbad	-- D.N.
42.	Bokaro	-- B.O.
43.	Chatra	-- C.H.
44.	Ranchi	-- R.N.
45.	Lohardagga	-- L.D.
46.	Gumla	-- G.L.
47.	East Singhbhum	-- E.S.
48.	West Singhbhum	-- W.S.
49.	Daltonganj	-- D.T.
50.	Garwa	-- G.W.

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**19 मई, 1994**

**एस.ओ. 167, दिनांक 10 जून, 1994** – बिहार दुकान एवं प्रतिष्ठान अधिनियम, 1953 (बिहार एक्ट 8, 1954) की धारा 38 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बिहार-राज्यपाल आदेश देते हैं कि बिहार दुकान एवं प्रतिष्ठान नियमावली 1955 की नियम 25 के परन्तुक में विनिर्दिष्ट शर्तों के अधीन रहते हुए उक्त अधिनियम की धारा 7, 8, 9 के द्वितीय परन्तुक धारा 12 की उप-धारा (1) के प्रावधानों का प्रवर्तन पंचांग वर्ष 1994 के दौरान अनुलग्नक अनुसूची के स्तम्भ 3 में उल्लिखित अवधि तक उक्त अनुसूची के स्तम्भ 4 में विनिर्दिष्ट स्थानों की स्थानीय सीमाओं के अंतर्गत सभी प्रतिष्ठानों के संबंध में निलम्बित रहेगा।

### अनुसूची

क्रमांक	त्योहारों का नाम	बिहार दुकान एवं प्रतिष्ठान अधिनियम, 1953 की धारा 7, 8, 9 के द्वितीय परन्तुक एवं 12 (1) के प्रावधानों के निलम्बन की अवधि.	स्थानीय सीमा में जहाँ निलम्बन आदेश लागू होगा
1	2	3	4
1.	सरहुल	7.4.1994 बृहस्पतिवार से 14.4.1994 बृहस्पतिवार तक	सम्पूर्ण उत्तर एवं दक्षिणी छोटानागपुर तथा संधाल परगना प्रमंडल.
2.	रामनवमी	10.4.1994 रविवार से 20.4.1994 बुधवार तक	सीतामढ़ी जिला तथा साहेबगंज जिला बड़हरवाँ क्षेत्र.
3.	श्रावण पूर्णिमा	19.7.1994 मंगलवार से 22.8.1994 सोमवार तक	सम्पूर्ण देवघर जिला एवं भागलपुर जिला का सुलतानगंज क्षेत्र.
4.	पितृपक्ष मेला	20.9.1994 मंगलवार से 4.10.1994 मंगलवार तक	गया नगर निगम एवं बोध गया अनुसूचित क्षेत्र.
5.	कार्तिक पूर्णिमा	18.11.1994 शुक्रवार से 2.12.1994 शुक्रवार तक	सम्पूर्ण वैशाली जिला एवं सारण जिला के सोनपुर क्षेत्र.
6.	विवाह पंचमी	1.12.1994 बृहस्पतिवार से 15.12.1994 बृहस्पतिवार तक	डूमरा अधिसूचित क्षेत्र समिति.



**S.O. 390 dated 13th September, 1995.**—In exercise of the powers conferred by sub-section (1) of section 29 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954) and in partial modification of Labour and Employment Department's notification no. 2/S6-101/76-L&E-752 dated the 9th May, 1997 the Governor of Bihar is pleased to appoint the officers mentioned in column 2 of the Schedule hereto annexed to be Inspecting Officers for the purpose of the said Act within the local limits of the areas mentioned against each in column 4 of the said Schedule with head-quarters as shown in column 3 thereof.

### Schedule

SL No.	Designation of Officers	Headquarters	Local Limits of Jurisdiction
1	2	3	4
1.	Superintendent of Labour, Gaya.	Gaya	Whole district of Gaya.
2.	Superintendent of Labour, Jehanabad.	Jehanabad	Whole district of Jehanabad.



**Notification No. 2849, dated 17th October, 2001.**—In exercise of the powers conferred by sub-section 3 of section 1 of the Bihar Shops and Establishment Act, 1953 (Bihar Act- VIII, 1954) the Governor of Bihar is pleased to appoint 01.10.2001 as the date

on which all the provisions of the said Act shall come into force in the places as mentioned in column 2 of the Schedule hereto annexed.

**Schedule**

SL.	Name of Place	Thana No.	Boundry	District
1	2	3	4	5
1.	Harnaut	213	North-Dihri South-Rupasur East-Railway Station West-Sabanpura	Nalanda
2.	Chandi	295	N.C.O.'s Residence South-Chiraiya River East-College Block West-Dicrowave Tower	Nalanda
3.	Akangar Sarai	119	North-Veterinary Hospital South-Bharat Petroleum East-Gram Sandi Bigha West-Modern Service Station	Nalanda
4.	Silaw	—	North-High School, Silaw South-South-side of Rajgir East-Silaw P.S. Badah West-Village Area	Nalanda
5.	Islampur	—	Notified Area	Nalanda
6.	Maheshkhunt	297	North-National Highway (Assam Road) South-Bhuthikiya East-Railway Station West-Karichak	Khagaria
7.	Phulwarisarif	—	Notified Area	Patna
8.	Maner	—	Notified Area	Patna
9.	Ramgarhwa Bazar	66	North-Ramgarhwa Gram South-Lalminda East-Bahauri Gram West-Silwania Pohra Tola	East Champanan
10.	Areraj	—	Notified Area	East Champanan
11.	Ramnagar	—	Notified Area	West Champanan
12.	Shivhar	—	Notified Area	Shivhar
13.	Bakhari Bazar	157	North-Bakhari Block H.O. South-Chandanala East-Sumama Mushari West-Rampur Mallachak	Begusarai

1	2	3	4	5
14.	Supaul Bazar	287	North–Nagarrata Goan South–Leg Bus-Stand East–Virola West–Karkoli Gram	Darbhanga
15.	Tazpur	129	North–Rahimabaj South–National Highway (Aahar) East–Motipur Adharpur West–Hari Shankar Baghauni	Samastipur
16.	Hasanpur	194	North–Magherpur Salha South–Railway Line East–Bargaon West–Rampur	Samastipur
17.	Janakpur Road	–	Notified Area	Sitamarhi
18.	Belsand	–	Notified Area	Sitamarhi
19.	Sursand	47	North–Nepal South–Virakh East–Gopalpur West–Vaishali	Sitamarhi
20.	Runni Saidpur	218	North–Morsand South–Manpur Bahnawali East–Weligram West–Waghari	Sitamarhi
21.	Ghogharadiha	–	Notified Area	Madhubani
22.	Kanti	–	Notified Area	Muzaffarpur
23.	Amarpur	–	Notified Area	Bhagalpur
24.	Bariyarpur	90	North–Pariya Panchayat South–Bariyarpur South Panchayat East–Banda Diyara Panchayat West–Itahari-Ratanpur Panchayat	Munger
25.	Tarapur	196	North–Gajipur Panchayat South–Bhima Panchayat East–Shambhuganj Panchayat West–Parvara Panchayat	Munger
26.	Navinagar	–	Notified Area	Aurangabad
27.	Jamhour	–	Notified Area	Aurangabad
28.	Makhdumpur	–	Notified Area	Jehanabad
29.	Shahpur	–	Notified Area	Bhojpur
30.	Kataiya	–	Notified Area	Gopalganj

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**S.O. 165 dated 10th June, 1994.**—In exercise of the powers conferred by section 38 of the Bihar Shops and Establishments Act, 1953 ( Bihar Act VIII of 1954) the Governor of Bihar is pleased to order that the operation of the provision of Section 7, 8, second proviso to Section 9 and sub-section (1) of Section 12 of the said Act shall remain suspended during calender year 1994 for the period mentioned in column 3 of the schedule hereto annexed in respect of all Establishments falling within the local limits of places as specified in column 4 of the schedule, subject to the condition laid down in the proviso to Rule 35 of the Bihar Shops and Establishments Rules, 1995.

#### Schedule

SL No.	Name of the Festival	Period of suspension of Sections 7, 8, second proviso to Section 9 and Section 12(1) of the Bihar Shops and Establishments Act, 1953.	Areas to which suspension is applicable
1	2	3	4
1.	Holi	Monday, 21st March, 1994 to Tuesday, 29th March, 1994.	Whole of Bihar.
2.	Id-ul-fitr	Monday, 7th March, 1994 to Monday, 14th March, 1994.	Whole of Bihar.
3.	Id-uz-Zoha	Sunday, 15th May, 1994 to Monday, 23rd May, 1994.	Whole of Bihar.
4.	Durga Puja and Laxmi Puja	Monday, 3rd October, 1994 to Sunday, 16th October, 1994.	Whole of Bihar.
5.	Deepawali and Chhat	Tuesday, 1st November, 1994 to Tuesday, 8th November, 1994.	Whole of Bihar.
6.	Christmas	Wednesday, 21st December, 1994 to Sunday, 25th December, 1994.	Whole of Bihar.

