

JHARKHAND SHOPS AND ESTABLISHMENT LAWS

THE BIHAR SHOPS AND ESTABLISHMENTS ACT, 1953¹

[Bihar Act VIII of 1954]

S.O. No. 2/SEA (LC) 501/2001 L&T-2870, dated 14th November, 2002.—In exercise of the powers conferred by Section 85 of the Bihar Reorganisation Act, 2000, the Government of Jharkhand do hereby adapt "The Bihar Shops and Establishment Act, 1953. The Bihar Shops and Establishment Rules, 1955" (hereinafter referred as the said Rules) with the following amendments :—

1. In the said Rules wherever the word "Bihar" is mentioned to the word "Jharkhand" shall be deemed to have been substituted.

2. Hereinafter the said Rules shall be known as "The Jharkhand Shops and Establishment Rules, 2001."

Note.—Though the Act has been adapted *vide* Notification S.O. No. 2/SEA (LC) 501/2001—L&T 2870, dated 14th November, 2002 but the word "Bihar" and the year "1953" of the title of the Act have not seen changed.

An Act to provide for the Regulation of conditions of work and employment in shops and other establishments and for certain other purposes.

Whereas it is expedient to provide for the regulation of conditions of work and employment in shops and other establishment and for certain other purposes hereinafter specified.

COMMENTS

Preamble.—The larger principle and rationale underlying Section 35 of the Act and those of Section 10 of the Essential Commodities Act are indeed plain and discernible. Both the statutes are directed against social or economic offences and may well be labelled as beneficent legislation which has to be somewhat liberally construed.²

1. Act received the assent of the President on 17.3.1954 and is in force from 15.2.1955 *vide* Notification No. 1/S6-108,55 L-1794.L, dated 15.2.1955.
2. *Baari Prasad Gupta v. State of Bihar*, 1986 PLJR 246 at 249 (FB).

The Object of the Shops Act.—The Shops Act was enacted for the benefit of the employee. It was noticed that persons who were working in shops and establishments and to whom Industrial Employment (Standing Orders) Act, 1946 does not apply have no statutory service conditions. The result was that employers made them work for unlimited hours in a day, no weekly paid rest and paid holidays were provided, the employers used to hire and fire at their whims. In these cases Courts are concerned with the object of the Shops Act noticed last, *i.e.* hire and fire. As the object is to prevent this, in a given case Court is entitled to tear the veil to see whether even if it appeared to be a case of registration by an employee, it was merely a ruse and the termination of employment was in fact brought about by the employer. Otherwise terminated will include such cases whose resignation is obtained by force, fraud, coercion, undue influence and the like, that is where it was (sic) voluntary.¹

Exemption of Goshala.—Goshala are exempted from all provisions of the Act hence workman cannot agitate its grievance before Labour Court.²

Termination.—Where the termination is not passed on ground of misconduct, the Act does not insist on rule of *audi alteram partem*. It will not be fair 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.³

Non-service of enquiry report.—When 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.⁴

Contractual appointment.—When appointment of a person had been made purely on contractual and *ad hoc* basis 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 *ad hoc* basis for more than one year.⁵

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Bihar Shops and Establishments Act, 1953.

(2) It extends to the whole of the State of Bihar.

(3) It shall come into force on such date⁶ as the State Government may, by notification appoint and different dates may be appointed for

1. *Tata Robins Fraser Co. Ltd. v. Presiding Officer*, 1989 PLJR 1153 at p. 1155.
2. *Muzaffarpur Goshala through Secretary v. The Presiding Officer*, 2001 (2) BLJR 1662 : 2001 (3) BLJ 169 (Pat).
3. *Biscomaun Ltd. v. State of Bihar*, 1993 (1) PLJR 333.
4. *Union of India v. Md. Ramzan Khan*, AIR 1991 SC 471.
5. *Driector v. Smt. Pushpa Srivastava*, AIR 1992 SC 2070.
6. Came into force on 15.2.1955 *vide* Notifi. No. 1/S6-108.55L- 1794.L, dated 15.2.1955.

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).

COMMENT

Issuing Notification from time to time Act enforced in the State of Bihar :

- ¹(a) Patna, Gaya, Ranchi, Jamshedpur, Bhagalpur, Muzaffarpur.
- ²(b) Jugsalai N.A.C., Doranda N.A.C., Dinapur Nizamut Municipality, Khagaul.
- ³(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.
- ⁴(d) Arrah, Chapra, Darbhanga, Motihari, Monghyr, Hazaribagh, Purnea, Chaibasa.
- ⁵(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.
- ⁶(f) Gumla N.A.C., Pakur N.A.C., Madhepura N.A.C., Mirganj N.A.C., Aurangabad N.A.C.

1. Vide Notification No. I/S6-108/55L - 1794, dated 15.2.1955 (w.e.f. 15.2.1955).
2. Vide Notification No. I/S6-108/55L - 7882, dated 26.5.1955 (w.e.f. 1.6.1955).
3. Vide Notification No. II/S6-104/60L - 2032, dated 23.2.1960 (w.e.f. 23.2.1960).
4. Vide Notification No. I/S6-106/57L - 3644, dated 28.5.1957 (w.e.f. 1.4.1957).
5. Vide Notification No. II/S6-1036-58L - 10883, dated 25.6.1958 (w.e.f. 15.7.1958).
6. Vide Notification No. II/S6-206/64L & E - 1202, dated 3.2.1964 (w.e.f. 1.3.1964).

- ¹[(g) Bairagania Market, Mahanar Market, Jahanabad Market, Ramgarh Cantt. Market.
- ²[(h) Dalsinghsarai N.A.C.
- ³[(i) Jamshedpur N.A.C.
- ⁴[(j) Warsalinganj, Nokha, Sahpur Patori, Mahuddinagar, Rajnagar, Sonapur, Marhowrah, Motipur, Chanpatia, Narkatiaganj, Bermo, Jamtara, Barauni, Jharia, Gogri, Kharagpur, Asarganj, Jogbani, Banmankhi, Behariganj.
- ⁵[(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.
- ⁶[(l) Maharajganj, Mairwa, Pupri, Fatuah, Bihta, Masaurhi, Hilsa, Hasua, Nassriganj, Bikramganj, Piro, Behea, Jhanjharpur, Chas.
- ⁷[(m) Jahanabad N.A.C.
- ⁸[(n) Barauli, Dighwara, Sahebganj, Barachakia.
- ⁹[(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..
- ¹⁰[(p) Paliganj Bazar, Vikram Bazar, Khusrupur Bazar, Parwalpur Bazar, Fatehpur Bazar, Barbigha Bazar, Barharwa Bazar, Bahadurganj Bazar, Khunti Bazar, Sherghati Bazar, Dhanwar Bazar, Garkha Bazar, Ekma Bazar, Masrakh Bazar, Ghorasahan Bazar, Madhepur Bazar, Chhoti Balia, Domchanchi, Sakri Bazar, Pandal Bazar, Bokaro Steel City, Hatia, Barauni]
- ¹¹[(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

1. *Vide* Notification No. II/S6-206/64L & E - 1201, dated 3.2.1964 (w.e.f. 1.3.1964).
2. *Vide* Notification No. II/S6 206/64L & E - 8411, dated 8.9.1964 (w.e.f. 15.9.1964).
3. *Vide* Notification No. II/S6 - 1070/64L & E - 1149, dated 18.12.1964 (w.e.f. 15.1.1964).
4. *Vide* Notification No. II/S6 - 204/64L & E - 5556, dated 7.6.1966 (w.e.f. 1.8.1966).
5. *Vide* Notification No. II/S6 - 204/66L & E - 5557, dated 7.6.1966 (w.e.f. 1.8.1964).
6. *Vide* Notification No. II/S6 - 2014/67L & E - 9957, dated 11.8.1967 (w.e.f. 1.11.1967).
7. *Vide* Notification No. II/S6 - 2014/67L & E - 9990, dated 11.8.1967 (w.e.f. 1.11.1967).
8. *Vide* Notification No. II/S6 - 207/68 L & E - 1182 (1), dated 2.8.1968 (w.e.f. 1.9.1968).
9. *Vide* Notification No. II/S6 - 1027/73 L & E - 903 (2), dated 4.4.1973 (w.e.f. 1.5.1973).
10. *Vide* Notification No. II/S6 - 1030/73 L & E - 4753 (2), dated 27.8.1973 (w.e.f. 15.8.1973).
11. *Vide* S.O. 691, dated 7.4.1979 (w.e.f. 1.1.1979).

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.

TABLE

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, 1955	1.6.1955	Jugsalai Notified Area, Doranda Notified Area	Jugsalai Municipality (Dist. Singhbhum) Doranda Municipality (Distt. 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) Gopalganj Municipality (Dist. Gopalganj) Jhumritelaiya Municipality (Dist. Hazaribagh).
3.	II/S6 - 104/60L - 2032, dated 23rd February, 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 - 206/64 L&E - 1202, dated 3rd February, 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).
5.	II/S6 - 204/66 L&E - 5555, dated 7th June, 1966	1.8.1966	Warasalinganj	Warsalinganj Notified Area Committee (Dist. Nawada)
			Narkatiaganj Market	Narkatiaganj Notified Area Committee (Dist. West Champaran).
			Jhajha	Jhajha Notified Area Committee (Dist. Monghyr).
			Banmankhi	Banmankhi Notified Area Committee (Dist. Purnea).
6.	II/S6 - 2014/67 L&E - 9987, dated 11th August, 1967	1.11.1967	Hilsa Market	Hilsa Notified Area Committee (Dist. Nalanda).
			Piro Market	Piro Notified Area Committee (Dist. Bhojpur).
			Behea Market	Behea Notified Area Committee (Dist. Bhojpur).

1	2	3	4	5
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	Khusrupur Notified Area Committee (Dist. Patna).
			Barbigaha Market	Barbigaha Notified Area Committee (Dist. Monghyr).
			Bahadurganj Market	Bahadurganj Notified Area Committee (Dist. Purnea).
			Khunti Market	Khunti Notified Area Committee (Dist. Ranchi)
			Sherghati Market	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 Chouhadi Gothra South - Boundary of Village Kanakpur	Purnea.

1	2	3	4	5
			East - Burhi Dangi River, Village Kanakpur	
			West - L.R.P. Road Village Gothra	
2.	Tribeniganj Bazar	Latona - 273	North	Saharsa
		Thalha	Kathakholwa	
		Garia - 269	South - Mora ast - Duparkha West - Babhangama	
3.	Dhaka Bazar	Dhaka Chainpur Panchayat Dhaka Ramchandra Panchayat	North - Pipra Wazid East South - Dhaka Cham-Lahan 106 East - Paran Barharwa Siwan West - Sitalpatti	

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.

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.

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	1. Bhagalpur Municipal Corporation
And	2. Gaya Municipal Corporation
I/S6-106/57L - 3644, dated the 28th February, 1957	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;
- (1-A) "child" means a person who has not completed the age of fourteen years;
- ✓(2) "closed" means not open for the service of any customer to any business connected with the establishment;
- ✓(3) "day" means a period of twenty-four hours beginning at midnight :

Provided that, in the case of an employee whose hours of work begins before and extend beyond midnight, day means a period of twenty-four hours beginning at the hour his work commences;

✓¹(4) "employee" means a person wholly or partially employed for hire, wages including salary, reward, or commission in and in connection with any establishment and includes 'apprentice' but does not include member of the employer's family. It also includes person employed in a factory who are not worker within the meaning of the Factories Act, 1948 (63 of 1948), and for the purpose of proceeding under this Act, include an employee, who has been dismissed, discharged or retrenched for any reason whatsoever;

(5) "employer" means a person who owns or exercise ultimate control over the affairs of an establishment and includes a manager, agent or any other person in the immediate charge of the general management or control of such establishment;

²(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

1. Subs. by Act 2 of 1975.

2. Subs. by Act 2 of 1975.

- (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;
- (10-A) "*Opened*" means opened for the service of any customer or for any business connected with the establishment;
- (10-B) ✓ "*Period of work*" means the time during which an employee is at the disposal of the employer;
- (11) "*Prescribed*" means prescribed by rules made under this Act;
- (12) "*Residential hotel*" means any premises used for the reception of guests travellers desirous of dwelling or sleeping therein and includes a club;
- (13) "*Restaurant*" or "*eating house*" means any premises in which is carried on wholly or principally the business of the supply of meal or refreshments to the public or a class of the public for consumption on the premises;
- (14) "*Retail trade or business*" includes the business of a hawker, hairdresser, the sale of cooked food, refreshments or intoxicating liquors and retail sale by auction;
- (15) "*Schedule*" means the Schedule appended to this Act;
- ✓ (16) "*Shop*" means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers and includes an office, store-room, godown, warehouse and work place, whether in the same premises or elsewhere, used in connection with such sales or services, but does not include a restaurant, a residential hotel, eating

- house, theatre or other place of public amusement or entertainment;
- (17) "*Spread over*" means the period between the commencement and the termination of the work of an employee on any day;
- (18) "*Theatre*" includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of a cinematograph or other suitable apparatus or for dramatic performance, or any other public amusement or entertainment;
- (19) "*Wage period*" in relation to the payment of wages of any employee, means a wage period fixed by an employer under Section 20 in respect of such employee;
- (20) "*Wages*" means wages as defined in the Payment of Wages Act, 1936 (IV of 1936) and includes the dearness allowance as the workman is for the time being entitled to;
- (21) "*Week*" means a period of seven days beginning at midnight of Saturday;
- ¹[(21-A) "*Year*" means a year commencing on the first day of January, and]
- (22) "*Young person*" means a person who is not a child and has not completed the age of eighteen years.

SYNOPSIS

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1. Requirement of the Section.—The impugned orders as well as the statement of the respondents in their counter affidavits are completely vague. The respondents have failed to assign any reason, as also to place relevant materials in support of their stand that the establishment in question is covered under the meaning of Section 2(4) or Section 6 of the Bihar Act. Unless all the required formalities are observed, it would be really hard to take a decision that the establishment requires registration under the Bihar Act.

The respondents have failed to justify that the establishment in question is required to be registered under the provisions of Rule 3 of the Rules. It is further held that neither proper enquiry was conducted nor due opportunity was given to the petitioners before the impugned action of the authority.²

2. Employee.—On a plain reading of the definition it would reveal that even persons employed in a factory by the inclusive clause in the second sentence of

1. Ins. by Act 12 of 1961.

2. *M/s. ITC Ltd. v. State of Bihar*, 1996 (1) PLJR 297 at pp. 299, 300.

the definition are employees within the meaning of the Bihar Act. But it has to be noticed that two exceptions have been carved out from the category of such person, namely, (i) who are not 'workers' within the meaning of the Factories Act such workers do not come within the exclusive definition of the term 'employees' and (ii) who are not working in managerial capacity.¹

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 Bihar Act. But it has to be noticed that two exceptions have been carved out from the category of such person, namely, (i) who are not "workers" within the meaning of the Factories Act, such workers do not come within the exclusive definition of the term "employees" and (ii) who are not working in managerial capacity.²

Even a person employed in a factory and who is not a worker within the meaning of the Factories Act will not be an employee under Section 2(4) of the Bihar Act if he is working in a managerial capacity.³

3. Worker—Is a person employed in the premises.—Defined in Section 2(1) of the Factories Act, 1948 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. It is not necessary that such workers must be directly connected with the manufacturing process, but those who are on any other work connected with or his work is incidental to the manufacturing process in a factory are included.⁴

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. It is not necessary that such workers must be directly connected with the manufacturing process, but those who are on any other work connected with or his work is incidental to the manufacturing process in a factory are included.

4. Establishment.—The school, not being an establishment within the meaning of the Act, the Labour Court had no jurisdiction to interfere with the order terminating the services of a teacher.⁵

5. "Establishment"—Definition of.—Merely because an institution employs teachers, regulates their conditions of service and pay them salary, it cannot be held that it is an establishment under the Act because if it employs teachers, it has to pay their salary and provide for regulation of their service. Running of an educational institution in a scientific and efficient manner like modern organization cannot convert it into a commercial establishment unless it is found that it carries on trade or business.

1. *M/s. ITC Ltd. v. State of Bihar*, 1996 (1) PLJR 297 at pp. 299, 300.

2. *M/s. ITC Ltd. v. State of Bihar*, 1996 (1) PLJR 297 at pp. 299, 300.

3. *M/s. ITC Ltd. v. State of Bihar*, 1996 (1) PLJR 297 at pp. 300, 301.

4. *M/s. ITC Ltd. v. State of Bihar*, 1996 (1) PLJR 297 at p. 300.

5. *The Managing Committee, East India Section of Seventh Day Adventists and another v. Presiding Officer, Labour Court, Ranchi and another*, 2002 (3) JCR 155 (Pat) (RB); *Lala Lajpat Rai Bal Mandir & Anr. (I) v. Labour Court Ranchi & Anr.*, 2004 (1) JCR 366 (Jhr).

The school does not render any material service to the community with the help of the employees in the sense in which it is done by trading and business organizations. It imparts education and does not carry on any trade business or profession. Its objective is carrying on welfare activities in the human societies in the field of education, health and hygiene. Majority of the students get free food, clothing and the education either wholly or partly and the school is run on donations from the people who have faith in the system. Such activities do not partake the character of trade or business. The finding to the contrary contained in the impugned judgment, being based on unwarranted assumption, cannot be sustained.¹

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

Section deals with the establishments which are exempted such as mine as defined in Mines Act, 1952. The provisions specified in the III Column of the Schedule shall not apply to the establishment, employees and other persons provided that the State Government may by notification, add to omit or alter any of the entries in Schedule in respect of one or more areas of the State.

Jurisdiction—Question of.—Even if the notification is prospective in view of the *non-obstante* clause and the deeming provision in the amended provision, it will come into operation immediately and affect proceedings which are pending on the date of the notification.

The Authority in view of the changed position in law by virtue of the amended provision of Section 4(2) of the said Act read with the notification ceases to have jurisdiction to pronounce the said order on 31st October, 1986 because the said notification on the strength of the amended provision of the said Act came into existence admittedly on 13th August, 1985.²

1. *The Managing Committee, East India Section of Seventh Day Adventists and another v. Presiding Officer, Labour Court, Ranchi and another*, 2002 (3) JCR 155 (Pat) (RB); *Lala Lajpat Rai Bal Mandir & Anr. (I) v. Labour Court Ranchi & Anr.*, 2004 (1) JCR 366 (Jhr).
2. *State Bank of India v. State of Bihar and others*, 1995 (4) PLJR 81 at p. 83, 85.

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.

COMMENT

The Act does not affect any right or privilege to which an employee in any establishment is entitled. In other words rights and privilege under other law are not affected by the Act.

CHAPTER II

ESTABLISHMENT

1[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.]

COMMENT

The State Government has been given power to make any rule requiring the registration of the establishment. The State Government may fix the fees payable for renewal and registration.

7. Opening and closing hours of establishments.—²[(1) No establishment shall on any day be opened earlier than 9 a.m. and closed later than 9 p.m. :

Provided that any customer who was being served or was waiting to be served at such closing hour in any establishment may be served in such establishment during the quarter of an hour immediately following such hour.]

(2) The State Government may, by notification, after the opening or closing hours for different establishments or for different areas or for different periods of the year.

(3) When they are conducted in an establishment two or more trades or business, any or which is of such a character that, if it was sole trade or business, therein conducted, the provisions of this section would not apply to that establishment shall, so far the conduct of that trade or business is concerned, be exempt from the operation of this section.

COMMENT

The State Government has been authorised to alter the opening or closing hours for different establishment but generally the establishment shall open at 9.00 a.m. and close at 9.00 p.m.

1. Subs. by Act 2 of 1975.
2. Subs. by Act 2 of 1975.

¹[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.]

COMMENT

No person shall carry on the sale of any goods in any place before the opening or after the closing hours fixed under Section 7 but the hawker on footpath or market street are exempted up to 11.00 p.m. Further the section does not apply to the hawking of news papers.

²[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 over-time wages at the rate fixed in Section 21, but the total number of hours of work, including overtime, shall not exceed 10 hours in any day and 54 hours in any week and the aggregate hours of overtime work shall not exceed 150 hours in a year :

Provided further that advance intimation of at least 3 days in this respect has been given in the prescribed manner to the Chief Inspector or any other officer authorised by the State Government.]

COMMENT

No employee shall be required or allowed to work for more than 9 hours in a day and or more than 48 hours in a week. Excess hours fixed under the section subject to payment of overtime wages may be allowed provided that advance intimation of at least three days to the Chief Inspector or any other officer authorised by State Government.

³[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 :

1. Subs. by Act 2 of 1975.
2. Subs. by Act 2 of 1975.
3. Subs. by Act 2 of 1975.

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.]

11. **Spreading of periods of work.**—The periods of work and intervals of rest of an employee in an establishment shall not be together spread over more than—

(i) in the case of child, eight hours in any day;

(ii) in the case of a young person, ten hours in any day;

¹[(iii) in the case of any other employee twelve hours in any day.]

²[12. **Weekly holidays in establishments.**—(1) Every establishment shall remain entirely closed on one day of the week :

Provided that an employer may keep the establishment open on weekly holiday if it falls on the opening day of the financial year.

(2) The day on which an establishment shall remain entirely closed in each week shall, subject to the provisions of sub-section (3), be specified by the employer in a notice (in hindi in devanagri script and, if necessary, in a language and script understood by the majority of the employees) displayed at some conspicuous and convenient place at or near the main entrance of the establishment and shall be mentioned in a clean and legible condition and the day so specified shall not be altered more often than once in three months and a copy of such notice shall be delivered at the office of the Inspecting Officer and the day specified in the notice shall not be altered without the prior approval of the Inspecting Officer.

(3) Subject to such directions as may be issued by the State Government in this connection from time to time, the Chief Inspecting Officer, may, if he thinks fit so to do in the public interest, by notification, specify the day on which all or any classes of establishment in a particular area shall remain entirely closed under sub-section (1) and thereupon, the day so specified shall be deemed to be the day specified under sub-section (2) by the employer.

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

Provided that nothing in this sub-section shall apply to any employee whose total period of employment in the week, including any day spent on authorised leave is less than six days or shall entitle such employee who has been allowed a whole holiday on the day on which the establishment has remained closed in pursuance of sub-section (1) to an additional holiday.

1. Subs. by Act 2 of 1975.

2. Subs. by Act 2 of 1975.

(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.]

COMMENT

One day in each week has been provided as a holiday. No deduction shall be made from the wages of any employee on account of any day on which it has remained closed as a holiday. Further the Chief Inspecting Officer on the direction of the State Government may by notification specify the day on which all or any class or classes of establishment in a particular area shall remain entirely closed.

¹[12-A. **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 Noti. S.O. No. II/S6-10102/72 L&S 2183, dated 30.10.1972, given after the Act.]

²[12-B. **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.

CHAPTER III

Employment of children and young persons

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

14. **Children, young persons and women to work only between 7 a.m. and 10 p.m.**—No child, young person or woman shall be required or allowed to work whether as an employee or otherwise in any establishment to which this Act applies before 7 a.m. or after 10 p.m.

15. **Daily and weekly hours of work for young persons.**—(1) Notwithstanding anything contained in this Act—

1. Ins. by Act 2 of 1975.
2. Renumbered by Act 2 of 1975.

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

(2) No child shall be required or allowed to work in any establishment on any day, on which he has already been working in another establishment.

CHAPTER 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) if a child, one day for every fifteen days of work performed by him during the previous calendar year.
- (ii) in any other case, one day for every twenty days of work performed by him during the previous calendar year.

Explanation.—For the purpose of this sub-section—

- (a) any day of lay off, by agreement or contract or as permissible under the standing orders and any days of lock-out;
- (b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks; and
- (c) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the employee has worked in an establishment for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.

(2) (i) The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

(ii) An employee whose service commence, otherwise than on the first day of January shall be entitled to leave with wages at the rate laid

down in clause (i) or as the case may be, clause (ii) of sub-section (1) if he has worked for two third of the total number of days in the remainder of the calendar year.

(3) An employee who has been employed for a period of not less than one hundred and twenty days shall be entitled to leave with wages at the rate prescribed in clause (i) or clause (ii), of sub-section (1), as the case may be, if the ratio of the number of days of his employment is not less than the ratio which 240 bears to 365, and the employer shall pay to him the amount payable under Section 17 in respect of the leave with wages to which he is deemed to have become entitled.

(4) In calculating leave under this section, fraction of leave of half-a-day or more shall be treated as one full 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 :

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

²[* * *]

(6) An employee may at any time apply in writing to the employer, not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during that calendar year under sub-section (1) or sub-section (3), as the case may be :

Provided that the number of instalments in which the leave is proposed to be taken shall not exceed three.

(7) An application for leave which does not contravene the provisions of sub-section (6) shall not be refused without sufficient cause to be recorded in writing :

Provided that an employee aggrieved by such refusal may appeal in the prescribed manner to the prescribed authority who shall, if he is satisfied after hearing the parties that such refusal was without sufficient cause, award such compensation to the employee as such authority may consider fair and equitable.

³[(8) When earned leave is refused to an employee having to his credit such leave for forty-five days, he shall be entitled, in respect of the period

1. Sus. by Act 2 of 1975.

2. Second proviso omitted by Act 2 of 1975.

3. Ins. by Act 2 of 1975.

covered by the refusal, to an amount which would have been payable to him as wages for the period in case he had been on leave during that period. The amount payable under this sub-section shall be in addition to the normal wages payable for the period.

On an employee receiving the said amount the leave to his credit shall be reduced by the number of days in respect of which such amount is received.]

✓ ¹[(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.]

²[16-A. 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.

1. Sub-secs. (8), (9), (10) re-numbered as sub-secs. (9), (10), (11) by Act 2 of 1975.

2. Ins. by Act 2 of 1975.

(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.

¹[(3) An employee proceeding on earned leave shall on demand be given advance payment of the wages for half of period of leave and the wages for the wage period immediately preceding such leave. The wages for the remaining half period of such leave shall be payable to him along with wages for the first wage period after he resumes duty. The wages for the period of sick leave shall be payable to the employee along with his wages for the first wage period after he resumes duty.]

COMMENT

An employee shall be paid at a rate equal to the daily average of his total full time earnings for the leaves allowed under Section 16. Further it has been provided that employees proceeding on earned leave shall on demand be given advanced payment of the wages for half of period of leave.

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

18-A. Power to exempt establishment.—Where the State Government is satisfied that the leave rules applicable to employees in an establishment

1. Ins. by Act 2 of 1975.

2. Subs. by Act 2 of 1975.

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.

COMMENT

It has been provided under this section that an employee shall be entitled in respect of the overtime to wages at the rate which shall be twice the ordinary rate of his wages. The State Government may prescribe the registers that shall be maintained in the establishment for the purpose of securing compliance with the provisions of the section.

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

23. **Time of payment of wages.**—(1) Wages of every employee shall be paid before the expiry of the seventh day after the last day of the wage period as respect of which the wages are payable :

Provided that if any employee be absent until the last day permissible under this sub-section the wages shall be paid before the expiry of three working days from the day on which he attends for work again or demands payment.

(2) Where the employment of an employee is terminated by or under the order of the employer, the wages earned by such employee shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) All payments of wages shall be made on a working day at or near the place of work and during working hours.

(4) The State Government may by general or special order exempt an employer from the operation of this section in respect of the wages of any employee or class of employees, to such extent and subject to such conditions as may be specified in the order.

24. **Wages to be paid in current coins or currency notes.**—All wages shall be paid in current coins or currency notes or in both.

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

COMMENT

It has been provided under this section that no deduction shall be made by the employer from the wages of the employees, only prescribed deduction shall be allowed.

26. **Notice of the dismissal or discharge.**—¹[(1) No employer shall dismiss or discharge or otherwise terminate the employment of any employee who has been in his employment continuously for a period of not less than six months, except for a reasonable cause and after giving such employee at least one month's notice or one month's wages in lieu of such notice :

Domestic Enquiry
Provided that such notice shall not be necessary where the services of such employee are dispensed with on a charge of such misconduct as may be prescribed by the State Government, supported by satisfactory evidence recorded at an enquiry held for the purpose :

Provided further that an employee who has been in continuous employment for a year or more and whose services are dispensed with otherwise than on a charge of misconduct shall also be paid compensation equivalent to fifteen days average wages for every completed year of service and any part thereof in excess of six months before his discharge in addition to the notice or pay in lieu of notice as prescribed above.]

²[(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

1. Subs. by Act 2 of 1975.

2. Subs. by Act 2 of 1975.

*DLC notified as prescribed authority - notification
no. 10/L6-1038/96 L.B. 177 dt. 16.4.96*

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.

Condone

(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.

Armed Tribunal

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1. **Notice.**—It has been provided in this section that notice is must for the dismissal or discharge. One months notice or one months wages in lieu of such notice is compulsory for the employee who has been in the employment continuously for a period not less than 6 months.¹

Further it has been provided that complaint in writing within 90 days may be made to the Prescribed Authority. The Prescribed Authority has been given power to condone the delay. The Prescribed Authority shall issue notice to the employer relating to the complaint. Prescribed Authority has been authorised to record evidence and has been also empowered to reinstate the employee and he shall has the power to award the compensation also. The decision shall be final and it has the binding effect.

2. **Scope of.**—A bare reading of the charge-sheet and the domestic enquiry goes in explain that the charges for which the petitioner was charge-sheeted and the grounds of dismissal on which he was dismissed, are one and the same charge and there is no discrepancy, whatsoever.

The charges of misconduct have been proved against the petitioner and, as such, the order impugned passed by the Labour Court, requires no interference.²

1. Author's View.

2. *Abdul Rahim v. Presiding Officer*, 1994 (2) PLJR 238 at p. 242.

3. **Approval to the order of dismissal.**—These are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and those two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal. In each of those cases, the findings are treated as perverse.¹

4. **Requirement of law.**—Admittedly, the Act and Rules do not provide that establishments shall/may make a Service Rule for regulating service conditions of its employees. If such a Rule would have been framed, then it would have been against the provisions of the Act/Rule. Such an issue can be framed only when there is such a requirement under the provisions of the Act/Rule and is to be examined what were these rules, but if there is no such requirement of law, then if such an issue is allowed to be framed then impliedly it means that every establishment is required to frame such Rules for its establishment, which is not at all the mandate of law.²

5. **Requirement of justice.**—Considering the aspect of the matter and the requirement of justice in this case, the Court directs the petitioner's company to pay an amount of Rs. 30,000/- by way of compensation payment to the petitioner.

The Court is of the opinion that before directing reinstatement, the Labour Court should have held an enquiry in respect of the charges and if he finds that the petitioner is not guilty in respect of the charges, he can direct reinstatement, but this has not been done and as such this is an infirmity in the order of the Labour Court. The said order is therefore quashed in so far as direction relating to reinstatement is concerned. But the Court does not disturb any other finding arrived at in the said order.³

6. **Earlier suspension—Consideration of.**—Respondent No. 1 has recorded a finding that the earlier supersession of respondent No. 2 was bad in law. That was beyond his jurisdiction while deciding a complaint under Section 26 and cannot be sustained.⁴

7. **Termination of service.**—Labour Court holding termination order illegal directed reinstatement with full back wages or in lieu of reinstatement payment of 50 months wages. No fixed formula for computation of compensation in wrongful dismissals available. Tribunal has to take into account,

- (a) the terms and conditions of the contract of employment;
- (b) the tenure of service;
- (c) the possibility of termination of the employment at the instance of either party;

1. *M/s. Usha Sales Ltd. and another v. Presiding Officer Labour Court, Jamshedpur and another*, 1983 PLJR 398 at p. 403.
2. *Gokul Rana v. Presiding Officer, Labour Court, Jamshedpur and others*, 2002 (3) JCR 391 at p. 394 (Jhr).
3. *Peewless G.F. & Investment Co. Ltd. and others v. Presiding Officer, Labour Court, Purnea and others*, 2000 (1) PLJR 926 at p. 928, 929.
4. *Tata Iron & Steel Co. Ltd. v. Presiding Officer*, 1989 PLJR 650 at p. 653.

- (d) the possibility of retrenchment by the employer or resignation or retirement by the workman;
- (e) the possibility of the employer or the workman ceasing to exist; and
- (f) the possibility of the workman being awarded various benefits in the future which are normally incidental to the employment.¹

8. **Complaint under Section 26.**—In contradiction to a proceeding under Section 28 of the Act in which the provisions of Code of Civil Procedure have been made applicable by Section 28(9) of the Act, no such provision has been provided in a complaint under Section 26 of the Act. From this it follows that rigour of the Code of Civil Procedure will not apply to a complaint under Section 26 of the Act and broad effect of the grievances made and facts alleged has to be dealt in a complaint under Section 26 of the Act.²

9. **Application—Maintainability of.**—In the instant case, there is a detailed finding recorded by the Labour Court showing that he has been working since 1982 and in 1985 his case was strongly recommended by the Depot Superintendent of the employer for his regularization in service but he was removed in 1986 without giving any notice or without any inquiry. The single Judge has not considered this aspect of the matter and has simply proceeded on the basis that petitioner worked from 16.12.1985 to 14.4.1986 *i.e.* less than six months, therefore, his application was not maintainable.³

10. **Maintainability of complaint.**—The employer purportedly changes the aims and objects of the trust by making a direction that the income from the establishment would no longer be used for the purpose of private gain. The whole idea appears to be plainly unacceptable and if the contention of the petitioner is accepted, then, it would be the easiest thing for the employer to frustrate any proceeding under the Act by unilaterally changing the nature of the establishment during the course of the proceeding.

Therefore, there was no merit in the petitioner's objection regarding the maintainability of the complaint filed by the second respondent and it was rightly rejected by the Labour Court.⁴

The Labour Court held that the applicant being a driver was a motor transport worker within meaning of Section 2(h) of the Motor Transport Workers Act which precludes him from invoking the provisions of Act, and, therefore, the petition is not maintainable.

The Labour Court was wholly justified to hold that the complaint under Section 26 (1) of the Act was not maintainable. Once the Labour Court expressed

1. *Management of the Tata Robin Fraser Ltd. v. Presiding Officer*, 1996 (1) PLJR 502 at p. 505 (Pat).
2. *M/s. Usha Sales Ltd. v. Presiding Officer, Labour Court, Jamshedpur and another*, 1983 PLJR 398 at p. 405.
3. *Krishna Chandra Yadav v. Presiding Officer, Labour Court B.S. City, Dhanbad*, 2002 (3) JCR 664 at p. 668 (Jhr).
4. *Popular Nursing House v. State of Bihar*, 1995 (1) PLJR 750 at p. 754.

its inability to entertain the complaint petition, its decision on merit is not binding on the parties and is really *non est*.¹

11. **Jurisdiction—Question of.**—It was contended that since it was a case of retirement which respondent No. 2 voluntarily sought, it was neither a case of dismissal nor a case of discharge nor a case in which it can be said that the services of respondent No. 2 was "otherwise terminated" within the meaning of Section 26 of the Act. In CWJC No. 93 of 1989 (R) and CWJC No. 2234 of 1988 (R) disposed of on 13.4.1989 the scope of the word "otherwise terminated" have been noticed in detail. In those cases, the question was whether resignation was voluntary. Here it is a case of whether retirement was voluntary, what have been stated in those cases with regard to case of resignation shall apply with regard to a case of retirement. Respondent No. 1 had jurisdiction to decide the question.²

12. **Territorial jurisdiction.**—The petitioners were working in the Patna Depot of the company their services will be deemed to have been terminated at Patna and, as such, the Labour Court, Patna will have territorial jurisdiction to decide the dispute. The Bihar Shops and Establishment Act, 1953, will also be applicable to the case for the same reason. In other words, in view of the fact that the services of the petitioners were terminated at Patna it cannot be legally claimed that the petitioners were not employed in any establishment in the State of Bihar at the time of termination of their services. Patna Labour Court had territorial jurisdiction to decide the dispute. Under clause (c) of Section 20, CPC, proceedings can be initiated in the Court or Tribunal where cause of action wholly or in part arises.³

13. **Colourable exercise of power.**—It may be that the allegation of lack of power made has been not strongly worded and has become a victim of the verbosity of the draftsman, it cannot be said that the jurisdiction of the Divisional Manager is not challenged. Apart from this, undoubtedly the Divisional Manager was cross-examined. In his cross-examination also the Divisional Manager did not state that he had power to take steps that he did. It was elicited from him that he had no written authority to take steps that he did. It was, necessary for the officer concerned to prove that he had the power to act in the manner that he did.⁴

14. **The procedure laid down in Section 20 of the CPC—Applicability of.**—Section 26 of the Act provides for filing complaint by an employee challenging the order of termination. No provision has been made in the Act for determining the jurisdiction of the Labour Court who may entertain a complaint. There is yet another provision under which application may be made *i.e.* Section 28 of the Act which provides for making claims arising out the deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims. In neither of the sections nor any where in the Act, any provision has been made laying down

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1. *Raj Narayan Singh v. Presiding Officer*, 1986 PLJR 1000 at p. 1002, 1003.
 2. *Tata Iron & Steel Co. Ltd. v. Presiding Officer*, 1989 PLJR 650 at p. 652.
 3. *K.T.V. Prasad v. H.D. Tanpe*, 1996 (2) BLJ 420 at pp. 422, 423 (Pat).
 4. *M/s. Usha Sales Ltd. v. Presiding Officer, Labour Court, Jamshedpur and another*, 1983 PLJR 398 at p. 405.

the Labour Court before whom such complaint or application may be filed. The Act lays down the territorial jurisdiction of each Labour Court. Can it be said that a complaint or application may be filed in any Labour Court of the choice of the employee? In the absence of any provision in the Act, the procedure laid down in Section 20 of the Code shall be followed.¹

15. Compensation for the loss of future employment.—In the instant case the Act of misconduct involved is subversive of discipline and confidence on the part of the workman. Taking into consideration the facts and circumstances of the case particularly the fact that the charge of taking bribe which is grave in nature has been proved which is prejudicial to the interest of the petitioner-company, it must be held that it is not desirable and expedient to direct reinstatement of the respondent. Therefore, the direction of the Labour Court with regard to reinstatement cannot be sustained in law and the same is set aside. It is held that in lieu of reinstatement the respondent shall be paid compensation for the loss of future employment. Accordingly the respondent shall be paid compensation on the basis of last wages drawn by him from the date of discharge till date.²

16. Reinstatement—Justification of.—The Labour Court, so far first part of the charge regarding demand of rupees one thousand is concerned, held that the same has not been proved but so far second part of the charge regarding receiving rupees seven hundred currency notes and recovery of the same from the pocket of the complainant is concerned, the Labour Court held that the same has been proved. In such circumstance, the impugned order of the Labour Court for reinstatement of the complainant-respondent in service is unjustified.³

17. Scope of "establishment".—The concept of industry, as defined under the business, trade, undertaking manufacture or calling of employers and also includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. It was, therefore, held that in a School there is an organised activity between the employers and employees to impart education. Such an activity, though may be industry, will not be a profession, trade or business for the purpose of Article 19(1)(g) of the Constitution, would not be one falling within the scope of "establishment" under the Act.⁴

18. Reinstatement.—It is well settled that in cases of wrongful dismissal or discharge, the normal rule is to award reinstatement. But 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.

1. *Tata Iron & Steel Co. Ltd. v. Presiding Officer*, 1989 PLJR 650 at p. 651.
2. *M/s. Tata Iron & Steel Co. Ltd. v. Presiding Officer, Labour Court, Jamshedpur*, 2003 (2) JCR 76 at p. 80 (Jhr).
3. *M/s. Tata Iron and Steel Co. Ltd. v. Presiding Officer, Labour Court, Jamshedpur*, 2003 (2) JCR 76 at p. 79 (Jhr).
4. *St. Ignatius High School v. Presiding Officer, Industrial Tribunal*, 2003 (4) JLJR 142 at p. 144.

The award of the Labour Court is hereby set aside and it is ordered that respondent No. 2 shall be paid (a) salary from the date of discharge to the date of order of reinstatement became final (b) 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.¹

19. "Management".—The enquiry was conducted by a complete outsider. This was also contrary to the procedure prescribed by the company for such enquiries. The Divisional Manager in any event should not entrust the enquiry to such a person.

The power to issue charge-sheet and to appoint enquiring officer is vested in the company and the management. The Divisional Manager cannot be said to be the "Management" of a Public Limited Company.²

20. Enquiry—Vitiation of.—There was no hurry in disposing of the enquiry on that day and to proceed *ex parte* in the matter on this ground was not justified, particularly, when the reason given by the respondent No. 2 was not entirely without substance. The enquiry officer could have allowed another adjournment as a last resort stating that no further application for adjournment would be entertained on any account whatsoever.³

21. The principle of—Article 311—Applicability of.—The list referred in Article 311 (1) therefore, speaks of such posts on the civil side as opposed to the military side. The incumbent of such post also receives protection but since the appellant is neither holding posts under the State nor Hindustan Steel Ltd. he was not entitled to the protection of Article 311 of the Constitution.

Service of enquiry report on the petitioner was not a pre-condition as envisaged in Article 311 of the Constitution and non-compliance thereof, does not vitiate the proceeding initiated against the petitioner.⁴

22. No proper enquiry.—On a construction of the provisions of sub-section (2) and sub-section (5) of Section 26 of Bihar Shops and Establishments Act, the Judges of the Supreme Court held that the Competent Authority is entitled to record evidence and come to its own findings on such evidence and such findings can be recorded independently of the findings given in the domestic enquiry. It has further been held that the proceeding under Section 26 of the Act are not by way of an appeal against the order passed in the domestic enquiry. The said proceedings are independent and original proceedings where the competent authority namely the Labour Court has to arrive at its own findings on the evidence to be adduced before it.⁵

1. *Management of Tata Robin Fraser Ltd. v. Presiding Officer and others*, 1996 (1) PLJR 502 at p. 504.
2. *M/s. Usha Sales Ltd. v. Presiding Officer, Labour Court, Jamshedpur and another*, 1983 PLJR 398 at p. 405.
3. *M/s. Usha Sales Ltd. v. Presiding Officer, Labour Court, Jamshedpur and another*, 1983 PLJR 398 at p. 405.
4. *Abdul Rahim v. Presiding Officer*, 1994 (2) PLJR 238 at p. 241.
5. *Peerless General Finance & Investment Co. Ltd. v. Presiding Officer*, 2000 (1) PLJR 926 : 2000 (1) BBCJ 439 (Pat).

23. **Dismissal/discharge on a reasonable cause**—The present case being covered by the first proviso of Section 26(1) of the Act, the minimum requirement of compliance of the principles of natural justice was must and that having not been complied, vitiates the orders of removal of the petitioners from services of the respondent-Biscomaun.¹

24. **Reasonable cause of termination.**—The expression 'reasonable cause' naturally will have to be tested as to whether it lacks any *bona fide* or is beyond the control of the employer such as lock-out in the factory or reduction of work forcing the employer to take recourse to retrenchment of employees on account of loss in business or financial constrains in the interest of efficiency and economy which necessity can be termed reasonable *ex facie* or winding up of the company itself and cannot include termination on account of irregular or illegal appointment.²

25. **Requirement of the section.**—Though there was reasonable cause for terminating the employment of respondent No. 3, the order of termination of employment was bad in view of non-compliance with the requirement of Section 26(1) of the Bihar Shops and Establishment Act which additionally requires the employer to give to the employee, whose services are terminated, one month's wages in lieu of notice.

The authority under the Act was not justified in holding that the termination of the employment of respondent No. 3 was not for a reasonable cause, but the finding of fact recorded by the authority, that one month's wages in lieu of notice had not been paid to respondent No. 3, is justified.³

26. **The principle of natural justice and its compliance.**—The present case being covered by the first proviso of Section 26(1) of the Act, the minimum requirement of compliance of the principles of natural justice was must and that having not been complied, vitiates the orders of removal of the petitioners from services of the respondent- Biscomaun.⁴

27. **Scope of the section.**—Respondent No. 1 is not interfered with by the Tribunal (or the Labour Court) in the reference made under Section 10 of the Central Act, it will be in consequence of following the well-established procedure of solving an industrial dispute and if the same respondent's dismissal is set aside by the Labour Court in the proceeding under Section 26 of the Bihar Act, it will be as a result of the procedure laid down by that section, without any reference to a dispute in the nature of an industrial dispute.⁵

If there is a special Act, which is a complete Code in itself to govern the service conditions of a particular type of employees, that Act must govern them

1. *Rajendra Prasad Sah v. State of Bihar*, 2000 (4) PLJR 273 : 2000 (3) All PLR 479 (Pat)(FB).
2. *Rajendra Prasad Sah v. State of Bihar*, 2000 (4) PLJR 273 (Pat).
3. *Bihar State Co-operative Marketing Union Ltd. through its Administrator v. State of Bihar*, 1993 (1) PLJR 333 at p. 339.
4. *Rajendra Prasad Sah and another v. State of Bihar and others*, 2000 (4) PLJR 273 at p. 288 : 2000 (3) All PLR 479 (Pat)(FB).
5. *Managing Director, Indian Oil Corporation Ltd. and others v. C.D. Singh and others*, 1972 PLJR 124 at p. 139 (FB).

although in some respects it may not be as advantageous or adequate either to the employee or to the employer as any other Act or the general Act may be.¹

It is clear that to govern the service conditions of the working journalists the Working Journalists Act, incorporating as it does some of the provisions of the Industrial Disputes Act, is a complete Code and, therefore, the working journalists cannot take recourse to Section 26 of the Bihar Act.²

28. Appointment—Removal due to misconduct—Compensation.—In the instant case, the respondent was appointed on probation for a period of 12 months. According to the appointment letter, probation period could be extended up to further period of six months on the sole discretion of the company. His services could be terminated during the period of probation if the work of respondent was found unsatisfactory. Services of the respondent was terminated during extended probation period. Termination order does not say that the services of the respondent-employee was terminated for unsatisfactory work. The services of the respondent could not be terminated before the end of the extended probation period. The award of the Labour Court can be interfered with only when there is apparent error of record or the findings of the Labour Court is perverse. The High Court has no power to appreciate the evidence of the Labour Court.³

29. Complaint under Section 26(2).—Two writ petitions arising out of a common order of the Labour Court and involving the same disputed has been heard together and were disposed of by the common judgment. High Court inclined to agree with the Labour Court that the petitions of complaint under Section 26(2) of the BSE Act were not maintainable.⁴

30. Termination.—Termination of services illegal having been passed without any reasonable cause. Hence liable to be quashed.⁵

Reasonable cause for termination of services must be made to appeal in the order of termination itself both the parties adduced their respective evidence before the Labour Court and as such it must be presumed that the parties concerned knew about their respective cases and they had full opportunity to place all the materials before the Court below. In such a situation, as the reasons for termination of services of the concerned employees were known to the petitioners, that point does not arise in the instant case.⁶

31. "Otherwise terminated".—Merely saying that signature was obtained by under influence or coercion will not be enough unless these and similar particulars are pleaded and proved, so that in law an inference that employment was "otherwise terminated" may be drawn. The findings recorded by the Labour Court that

1. *Samachar Bharti v. Kedar Nath and others*, 1972 PLJR 365 at p. 368.
2. *Samachar Bharti v. Kedar Nath and others*, 1972 PLJR 365 at p. 368.
3. *Bihar Air products Ltd. v. Presiding Officer*, 1999 (1) PLJR 883 : 1999 (1) All PLR 144 : 1999 (1) BLJ 260 : 1999 (1) BLJR 736 (Pat).
4. *Gautam Banerjee v. State of Bihar*, (1999) 2 BLJR 1110 (Pat).
5. *Managing Committee, E.I.S.S. v. P.O.L.C., Ranchi*, (1999) 2 BLJR 1015 (Pat).
6. *Sri Sao v. Presiding Officer*, 1989 PLJR 810 at p. 813.

their resignation was obtained by inducement or undue influence or under duress are mere conjectures. The company, therefore in both the cases must succeed.¹

32. Service of termination order—Question of.—The concerned workmen had never raised the plea that the order of termination was not served upon them. Even in these writ applications, except taking the points in grounds the foundational facts have not been pleaded at all. Neither before the respondent No. 1 nor before High Court the petitioners even made an attempt to call for the said letter.

In this situation, it is not permissible for the High Court to permit the petitioners to raise the aforementioned question for the first time in these writ applications.²

33. Termination—Can be challenged under the provisions of Industrial Disputes Act.—The petitioners were discharging functions of supervisory nature and that the total number of employees being 39, they came amongst the first four according to their seniority and, therefore, are covered by the said entry. If petitioner take the stand that they were not engaged in supervisory capacity and are, therefore, 'employees' under Section 2(4) of the Act, in view of the provisions of Section 6(4) of the Act, they would have to be relegated to the remedy under the I.D. Act. If on the other hand, they take the stand that they were engaged in supervisory capacity, they would stand excluded from the category of 'employees' under Section 2(4) of the Act, in view of the provisions of Section 4(2) read with Schedule of that Act.³

34. Establishment—Definition.—Educational Institutions do not fall under the definition of the establishment hence petition under Section 26 of Act is not maintainable against such institution.⁴

Educational Institution imparting education does not carry on a business, trade or profession hence it is not "establishment". Labour Court had no jurisdiction to interfere with the order of the Managing Committee.⁵

35. Application—Maintainability of.—The writ petitioner-appellant, filed an application under Section 26(2) of the Bihar Shops and Establishment Act, 1953 against the order of termination with further prayer for reinstatement with monetary compensation. The Presiding Officer, Labour Court, held that the application was not maintainable, dismissed the complaint petition.

The order aforesaid was affirmed by single Judge.

In the circumstances as the application filed by the appellant before the Labour Court, was not maintainable.⁶

1. *Tata Robin Fraser Co. Ltd. v. Presiding Officer*, 1989 PLJR 1153 at p. 1158.

2. *Sri Sao v. Presiding Officer*, 1989 PLJR 810 at p. 813.

3. *Gautam Banerjee v. State of Bihar*, 1999 (3) BLJ 302 (Pat).

4. *G.&H. High School v. State of Bihar*, 2001 (1) JCR 283 (Jhr).

5. *Ruth Soren v. Managing Committee, East ISSDA*, 2001 (1) JCR 1 : 2001 (1) BBCJ 15 : 2001 (1) BLJR 203 (SC).

6. *A.K. Khan v. State of Bihar*, 2002 (3) JCR 365 (Jhr).

36. Notification dated 13.8.1985 issued amending the Schedule to the Act resulting in including all branches of public sector bank situated in State of Bihar from the purview of the provisions of the Act—Applicability of.—Notification was retrospective, was applicable even in relation to cases under Section 26(2) of the Act which were pending from before its issuance and from the date of issuance of the notification, the provisions of the Act ceased to apply to employee of the State Bank of India situated within the State of Bihar.¹

37. Whether the word "establishment" covers educational institution.—The issue whether the word "establishment" covers educational institution imparting education or not stands decided by the decision of the Supreme Court in *Ruth Soren v. Managing Committee, East, ISSDA*, reported in 2001 (1) JCR 1 (SC). In the said case, the Supreme Court taking into consideration the provision of Section 26(2) of the Bihar Shops and Establishment Act, 1953 held that the educational institution imparting education does not carry on business, trade or profession hence it is not "establishment". Labour Court had no jurisdiction to interfere with the order of the Managing Committee.²

38. Provisions of the Act—Ceased to apply to the branches of State Bank situated in Bihar—By a notification which have retrospective effect in relation to cases under Section 26(2) pending before its issuance and hence, Labour Court cannot adjudicate in such cases.—The notification dated 13.8.1985 was retrospective, was applicable even in relation to cases under Section 26(2) of the Act which were pending from before its issuance and from the date of issuance of the notification, the provisions of the Act ceased to apply to employees of the State Bank of India situated within the State of Bihar.³

39. Publication of the notice in the news paper.—However, from the finding arrived at by the Presiding Officer, Labour Court, it is absolutely clear that not only the notices were served upon the concerned employee but even they appeared on the first date but they refused to take part therein on the ground of pendency of the earlier complaint petitions under Section 26 of the said Act.

In view of the fact the employees themselves have refused to participate in the enquiry, it does not lie in the month of the concerned employee to contend that it was obligatory on the part of the management to issue notices upon them for each and every date of hearing of the domestic enquiry.⁴

40. Grant of interest.—It is, clear that the application filed by respondent No. 2 under Section 33-C (2) of the Industrial Disputes Act was not maintainable.

Further in this case, although the petitioner filed an application under Articles 226 and 227 of the Constitution of India before High Court challenging the order of the Labour Court under Section 26(2) of the Bihar Shops & Establishment Act, it did not pray for any stay of the award. It was, thus, open to respondent No. 2 to file a suitable application in the High Court for a direction upon the employer

1. *State Bank of India v. State of Bihar*, 1999 (1) BLJ 260 (Pat) (DB).

2. *A.K. Khan v. State of Bihar and others*, 2002 (2) JCR 365 (Jhr).

3. *State Bank of India v. State of Bihar*, 1999 (1) PLJR 274 (Pat) (DB).

4. *Sri Sao v. Presiding Officer*, 1989 PLJR 810 at p. 813.

to pay the amount or in the alternative he could have taken steps for executing the said order. It is not the case of the respondent No. 2 that any prayer was made for grant of interest either before High Court or in the Special Leave Petition filed before the Supreme Court of India.

The petitioner should be held to be liable to at least pay interest on the amount of pension and gratuity to the respondent No. 2 from 1st October, 1975, that is, after the expiry of two months @ 12% per annum.¹

41. Order—Modification of.—The brief fact of the case is that M/s. Uphar Picture Palace is carrying on business of exhibition of cinema shows, a place of public entertainment. It engaged several persons including respondent, who was working since 1975 as operator. A departmental proceeding was initiated against him by charge-sheet whereinafter the respondent was dismissed.

The Court being not satisfied with the finding given by Presiding Officer, was inclined to set aside the impugned order and to remand the case for fresh decision. However, taking into consideration the stand taken by the petitioner M/s. Uphar Picture Palace that they have lost confidence on respondent and that they have offered to pay a sum of Rs. 50,000/- in favour of respondent as a full and final settlement in two equal instalment within two months instead of setting aside the order dated 8.8.1999 passed in B.S. Case No. 11/97, the order dated 6.2.1999 is modified with direction to the management of Uphar Picture Palace to pay a sum of Rs. 50,000/- (Rupees Fifty thousand) only to respondent in all as a full and final settlement in two equal monthly instalment.²

42. Framing of proper issues and its effect.—There is absolutely no doubt that although the issues were properly framed but the respondent no addressed himself correctly with regard to the requirement of the provisions of sub-section (2) of Section 26 of the said Act and the parties have not been prejudiced in any manner whatsoever because of non-framing of the issues by the respondent No. 1.³

43. Violation of natural justice.—The allegation of the petitioner that some employees have been allowed to work upto 65 years or even beyond that has no leg to stand, in view of the fact that the general rule of superannuation in the establishment is 60 years, though that could be extended. So, if certain employees have been given extension benefit, then that cannot create any right in favour of the petitioner to derive it in terms of the contract of employment which was known to the petitioner right from the year 1986 that he had to superannuate on attaining the age of 60 years. "Otherwise termination" and superannuation are two different things, so there has been no violation of natural justice because non-issuing of the show cause notice before his superannuation, particularly when the petitioner has been informed prior to his superannuation. Thus, there is no merit in this writ application, which is accordingly dismissed. However, the petitioner will be paid all his retrial benefit, to which he is entitled, by the establishment.⁴

1. *Central Coalfields Ltd. v. Presiding Officer and another*, 1992 (2) PLJR 315 at p. 320.
2. *M/s. Uphar Picture Palace v. Presiding Officer, Labour Court and others*, 2002 (2) JCR 559 at p. 560, 561 (Jhr).
3. *Sri Sao v. Presiding Officer*, 1989 PLJR 810 at p. 814.
4. *Gokul Rana v. Presiding Officer, Labour Court, Jamshedpur*, 2002 (2) JCR 391 at p. 394.

44. Repugnancy between Section 26 of the Act and either of the Central Act.—The inevitable conclusion must be that the Central Act does not cover the whole field of industrial relationship, so that Section 26 of the Bihar Act can be held to be repugnant to the Central Act.¹

45. Excess of jurisdiction.—A plain reading of the Section 26(2) of the Act clearly shows that the Labour Court has jurisdiction if the employee has been dismissed or discharged or whose employment is otherwise terminated. Obvious it is that the question of dismissal or discharge arisen only when there is misconduct on the part of an employee Rule 20(1) lists the misconduct; (2) provides the procedure of discharge in case of misconduct; and Rule 21 clearly provides that any employee aggrieved by an order of dismissal or discharge under Section 26 of the Act may make a complaint. It is to be noted that under Rule 21, the complaint is maintainable only in case of dismissal or discharge and as this rule does not mention "even otherwise termination", no complaint can be lodged for the "otherwise termination of the service" under Section 26. It is amply clear that the petitioner of this case has not been found guilty of any misconduct as listed under Rule 20. Consequently, his case does not fall within the mischief of dismissal or discharge with the obvious consequences that no complaint could have been made under sub-section (2) of Section 26 of the Act. So if the complaint did not lie and even if the Labour Court entertained the complaint, then the mere entertaining of the complaint by the Labour Court was without jurisdiction and the impugned order in excess of jurisdiction. Therefore, the impugned order is without jurisdiction.

Thus, in the aforesaid legal situation, the petitioner cannot derive any benefit out of the quashing of the impugned order.²

46. Generalibus specialia derogant.—The Bihar Act being of a general nature will cover ordinarily and generally all kinds of workers working in the establishment. Therefore, this is a general Act. The Working Journalists Act, however, is a special Act governing the service conditions of the working journalists only working in the newspaper establishment. That being so, on the principle *generalibus specialia derogant* the special Act will exclude the application of the general Act.³

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.

1. *Managing Director, Indian Oil Corporation Ltd. and others v. C.D. Singh and others*, 1972 PLJR 124 at p. 138 (FB).

2. *Gokul Rana v. Presiding Officer, Labour Court, Jamshedpur*, 2002 (2) JCR 391 at p. 393 (Jhr).

3. *Samachar Bharti v. Kedar Nath and others*, 1972 PLJR 365 at p. 368.

COMMENT

Scope of.—Section 27 has been ingrafted for the protection of the interest of the employer and there is no law which debars the employer to waive his right under Section 27.¹

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 *boan 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

1. *Tata Iron & Steel Co. Ltd. v. Presiding Officer*, 1989 PLJR 650 at p. 653.

unpaid group, and in such case the maximum compensation that may be awarded under sub-section (2) shall be ten rupees per head.

Explanation.—Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage period or periods have remained unpaid after the day fixed by Section 23.

(6) The authority may deal with any numbers of separate pending applications, presented under this section in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (5) and the provisions of that sub-section all apply accordingly.

(7) An appeal against an order dismissing either wholly or in part an application made under sub-section (1) or against a direction made under sub-section (2) or sub-section (3) may be preferred in such manner, within such time and to such authority as may be prescribed and such authority shall consider and dispose of such appeals in the prescribed manner.

(8) Save as provided in sub-section (7), any order dismissing either wholly or in part of an application made under sub-section (2) or sub-section (3) shall be final.

(9) Every authority appointed under this section shall have all the powers of a civil Court under the Code of Civil Procedure, 1908 (V of 1908) for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil Court for all the purposes of Section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).¹

SYNOPSIS

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1. Deduction, delay in wages—Application against.—The employee or legal practitioner or any authorised agent or any officer of a registered Trade Union or any Inspecting Officer may make application where any deduction has been made from wages of an employee or any payment of wages has been delayed. The prescribed authority shall hear the application and has been given power to direct the refund of the amount deducted together with the payment of compensation but on the other hand if it is found that the application has been filed maliciously,

1. Now Cr PC, 1973.

the authority may direct that penalty not exceeding 25 rupees be paid to the employer. Further it has been provided that the authority shall have all, the powers of civil Court.¹

2. Claim of an employee—Allowance of.—It needs to be recorded at this stage that when the employee filed a suit to claim reliefs on reinstatement or past wages the objection taken by the employer in the suit was that the suit is not maintainable and the employee should take recourse to reliefs under the Act. Now the employer is estopped from taking legal pleas, to the effect, that this 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 of the appellant is not covered under the enactment, notwithstanding, the objection of the appellant. In generality, the appellant rendered services in a commercial establishment within the meaning of the Act. Whether he comes under the expression 'establishment' or a 'shop' legal ingenuity cannot defeat the claim of an employee.²

3. Applicability of provisions in respect of workmen employees of State Bank of India.—The State Bank of India is a creature of an Act known as State Bank of India Act and it is an autonomous body and cannot be said to be an office under the Central Government. At the time of passing of the impugned orders, the provisions contained in Section 28 of the Shops Act, under which the Asstt. Labour Commissioner passed the order as well as the provisions contained in Section 28(7), under which the Presiding Officer of the Industrial Tribunal has passed the judgment the validity of which have been assailed, were very much applicable and on that account they cannot be held to be without jurisdiction. It cannot be disputed that the Shastri Award under Section 18, of the Industrial Disputes Act will be binding on all the employees of the Bank. It is also well settled that only in case of any repugnancy between the provisions of the Industrial Disputes Act and the Shops Act, the provisions of the said Act, *i.e.* the shops Act will be excluded to the extent the provisions are repugnant to those of the Industrial Disputes Act. The action of the Bank is deducting the wages for the period of absence of respondent No. 3 being not be way of punishment penalty and being permissible under the provisions contained in sub-rule (1)(b) read with sub-rule (7) of Rule 18, of the Bihar Shops and Establishment Rules, 1955 the provisions of Section 28, of the Shops Act shall not at all be attracted as it only provides for entertaining claim, where deductions have been made from the wages of the employees or any payment of wages has been delayed and any sum is otherwise due from the employer to the employee contrary to the provisions of the said Act.³

4. Recovery of the amount—Justification of.—As no payments were made in directed by the Deputy Labour Commissioner a certificate proceeding was initiated for recovery of the amounts in terms of the order. The certificate cases was naturally instituted against all the four persons who were impleaded as opp.

1. Author's view.

2. *Popular Nursing Home v. State of Bihar*, 2003 (1) PLJR 303 at p. 304.

3. *Branch Manager, State Bank of India v. Presiding Officer Industrial Tribunal, Patna*, (1996) 2 BLJ 879 at pp. 882, 883 (Pat).

parties in the case under the Bihar Shops & Establishments Act. The first certificate debtor is the company itself while the other two certificate debtors are the high officials of the company, residing at Calcutta. The 4th certificate debtor, that is, the petitioner being the junior most of the three officers resides in Patna and he was, thus, the most easily available of the four judgment debtors. For this reason alone, it appears that he has been picked out for being proceeded against and being subjected to all coercive measures for the recovery of the amount. This is inequitable, unfair and unjust.¹

5. **Definition of wages.**—Courts do not feel satisfied that the claims could have been rejected in the manner it has been done. Some claims clearly come within the definition of "wages" and the Labour Court is fully competent to grant the same under Section 28 of the Act.²

6. **Claims—Consideration of.**—The Labour Court has rejected the claim on the ground that there is no satisfactory evidence on record without at all referring to any evidence whatsoever. The petitioner attained the age of superannuation on 14.8.1976 and, therefore, he was entitled to continue in service up to that date. If, however, in view of the take over, his services stood terminated, then he would be entitled to, in law, either retrenchment compensation or closure benefits whatever may be appropriate in the facts and circumstances of the case. These claims needed judicial consideration of the Courts below and not the perfunctory manner in which they have been disposed of.³

7. **Compensations—Question of.**—The Courts below failed to apply judicial mind to the aspect of the case, namely, what *bona fide* dispute existed at least after the dismissal of the writ petition. The employer, should have immediately complied with the direction of the Labour Court. The petitioner has been unnecessarily harassed and was driven to another proceeding for recovery of his dues. It is well settled principle "that where you have interference with a legal right, the law presume damages" (See *Constantine v. Imperial Hotels*, (1944) 1 KB 693). It cannot be said that the petitioner is not entitled to any compensation.⁴

8. **Quantum of compensation.**—In this case the claim for compensation has been confined to a sum of Rs. 3000/- only whereas from 27.7.1972 the wages have been withheld in spite of the decision of the Labour Court and subsequently of the High Court in the year 1974. The delayed wage claimed constitutes a sum of Rs. 6950/- for the period from 10.12.1972 to 20.2.1975. It is shocking that the petitioner did not receive the said wage during his tenure of office, he ultimately superannuated in the year 1976, even though he was held to be entitled to it by virtue of an order of reinstatement passed by a competent Court as far back as 1972. In the facts and circumstances of this case the claim of compensations for a sum of Rs. 3000/- is most reasonable and the petitioner is entitled to the same and the respondent No. 3 must pay the said compensation.⁵

1. *Shakti Kumar Kar v. State of Bihar and others*, 2003 (2) PLJR 458 at p. 458.

2. *Sri Shatrughanjee Sahay v. Industrial Tribunal, Patna*, 1983 PLJR 186 at p. 194.

3. *Sri Shatrughanjee Sahay v. Industrial Tribunal, Patna*, 1983 PLJR 186 at p. 194.

4. *Sri Shatrughanjee Sahay v. Industrial Tribunal, Patna*, 1983 PLJR 186 at p. 191.

5. *Sri Shatrughanjee Sahay v. Industrial Tribunal, Patna*, 1983 PLJR 186 at p. 193.

9. **Scope of proviso to Section 28(2).**—Whereas the main section refers to “compensation not exceeding ten times the amount deducted”, the said payment is made inadmissible by the proviso, in the case of “delayed wages” the employer satisfies the Court, or it being so, due to *bona fide* error or *bona fide* dispute or exceptional circumstance the failure of the person employed to accept payment etc. It would, therefore, be seen that these words “deducted” and “delayed wages” have been used in juxtaposition with each other. It would be, too, unreasonable to hold that for payment of paltry compensation of rupees ten only towards “delayed wages” the employer is required to prove the requirements of the proviso and the employee’s to prove the absence of the said conditions.¹

28-A. **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.

28-B. **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 Dhanbad and Singhbhum and every Sub-divisional Magistrate shall be an *ex officio* Inspecting Officer within the limits of his respective jurisdiction.

(4) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be Additional Inspecting Officers for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(5) In any area where there are more Inspecting Officers than one, the State Government may, by notification as aforesaid, declare the powers

1. *Sri Shatrughanjee Sahay v. Industrial Tribunal, Patna*, 1983 PLJR 186 at p. 193.

which such Inspecting Officers shall respectively exercise and the Inspecting Officer to whom the prescribed notices are to be sent.

COMMENT

The State Government has been given power to appoint Inspecting Officer, the Government may issue notification in this regard. Further it has been provided that the State Government may by notification declare powers of the Inspecting Officer.

30. Powers and jurisdiction of an Inspecting Officer.—(1) Subject to any rules made by the State Government in this behalf, an Inspecting Officer may within the limits of his jurisdiction—

(a) enter, during such hours as may be prescribed and with such assistance, if any, as may be necessary, any premises which is, or which he has reasons to believe is, an establishment;

¹[(b) inspect or take extracts from any prescribed registers, records and notices maintained under this Act or the rules made thereunder or seize such records, registers or notices as he may consider relevant in respect of an offence under this Act which he has reason to believe to have been committed by an employer;]²

(c) take on the spot or otherwise the statement of any person which he may consider necessary for carrying out the purposes of this Act :

Provided that no persons shall be compelled to answer any question or give any evidence tending to incriminate himself; and

(d) exercise such other power as may be prescribed for carrying out the purposes of this Act.

(2) The Inspecting Officer shall for the purposes of any inquiry under this Act have same power regarding the summoning and attendance of witnesses and compelling the production of documents as a civil Court has under the Code of Civil Procedure, 1908 (V of 1908).

COMMENT

Inspecting Officer requiring production of certain documents for inspection—Documents not produced without any cogent reason—Validity of prosecution.—In the instant case the Inspecting Officer visited the establishment for inspection. Some information was given with regard to the employment in the establishment. The Inspecting Officer wanted to inspect the relevant documents details of which have been mentioned in the complaint petition with regard to the violation of certain provisions of the Act. The were directed to produce the

1. Subs. by Act 2 of 1975.

2. Subs. by Act 2 of 1975.

documents. Several adjournments were granted for production of the documents but the documents were not produced for inspection. Intimations for production of the documents were also given to the other petitioners but without any cogent reason they did not produce the documents for inspection. It is evident from the provisions of the Act that the Inspecting Officer has power to issue direction for production of the documents and violation of the direction itself is an offence under Section 32 of the Act. Therefore prosecution is not bad for want of powers.¹

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.

SYNOPSIS

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1. Penalty.—Imprisonment of six months and fine of Rs. 250 or with both has been provided who voluntarily obstructs an Inspecting Officer or any person lawfully assisting an Inspecting Officer or who fails without sufficient cause to comply with any lawful direction made by an Inspecting Officer.²

2. Offence under Section 32.—The petitioners were directed to produce the documents. several adjournments were granted for production of the documents but the documents were not produced for inspection. Intimations for production of the documents were also given to the other petitioners but without any cogent reason they did not produce the documents for inspection. It is evident from the provisions of the Act that the Inspecting Officer has power to issue direction for production of the documents and violation of the direction itself is an offence under Section 32 of the Act. Thus, the contention of the petitioners that the Inspecting Officer has no power to issue direction for production of the documents is without any substance.³

3. Prosecution—Question of.—The petitioners are already maintaining registers under the Factories Act and hence it is not necessary to maintain registers

1. *Ramanand Singh v. State of Bihar*, 1997 (1) East Cr C 802 (Pat); *Madhav Prasad Agarwal v. State of Bihar*, 1986 PLJR 742—Distinguished.
2. Author's view.
3. *Ramanand Singh and others v. State of Bihar and others*, 1997 (1) PLJR 379 at p. 381.

under the Shops and Establishments Act. There is no doubt that the petitioners are covered under the Factories Act and in the facts any circumstances of the case, they cannot be prosecuted under the Shops and Establishment Act.¹

4. **Quashing of the prosecution.**—From the complaint petition it appears that when the complainant went to the shop premises of the petitioner he wanted to know the name and address of the employer of the shop and it is said that he refused to disclose the name and address of the employer. This can only be non-co-operation with the complainant but it cannot be a case of an act of violence or show of violence. Hence, it is held that in the present case no case of obstruction by the complainant against the petitioner has been made out. And, so the prosecution of the petitioner will be an abuse of the process of the Court.²

33. **Maintenance of registers and records and display of notices.**—Every employer of an establishment shall maintain such records and registers and display such notices and in such manner as may be prescribed.

(2) Every employer shall on demand produce for inspection of Inspecting Officer all registers, records and notices required to be kept under and for the purposes of this Act.

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

35. **Penalty whether the employer is a firm or company.**—If the person contravening any provision of this Act or a rule or order made thereunder is a company or a partnership firm every director, partner, manager or secretary thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

SYNOPSIS

1. Requirements of the Section.	43	4. Requirement of the Section.....	44
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1. **Requirements of the Section.**—Section 35 of the Act does not require that the company or the partnership firm must be arraigned simultaneously along with the Director, Partner, Manager or Secretary thereof for prosecutions for the contravention of the Act.³

1. *Baidyanath Ayurved Bhawan Ltd. v. State of Bihar*, 1998 (3) PLJR 80 at p. 82.
2. *Madhav Prasad Agarwal v. State of Bihar*, 1986 PLJR 742 at pp. 742, 743—**Distinguished**; *Ramanand Singh v. State of Bihar*, 1997 (1) East Cr C 802 (Pat).
3. *Badri Prasad Gupta v. State of Bihar*, 1986 PLJR 246 at p. 250 (FB).

2. **Complaint made against accused without averring him to be incharge of business—Maintainability of complaint.**—It is obvious from Section 35 that Director, Partner, Manager or Secretary all shall be liable for prosecution unless they prove that the contravention took place without their knowledge or that they exercised all due diligence to prevent such contravention when the clause of the enactment describes the person who can be prosecuted, it is not required to plead in the complaint that the Director, Partner, Manager or Secretary had ultimate control over the affairs of the company or partnership firm or were in immediate charge of the general management or control there of for contravention of the provision of the provisions of the Act. It is on them to prove that the offence took place without their knowledge or they exercised due diligence to prevent the same. The burden of proof is clearly laid down on the office bearers of the company.¹

3. **Scope of the marginal note.**—It is significant to note that the body of Section 35 does not use the word 'employer' at all. However, undoubtedly the said word is employed in the heading of the marginal note of the section. It is well settled that the marginal note of the section does not necessarily or wholly control the provision.²

4. **Requirement of the Section.**—Section 35 of the Act does not inflexibly require the pleading that the Director, Partner, Manager or Secretary either exercised ultimate control over the affairs of the company or the partnership firm, or was in immediate charge of the general management or control thereof, in all complaints against them, for offences in contravention of the said Act.³

5. **Burden of proof.**—Section 35 of the Act says the "if the person contravening any provision of the Act or a rule or order made thereunder is a company or partnership firm every Director, Partner, Manager or Secretary thereof shall, unless he proves that 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. It is thus obvious from the aforesaid provision that Director, Partner, Manager or Secretary all shall be liable for prosecution unless they prove that the contravention took place without their knowledge or that they exercised all due diligence to prevent such contravention. The burden of proof is clearly laid down on the office bearers of the company.⁴

6. **Question of burden of proof.**—Section 35 spells out both a deeming fiction of vicarious liability and a rule of evidence laying the burden of proof on the Directors, Partners, Managers or Secretaries of the company or partnership firm committing the contravention.⁵

1. *Ramanand Singh v. State of Bihar*, 1997 (1) PLJR 379 : 1997 (1) East Cr C 802; *Badri Prasad Gupta v. State of Bihar*, 1986 East Cr C 368 : 1986 PLJR 246 (FB)—Relied on.
2. *Badri Prasad Gupta v. State of Bihar*, 1986 PLJR 246 at p. 251 (FB).
3. *Badri Prasad Gupta v. State of Bihar*, 1986 PLJR 246 at p. 253 (FB).
4. *Ramanand Singh and others v. State of Bihar and others*, 1997 (1) PLJR 379 at p. 381-382.
5. *Badri Prasad Gupta v. State of Bihar*, 1986 PLJR 246 at p. 251 (FB).

¹[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, 16-A, 26 and 28 after the expiry of the said period of six months, if it is satisfied that the complainant was prevented by sufficient cause from filing the complaint within the said period.

(2) No Court inferior to that of a Magistrate of the first class shall take-cognizance or try an offence punishable under the Act.]

COMMENTS

Cognizance for offence—Conditions for.—No Court inferior to that of a Magistrate of first class shall take cognizance or try an offence punishable under the Act. Further, the complaint in writing of the facts is necessary. Six months time has been provided for taking cognizance but delay may be condoned if the Court is satisfied.²

Inspection of shop—Cognizance for offence under Section 34, of the Act on complaint of the same date—Quashing of order.—The cognizance was taken beyond a period of six months of the date on which the offence is alleged to have been committed, which is in violation of the provision of Section 36(1) of the Act. The said provision is mandatory as is clear from a bare reading of the same. Although, there is a proviso to Section 36(1), Bihar Shops and Establishment Act, 1953, according to which the concerned Court may take cognizance for the reasons to be recorded in writing, if such a complaint prosecution report is made 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, it is clear from the impugned order that cognizance has been taken by the lower Court in a mechanical manner without applying his mind to the case. On this sole ground the impugned order deserves to be quashed. *Held*, an order of cognizance of offence under the Act in violation of Section 36(1), of the Act is liable to be quashed.³

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.

1. Subs. by Act 2 of 1975.

2. Author's view.

3. *Madhusudan Chawra v. State of Bihar*, 1996 (1) East Cr C 59 (Pat).

¹[37-A. **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.

²[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.]

³[39-A. **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 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 foregoing power, such rules may provide for all or any of the following matters, namely :

- ⁴(a) the registration and renewal of establishments and the amount, and manner of payment of fees under Section 6;
- (b) the registers to be maintained in an establishment under sub-section (2) of Section 17 or sub-section (2) of Section 21;
- (c) the misconduct of an employee for which his services may be dispensed with without a notice under sub-section (1) of Section 26; and the authority to which and time within which appeals under sub-section (2) of that section may be filed;
- (d) the authority before whom, the time within which and the manner in which the employee or any legal practitioner or authorised agent or an officer of a registered trade union or an Inspecting Officer shall make an application under sub-section (1) of Section 28;

1. Ins. by Act 2 of 1975.

2. Subs. by Act 2 of 1975.

3. Subs. by Act 2 of 1975.

4. Subs. by Act 2 of 1975.

- (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;
- (ll) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before the Prescribed Authority; and
- (m) any other matter which is required to be or may be prescribed.

(3) The rules may provide that any contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(5) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or in the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

COMMENT

Authority to make rules.—The State Government has been authorised to make rules to carry out the purposes of the Act. Every rule made shall be laid, as soon as may be after its is made after each house of the State Legislature while it is in session for total period of 14 days which may be comprised in one session or in two successive session. Maximum 50 rupees shall be imposed as a fine on the contravention of the rules.¹

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)]

Sl. No.	Establishments, employees or other persons	Provisions of the Act
1.	Establishment in which only members of employer's family are employed.	All provisions except Sections 6, 7, 8 and 12(i) and Chapters VI and VII.
² [2.	Establishments for the treatment or the care of the infirm, sick, destitute or the mentally unfit, which are not run for the profits, ^{but} for charitable, philanthropic, religious or educational object.	All provisions.]
³ [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.	<u>Any Railway service, Postal Telegraph or Telephone service,</u> any system of public conservancy or sanitation, and any such establishment as the State Government may by notification exempt.	All provisions. <i>Om</i>

1. Author's view.

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

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

Sl. No.	Establishments, employees or other persons	Provisions of the Act
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 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 ¹ [* * *] <i>x</i> <i>omitted</i>
6.	Fairs and hats.....	All provisions.
² [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).
³ [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.
⁴ [9.	Clubs, restaurants, eating houses, boarding houses, residential hotels, establishments dealing in meals, refreshments, sweetmeats, milk and cooked food.]	Sections 7, 8 and 12(1).
⁵ [10.	Stalls and refreshment rooms of railway stations.	Sections 7, 8 and 12(1).
⁶ [11.	Shops for the sale of motor spirit and motor or aircraft spares and accessories.]	Sections 7, 8 and 12(1).

1. Words "except Secs. 7, 8, 12(1), 26 and Chapter VI and VII" omitted by S.O. 183, dated 27.3.1976.
2. Subs. by Act 2 of 1975.
3. Subs. by Act 2 of 1975.
4. Subs. by Act 2 of 1975.
5. Subs. by Act 2 of 1975.
6. Subs. by Act 2 of 1975.

Sl. No.	Establishments, employees or other persons	Provisions of the Act
¹ [12.	Government licensed Establishments dealing in spirituous liquor or narcotic drugs.]	Sections 7, 8 and 12(1).
² [13.	Shops dealing in articles, required for funeral, burial or cremation so far as the sale of these articles is concerned.	Sections 7, 8 and 12(1).
14	Banks transacting Government business]	Section 7.
³ [15.	Circus and Exhibitions.]	Sections 7, 8 and 12(1).
⁴ [16.	Shops of barbers and hair dressers.]	Sections 7, 8 and 12(1).
⁵ [17	Establishments of the factories engaged in manufacture of iron and steel.]	All provisions except Sections 6, 26 and 28 and Chapters VI and VII.
⁶ [18.	Establishment of counter oil-ghanies.]	Sections 7 and 8.
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 :	Sections 7 and 8.
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 philathropic, religious or educational object.	All provisions.

1. Subs. by Act 2 of 1975.
2. Subs. by Act 2 of 1975.
3. Subs. by Act 2 of 1975.
4. Subs. by Act 2 of 1975.
5. Subs. by Act 2 of 1975.
6. Subs. by Act 2 of 1975.

Sl. No.	Establishments, employees or other persons	Provisions of the Act
1[24.	Offices of the Life Insurance Corporation of India situated in the State of Bihar.	Section 33(1).
2[25.	Bank situated in the State of <u>(Bihar)</u> <i>Ranchi</i>	Sections 33(1) and 12-A.
3[26.	Reserve Bank of India.	All provisions.
4[27.	Heavy Engineering Corporation, Ranchi.	All provisions except Sections 6 and 26, Chapter VI and Section 37. <i>28</i>
5[28.	Establishments of M/s. Metallurgical and Engineering Consultants (India) Ltd., Ranchi located at Ranchi and Bokaro Steel City.	All provisions except Section 6, <i>26 & 28</i> and Chapters III, IV and VII.]
6[29	All Establishments of Sulabh International, Patna situated in the State of Bihar. <i>Ranchi</i>	All provisions.
7[30.	Establishments of the Food Corporation of India situated in the State of Bihar. <i>Ranchi</i>	All provisions.]
8[31.	Establishments of the Research and Development Centre for Iron and Steel, Doranda, Ranchi.	All provisions except Section 6, <i>26, 28 &</i> Chapters III, V, VI and VII.]
9[32.	Establishments of the Indian Airlines Corporation situated in the State of <u>(Bihar)</u> <i>Ranchi</i>	All provisions except Sections 6, 26 and 28, Chapters III, VI, VII and VIII of Act.]
10[33.	All Branches of the Scheduled Commercial Bank, including Public sector banks and Regional Rural Banks situated in the State of <u>(Bihar)</u> <i>Ranchi</i>	All provisions.] <i>excl. Chp. 6, 26 & 28, Chapter III, V, VII and VIII</i>

1. Added by Notifn. No. 2/S6-1039/68 L & E 1727 (2) dated 26.10.1968.
2. Added by Notifn. No. II/S6-1014/69 L & E - 1458 (2) dated 18.11.1969.
3. Added by Notifn. No. II/S6-1014/69 L & E - 1458 (2) dated 18.11.1969.
4. Added by Notifn. No. II/S6-2031/75 L & E - 716 (2) dated 3.4.1975.
5. Added by S.O. 1575 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. 1342 dated 30.8.1979 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.
8. Added by S.O. 136 dated 4.2.1980.
9. Added by S.O. 1143, dated 27.12.1980.
10. Added by S.O. 1751 dated 20.11.1984, subs. by S.O. 800 and 2.8.1985 and again subs. by S.O. 419 dated 25.3.1986.

Sl. No.	Establishments, employees or other persons	Provisions of the Act
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¹ [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.]
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35.	² [* * *]	All provisions.]
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³ [36.	All Establishments of Central Ware-housing Corporation situated in the State of Bihar. <i>Shankar</i>	All provisions.] <i>28/01/72</i>
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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 (Agricultural 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 & S 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 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 |

1. Added by S.O. 134 dated 16.1.1984.
2. Added by No. 10/S6-1070/83 L&E dated 9.1.1985 and deleted by S.O. 80 dated 22.8.1986
3. Added by S.O.1018 dated 2.9.1986.

6. Budha 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 and 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 festivals	Period of suspension of Sections 7 and 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
3.	Id-uz-Zoha	Thursday, 30 July, 1987 to Friday, 7th August, 1987	Ditto

1	2	3	4
4.	Durga Puja and Laxmi Puja	Sunday, 20th September, 1987 to Tuesday, 6th October, 1987	Whole of Bihar
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 sub-section (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	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.	Superintendent 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
11.	Superintendent of Labour, West Champaran	Bettiah	West Champaran District

1	2	3	4
12.	Superintendent of Labour, East Champaran	Motihari	East Champaran District
13.	Superintendent of Labour, Darbhanga	Darbhanga	Darbhanga & Madhuani 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 Sub-Division 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 Sub-Division & Jamtara Sub-Division of the Santhal Parganas District
22.	Superintendent of Labour, Dumka	Dumka	Dumka Sub-Division & Godda Sub-Division of Santhal Parganas District
23.	Superintendent of Labour, Sahebganj	Sahebganj	Sahebganj Sub-Division & Pakur Sub-Division 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
27.	Superintendent of Labour, Bokaro Steel City	Bokaro Steel City	Bokaro Steel City, Project area of Dhanbad District & Chas Bazar Area
28.	Superintendent of Labour, Dhanbad	Dhanbad	Dhanbad District (except Bokaro Steel Project & Chas Bazar Area)
29.	Superintendent of Labour, Palamau	Daltanganj	Palamau District 30.
31.	Superintendent of Labour, Jamshedpur	Jamshedpur	Dalbhum and Seraikella, Kharasawan Sub-Divisions of Singhbhum District

S.O. 752, dated the 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	Darbhangha	Darbhangha District
6.	Superintendent of Labour, Madhubani	Madhubani	Madhubani District
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
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, Kodarma	Kodarma	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.	Name of the Officers	Headquarter	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 Labour Commissioner, 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

1	2	3	4
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	Headquarter	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

S.O. 326, dated the 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 the 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.	Designations	Headquarter	Local limits of jurisdiction
1	2	3	4
1.	Superintendent of Labour, Kishanganj	Purnea	Whole of the Kishanganj and Araria Sub-Divisions
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 Sub-Division)
4.	Superintendent of Labour, Barh	Barh	Whole of Barh Sub- Division

S.O. 456, dated the 20th March, 1982.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Bihar and Establishments Act, 1953 (Bihar Act VIII of 1954), and in continuation of this Department's Notification No. 1/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 the 25th May, 1982.—In exercise of the powers conferred by sub-section (2) of Section 29 of the Bihar 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 the 7th April, 1983.—In exercise of the powers conferred by sub-section (2) of Section 7 of the Bihar 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.

S.O. 1011, dated the 2nd September, 1986.—In exercise of the powers conferred by sub-rule (1) of Rule 22 of the Bihar 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 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 and Establishments Act, 1953 (Bihar Act VIII of 1954) and in partial modification of Notification No. 2/S6-101/78-L and 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 head quarters as shown in column 3 of the Schedule against the designations of Officers :

SCHEDULE

Sl. No.	Designation of Officers	Headquarter	Local limits of jurisdiction
1	2	3	4
1.	Labour Superintendent, Bermo	Bokaro Thermal	Bermo Sub-division of Giridih district
2.	Labour Superintendent, Giridih	Giridih	Sadar Sub-Division of Giridih District

S.O. 941, dated the 26th September, 1988.—In exercise of the powers conferred by sub-section (4) of Section 29 of the Bihar 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 Officer 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 Officer	Head-quarter	Local limit of jurisdiction
1	2	3	4
1.	Additional Commissioner of Labour, Ranchi	Ranchi	South Chhotanagpur, North Chhota-nagpur and Santhal Parganas Division

S.O. 913, dated 24th July, 1989.—In exercise of the powers conferred by sub-section (1) of Section 29 of the Bihar 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	Headquarter	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 Deoghar District
3.	Superintendent of Labour, Sahebganj	Sahebganj	Whole of the Sahebganj District

S.O. 1014/92 L&E - 520 Patna, dated the 7.11.1992.—The Governor of Bihar in exercise of the powers conferred by Section 40 of the Bihar 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

Sl No.	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	W.C.
16.	Saran	S.R.
17.	Gopalganj	G.J.
18.	Siwan	S.W.
19.	Darbhanga	D.B.
20.	Madhubani	M.B.

1	2	3
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.

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 Establishment 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	Head-quarters	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 the 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 of 1954) the Governor of Bihar is pleased to appoint 1.10.2001 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. No.	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 S-Chiraiya River E-College Block W-Dicrowave Tower	Nalanda
3.	Akangar Sarai	119	N. Vateria Hospital S-Bharat Petroleum E-Gram Sandi Bigha W-Modern Service Station	Nalanda
4.	Silaw	—	N-High School Silaw S-South side of Rajgir E-Silaw P.S. Badah W-Village Area	Nalanda
5.	Islampur	—	Notified Area	Nalanda
6.	Maheshkhunt	297	N. National Highway (Assam Road) S-Bhuthikiya E-Railway Station W-Karichak	Khagariya
7.	Phulwarisarif	—	Notified Area	Patna
8.	Maner	—	Notified Area	Patna
9.	Ramgarhwa Bazar	66	N. Ramgarhwa Gram S-Lalminda E-Bahauri Gram W-Silwania Pohra Tola	East Champaran
10.	Areraj	—	Notified Area	East Champaran (Motihari)

1	2	3	4	5
11.	Ramnagar	—	Notified Area	West Champaran to (Bettiah)
12.	Shivhar	—	Notified Area	Shivhar
13.	Bakhari Bazar	157	N. Bakhari Block H.O. S-Chandanala E-Sumama Mushari W-Rampur Mallachak	Begusarai
14.	Supaul Bazar	287	N. Nagarrata Goan S-Leg Bus Stand E- Virola W-Karkoli Gram	Darbhanga
15.	Tazpur	129	N. Rahimabaj S-National High Way (Aahar) E-Motipur Adharpur W-Hari Shankar Bhagauni	Samastipur
16.	Hasan Pur	194	N-Magherpur Salha S-Railway line E-Bargaon W-Rampur	Samastipur
17.	Janakpur Road	—	Notified Area	Sitamarhi
18.	Belsand	—	Notified Area	Sitamarhi
19.	Sursand	47	N-Nepal S-Virakh E-Gopalpur W-Vaishali	Sitamarhi
20.	Runni Saidpur	218	N. Morsand S-Manpur Bahnawali E-Weligram W-Waghari	Sitamarhi
21.	Ghogharadiha	—	Notified Area	Madhubani
22.	Kanti	—	Notified Area	Muzaffarpur
23.	Amarpur	—	Notified Area	Bhagalpur
24.	Bariyarpur	90	N-Pariya Panchayat S-Bariyarpur South Panchayat E-Banda Diyara Panchayat W-Itahari-Ratanpur Panchayat	Munger
25.	Tarapur	196	N. Gajipur Panchayat S-Bhima Panchayat S-Shambhuganj Panchayat, W.-Parvara Panchayat	Munger
26.	Navinagar	—	Notified Area	Aurangabad
27.	Jamhour	—	Notified Area	Aurangabad
28.	Makhdumpur	—	Notified Area	Jahanabad
29.	Shahpur	—	Notified Area	Bhojpur
30.	Kataiya	—	Notified Area	Gopalganj

S.O. 165, dated 10th June, 1994.—In exercise of the powers conferred by Section 38 of the Bihar Shops & 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 and 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 Schedule, subject to the condition laid down in the proviso to Rule 35 of the Bihar Shops Establishments Rules, 1955.

SCHEDULE

Sl. No.	Name of the Festivals	Period suspension of Sections 7 and 8, second proviso to Section 9 and Section 12(1) of the said Act	Areas of which suspension is applicable
1.	Holi	From Monday 21 March, 1994 to Tuesday 29th March, 1994	Whole Bihar
2.	Id-ul-Fiter	From Monday 7th March, 1994 to Monday 14th March, 1994	Whole Bihar
3.	Id-uz-Zohz	From Sunday 15th May, 1994 to Monday 23rd May, 1994	Whole Bihar
4.	Durgapuja and Laxmipuja	From Monday 3rd October, 1994 to Sunday 16 October, 1994	Whole Bihar
5.	Dipawali and Chhat	From Tuesday 1st November, 1994 to Tuesday 8 November, 1994	Whole Bihar
6.	Christmas	From Wednesday 21st December, 1994 to Sunday 25th December, 1994	Whole Bihar

एस० ओ० 167, दिनांक 10 जून, 1994—विहार दूकान एवं प्रतिष्ठान अधिनियम, 1953 (विहार एक्ट 8 1954) की धारा 38 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विहार-राज्यपाल आदेश देते हैं कि विहार दूकान एवं प्रतिष्ठित 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 अन्तर्गत सभी प्रतिष्ठानों के संबंध में निलम्बित रहेगा।

अनुसूची

क्रमांक	त्योहारों का नाम	विहार दूकान एवं प्रतिष्ठान, अधिनियम, 1953 की धारा 7, 8, 9 के द्वितीय परन्तुक एवं 12 (1) के प्रावधानों का निलम्बन की अवधि।	स्थानीय सीमा जहाँ निलम्बन आदेश लागू होगा।
1.	सरहुल	7.4.1994 वृहस्पतिवार से 14.4.1994 वृहस्पतिवार तक	सम्पूर्ण उत्तर एवं दक्षिण छोटानागपुर तथा संथाल परगना प्रमंडल।
2.	रामनवमी	10.4.1994 रविवार से 20.4.1994 बुद्धवार तक	सीमामट्टी जिला एवं साहेवगंज जिला वड़हरवाँ 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 बांध 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 वृहस्पतिवार से 15.12.1994 वृहस्पतिवार तक	इमरा अधिसूचित क्षेत्र समिति।

JHARKHAND SHOPS AND ESTABLISHMENTS RULES, 2001

No. 2/SEA (LC) 501/2001 L&T-2870, dated 14th November, 2002.—In exercise of the powers conferred by Section 85 of the Bihar Reorganisation Act, 2000, the Government of Jharkhand do hereby adapt "The Bihar Shops and Establishments Act, 1953. The Bihar Shops and Establishments Rules, 1955" (herein referred as the said Rules) with the following amendments :—

1. In the said Rules wherever the word "Bihar" is mentioned to the word "Jharkhand" shall be deemed to have substituted.

2. Hereinafter the said Rules shall be known as "The Jharkhand Shops and Establishments Rules, 2001."

No. 156-105/55-L-764, dated the 15th January, 1955.—In exercise of the powers conferred by Section 40 of the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), the Governor of Bihar is pleased to make the following rules, the same having been previously published as required by sub-section (4) of the said Section, namely :—

CHAPTER I

PRELIMINARY

1. **Short title and commencement.**—These rules may be called the Jharkhand Shops and Establishments Rules, 2001.

2. **Definitions.**—In these Rules, unless there is anything repugnant in the subject or context—

- (a) "Act" means the Bihar Shops and Establishments Act, 1953;
- (b) "Form" means a form appended to these rules;
- (c) "Government" means the Government of Jharkhand;
- (d) "Section" means a section of the Act;
- (e) the expression "Labour Commissioner", "Assistant Commissioner of Labour" and "Superintendent of Labour" means persons appointed as such by the Government; and
- (f) words and expressions used in these rules and not defined shall have the meaning respectively assigned to them in the Act.

CHAPTER II

REGISTRATION

3. (1) Every employer shall within thirty days of the application of these rules to his establishment, make an application in duplicate, in Form I to the Inspecting Officer for registration of the establishment.

¹[(2) The application shall be signed by the employer and shall be accompanied by a treasury challan or crossed Indian Postal Order drawn in favour

1. Subs. by S.O. 1944, dated 27.12.1975.

of the Chief Inspecting Officer, Jharkhand, Ranchi in proof of payment of the registration fee as specified below :—

¹[Scale of fee payable for the registration of an establishment.

Maximum number of employees on any one day during the year. Rates prior to amendments by S.O. 1944, dated 27.12.1975 which have become effective again consequent upon Patna High Court decision in *B.K. Sinha v. State of Bihar*.

	Amount of fees Rs	Amount of fees Rs.
Up to 2	10	5
3 to 5	20	10
6 to 10	100	20
11 to 20	200	35
21 to 50	500	75
51 to 100	1000	150
101 and above	2000	500

For registration of an establishment in which only members of employer's family are employed the fee shall be Rs. 5/- only.

These revised rates shall be effective from 1st January, 1976.

(3) If on receipt of the application, the Inspecting Officer is satisfied about the correctness of the statements made in the application he shall register establishment in the Register of Establishment in Form II and issue a certificate of registration in Form III.

(4) (a) The Inspecting Officer shall assign to every establishment a registration mark and a number which shall be noted distinctly on the certificate of registration.

(b) The registration mark to be assigned to establishment in a district specified in the first column of the following table shall be as mentioned in the corresponding entries in the second column.

²[TABLE

Sl. No.	Name of the district	Registration Marks
1	2	3
1.	Patna	P.T.
2.	Bhojpur	B.J.
3.	Nalanda	N.L.
4.	Rohtas	R.H.

1. Subs. by S.O. 1944, dated 27.12.1975.

2. Subs. by S.O. 629, dated 6.7.1985.

1	2	3
5.	Gaya	G.Y.
6.	Aurangabad	A.B.
7.	Nawada	N.W.
8.	Hazaribagh	H.Z.
9.	Giridih	G.D.
10.	Dhanbad	D.N.
11.	Ranchi	R.N.
12.	Singhbhum	S.G.
13.	Palamau	P.L.
14.	Lohardagga	L.D.
15.	Gumla	G.L.
16.	Dumka	D.K.
17.	Deoghar	D.G.
18.	Godda	G.A.
19.	Sahebganj	S.J.
20.	Muzaffarpur	M.Z.
21.	Vaishali	V.S.
22.	East Champaran	E.C.
23.	West Champaran	W.C.
24.	Sitamarhi	S.M.
25.	Siwan	S.W.
26.	Saran	S.R.
27.	Gopalganj	G.J.
28.	Saharsa	S.H.
29.	Katihar	K.R.
30.	Madhepura	M.P.
31.	Purnea	P.N.
32.	Bhagalpur	B.H.
33.	Munger	M.G.
34.	Khagaria	K.G.
35.	Madhubani	M.B.
36.	Samastipur	S.T.
37.	Darbhanga.	D.B.
38.	Begusarai	B.G.

(c) The registration mark shall precede the registration number.

(5) The Chief Inspecting Officer may, with the approval of the Labour Commissioner issue necessary instructions to the Inspecting Officer for the proper maintenance of the Register of Establishment.

(6) Every employer shall display prominently the certificate of registration at the establishment.

(7) In the event of any doubt or difference of opinion between an employer and the Inspecting Officer, as to the liabilities of registration of the establishment and payment of the fees therefore, the Inspecting Officer shall refer the matter to the Chief Inspecting Officer whose decision shall be final.

COMMENTS

Registration fee raised by S.O.1944 by the State Government declared *ultra vires* in 1980 BLJR 349—In view of the notification declared *ultra vires* there is no question of payment of registration fee as per increased rates.¹

Rule 26(b) empowers the Inspecting Officer to point out such defects or irregularities as he may have noticed and to order for their removal—any non-compliance of such order and for contravention of provision of Rule 3 will be an offence punishable under Sections 32 and 34 of Bihar Shops and Establishments Act.²

Question whether the petitioner's weighing centre is an establishment or not, a matter in dispute between the parties—prosecution of petitioner under the said Rule in such circumstances is not justified.³

⁴[3-A. **Renewal of certificate of registration.**—(1) The employer of every establishment shall apply to the Inspecting Officer for renewal of certificate of registration in Form I-A in duplicate, not less than thirty days before the date on which the certificate of registration expires, and if application is so made the establishment shall be deemed to be duly registered until such date of the certificate of registration is renewed.

(2) On receipt of an application for the renewal of a certificate of registration, a certificate of renewal of registration shall be issued in Form III.

(3) The fees chargeable for renewal of certificate of registration shall be the same as for the grant thereof.

⁵[3-B. **Validity of certificate of registration.**—Every certificate of registration granted under Rule 3 or renewed under Rule 3-A shall remain in force upto the 31st December of the year for which it is granted or renewed :

Provided that every certificate of registration granted on a date prior to the date of this notification shall remain valid till the 31st December, 1973.]

4. Amendment of registration certificate.—(1) An employer shall notify to the Inspecting Officer in Form IV any change in respect of any particulars furnished

1. *Chamber of Commerce & Industries v. State of Bihar*, 1988 PLJR 362.

2. *State of Bihar v. Vijoy Kumar Singh*, 1968 PLJR 168.

3. *Abu Mohammad v. State of Bihar*, 1977 PLJR 565.

4. Ins. by S.O. 6, dated 3.1.1974.

5. Ins. by S.O. 6, dated 3.1.1974.

omitted
vide notifi-
no. 1667
dt. 31/8/73

in his application in Form I or any previous application in Form IV immediately preceding the present one, within seven days of the occurrence of the change.

(2) Every notice in Form IV shall be accompanied by the current registration certificate, and a treasury challan or a crossed Indian Postal Order drawn in favour of the Chief Inspecting Officer, showing the payment of a fee of Rs. 1 plus an amount, if any, by which the fee that should have been payable, if the registration certificate had originally been issued in the amended form exceeds the originally paid for the registration certificate.

(3) On receipt of the notice in Form IV accompanied by the registration certificate and the treasury challan or the Indian Postal Order, the Inspecting Officer shall, on being satisfied about its correctness, make the necessary changes in the "Register of Establishments" and amend the registration certificate.

Section 6

5. Transfer of registration certificate.—(1) The registration certificate shall be non-transferable.

(2) If any employer transfers his establishment to any other person he shall, within 14 days of such transfer, notify the fact of transfer with all the particulars required in Form I in respect of the transferee signed by himself and surrender the certificate of registration to the Inspecting Officer who, after satisfying himself about the correctness of the claim, issue a fresh certificate of registration in Form III to the transferee, and make an entry in the register of establishments accordingly.

(3) Every such notice shall be accompanied by a treasury challan or a crossed Indian Postal Order drawn in favour of the Chief Inspecting Officer showing payment of fees according to the scales of fees for the registration of an establishment as prescribed in Rule 3 or five rupees, whichever is less.

6. Loss of registration certificate.—Where a registration certificate is lost or destroyed, an application shall be made to the Inspecting Officer within seven days of such loss or destruction, for a duplicate copy which may be granted on payment of a fee of two rupees either by crossed Indian Postal Order or by depositing the amount in the local treasury.

COMMENT

An application shall be made to the Inspecting Officer within 7 days where a registration certificate is lost for a duplicate copy. Fees of Rs. 2.00 has been provided for grant of duplicate copy.

¹[7. **Late application for registration, renewal or amendment.**—If an application for registration of an establishment or renewal or amendment of a registration certificate is not received by the Inspecting Officer within the time specified in the foregoing rules, the establishment shall be registered or the registration certificate shall be renewed or amended, as the case may be, on payment of a fee which is calculated at the rate of 50 per cent for the first six months plus fifty percent for

1. Subs. by S.O. 6, dated 3.1.1974.

each subsequent three months or part thereof, in excess of the fee prescribed for the purpose :

Provided that the amount of excess fee shall not exceed Rs. 100 in case of establishment employing upto 2 employees or in which only members of employer's family are employed and in all other cases, it shall not exceed Rs. 1,000.

8. Penalty for making incorrect statement.—If any statement made in Form I or in Form IV is found to be incorrect, the employer shall be punished with fine which may extend to one hundred rupees.

Sections 6 and 40(2)(m)

9. Permanent closure of establishment.—(1) If any establishment is and closed permanently, the employer shall within seven days of such closure, notify that fact to the Inspecting Officer, in Form V. The Inspecting Officer shall on being satisfied about its correctness remove such establishment from the "Register of Establishments", cancel the registration certificate and inform the employer accordingly.

Explanation.—An establishment will be treated to have been permanently closed for the purpose of this rule if it is closed for a period of six months or more from the date of closure.

(2) If the establishment is re-opened after its registration certificate has once been cancelled, the employer shall, within 15 days of such reopening make an application to the Inspecting Officer in Form I for the registration of the establishment on payment of fees prescribed in Rule 3 either through treasury challan or by crossed Indian Postal Order. The Inspecting Officer shall on being satisfied about the correctness of statement made in the application, register the establishment in "Register of Establishments" and issue a registration certificate.

10. Procedure on death or disability of the holder or registration certificate.—If the holder of a registration certificate dies or becomes insolvent, the persons carrying on the business of such certificate holder shall not be liable to any penalty under the Act for exercising the power granted to the certificate holder by the registration certificate for the period of thirty days from the date of death or insolvency of the holder of registration certificate to enable him to make an application for amendment of the registration certificate in his own name and such amendment shall be subject to the fees prescribed in Rule 4.

CHAPTER II

WEEKLY CLOSURE, WEEKLY HOLIDAYS AND LEAVE WITH WAGES

*omitted vide 1004/2011
100-230 add. 16/2/13*

11. Notice of weekly closure.—The notice under sub-section (1) of Section 12 shall be in Form VI which shall be exhibited on a conspicuous place in every establishment. The day on which the establishment remains closed shall also be displayed on a board prominently outside the entrance of every establishment so as to make it clearly visible from outside the establishment.

(2) A copy of the notice shall be delivered at the office of the Inspecting Officer within two days of its display in the establishment.

COMMENT

Notice of weekly closure has been provided in this rule. The notice shall be exhibited on a conspicuous place in every establishment. Further it has been provided that the copy of the notice shall be delivered at the office of the Inspecting Officer within two days.

¹[12. **Notice for weekly holidays.**—Every employer shall exhibit in his establishment a notice in Form VII specifying the day or days of the week on which the employees shall be given a holiday. The notice shall be exhibited before the persons employed cease work on Saturday immediately preceding the week during which it will have effect, and a copy of every such notice shall be delivered at the office of the Inspecting Officer within two days of its display in the establishment.]

²[12-A. The employer shall maintain a service card in Form XXI in triplicate. A copy of this Form after necessary entries made therein shall be furnished to employees, the second copy shall be delivered at the office of the Inspecting Officer within a week of his first employment in the establishment and the third copy shall be retained by the employer for the record.]

³[13. **Notice of period of work for employees.**—Every employer shall exhibit in this establishment a notice in Form VII specifying the period of work of each and every employee of the establishment. A copy of the notice shall be delivered at the office of the Inspecting Officer within two days of its display in the establishment.]

14. Leave with Wages Register.—Every employer shall maintain Leave with Wages Register in Form IX.

(2) The Leave with Wages Register shall be preserved for a period of three years after the last entry in it and shall be produced before the Inspecting Officer on demand.

Section 16(7)

15. Appeal against refusal of leave.—(1) An appeal under sub-section (7) of Section 16 shall be preferred, within thirty days of the date on which the refusal of leave is communicated to the employee before the Superintendent of Labour or the Sub-divisional Magistrate of the local area concerned.

(2) An appeal shall be preferred in the form of a memorandum in duplicate, setting forth concisely the grounds of objection to the order appealed from either by the aggrieved employee himself or through an officer of a registered Trade Union. The memorandum shall be accompanied by a certificate signed by the appellant to the effect that the contents of the memorandum are true to the knowledge and belief of the appellant and that no appeal under sub-section (7) of Section 13 has been filed previously before any other authority.

(3) The Superintendent of Labour or the Sub-divisional Magistrate as the case may be shall call upon the employer by a notice to appear before him either personally or through his agent at a specified time together with all relevant

1. Subs. by S.O. 6, dated 3.1.1974.

2. Subs. by S.O. 6, dated 3.1.1974.

3. Subs. by S.O. 6, dated 3.1.1974.

documents and witnesses, if any, and shall inform the appellant of the time so specified.

(4) If the employer or his agent fails to appeal at the specified time, the authority may proceed to hear and determine the appeal *ex-parte*.

(5) If the appellant fails to appear at the specified time, the authority may dismiss the appeal.

(6) The party aggrieved by the order made under sub-rule (4) or (5) may file an application within thirty days of the passing of the order to have the order set aside :

Provided that no such order shall be set aside unless the applicant shows sufficient cause for his non-appearance when the appeal was called on for hearing :

Provided further that no order shall be made under this sub-rule unless notice of the application has been served on the opposite party.

(7) Every such memorandum of appeal shall bear a Court fee stamp of Re. 1.

(8) The Superintendent of Labour or the Sub-divisional Magistrate as the case may be, shall record briefly the evidence adduced before him, hear the parties and then pass orders, giving reasons, thereof. The orders so passed shall be final and binding on the parties. The orders shall be communicated to be parties immediately.

(9) The compensation awarded under Section 16 may be recovered—

(a) if the authority is a Magistrate, by authority as if it were a fine imposed by him as Magistrate; and

(b) if the authority is not a Magistrate, by any Magistrate, to whom the authority sends written requisition duly signed and sealed in this behalf as if it were fine imposed by such Magistrate.

Section 17(2)

16. Mode of computation of cash value of wages.—The retail price at the nearest market to be selected by Inspecting Officer, if there are more than one such markets, shall be taken into account in computing the cash equivalent of any benefit accruing by the sale of food-grains and other articles at concessional rates. The computations shall be made in accordance with such directions as may be issued by the State Government from time to time.

CHAPTER IV

WAGES, DISCHARGE OF AN EMPLOYEE

17. Register of wages.—A register of attendance and wages shall be maintained by every employer in Form X.

Section 25

18. Deduction from wages.—(1) No deduction except as provided herein-after shall be made by an employer from the wages of an employee—

(a) fines;

(b) deductions from absence from duty;

- (c) deductions for damage to or loss of goods expressly entrusted to the employee for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) deductions for house accommodation supplied by the employer;
- (e) deductions for such amenities and services as Government may by general or special order authorise;

Explanation.—The word "service" in the sub-rule does not include supply of tools, any raw materials required for the purposes of employment.

- (f) deductions for recovery of advance or for over payments of wages;
- (g) deductions of income-tax payable by the employee;
- (h) deductions required to be made by order of a Court or other authority competent to make such order;
- (i) deduction for subscription to and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies or any recognised fund as defined in Section 58-A of the Indian Income-tax Act, 1922 (XI of 1922)¹, or any Provident Fund approved in this behalf by the State Government during the continuance of such approval;
- (j) deductions for payment to co-operative societies approved by Government or to a scheme of Insurance approved by Government;
- (k) deductions for revenue stamp required to be attached to pay receipts, where applicable;
- (l) deductions for any saving scheme approved by Government with the written authority of the employee;
- (m) deduction on account of supply of cooked food or refreshments during the hours of employment in accordance with any scheme previously approved by the Chief Inspecting Officer; and
- (n) deductions for contribution to the National Defence Fund or to any Defence Saving Scheme approved by the State Government with the written authority of the employee.

Explanation.—Every payment made by the employee to employer or his agent shall for the purpose of these rules be deemed to be a deduction from wages.

(2) An employer desiring to impose a fine on any employee or to make a deduction for damage or loss caused to him shall explain to him personally and also in writing the act or omission or the damage or loss in respect of which the fine or deduction is proposed to be imposed or made and give him an opportunity to offer an explanation in the presence of another person. The amount of the said fine or deduction shall also be intimated to him in writing.

1. Now see Income Tax Act, 1961.

(3) The total amount of fine which may be imposed in any one wage period on any employee shall not exceed an amount equal to ¹[half-an-anna in the rupee of the wages payable to him in respect of that wage period.

(4) No fines shall be imposed on a child.

(5) All fines realised shall be expended only on such purposes beneficial to the persons employed in the establishment as are approved by the Chief Inspecting Officer.

(6) A deduction under clause (c) of sub-rule (1) shall not exceed the amount of damage or loss caused to the employer by the neglect or default of the employee.

(7) (a) Deductions may be made under clause (b) of sub-rule (1) only on account of the absence of an employee from the place or places where the terms of his employment he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(b) The amount of such deduction shall in no case bear to the wages payable to the employee in respect of the wages period for which the deduction is made a larger proportion than the period for which he was absent to the total period within such wage period, during which by the terms of his employment he was required to work.

(8) A deduction under clause (d) or clause (e) of sub-rule (1) shall not be made from the wages of an employee unless the house accommodation, amenity or service has been accepted by him as a term of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and in the case of a deduction under clause (e) shall be subject to such conditions as Government may, by notification in the Official Gazette impose.

(9) Deduction under clause (j) or clause (n) of sub-rule (1) shall be subject to such conditions as Government may, by order impose.

19. Register of fines and deductions.—The amount of fine realised and all deductions imposed on the wages of employees shall be recorded in a register in Form XI.

COMMENT

There shall be a register in Form 11 and it has been provided that the amount of fine realised and all deductions imposed on the wages of employees shall be recorded in the register.

Sections 26 (1) and 40 (2) (c)

20. List of acts which may be termed as misconduct.—(1)—The following acts shall each be treated as misconduct for the purposes of the proviso to sub-section (1) of Section 26 :—

- (a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

1. Now paisa equivalent to that.

- (b) wilful damage or loss of employer's property;
- (c) taking or giving bribes or any illegal gratification;
- (d) theft, fraud or dishonesty in connection with the employer's business property;
- (e) habitual absence without leave or absence without leave for more than ten days;
- (f) habitual breach of any law applicable to the establishment,
- (g) habitual late attendance;
- (h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;
- (i) habitual or gross negligence or neglect of work;
- (j) striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law;
- (k) breach of the provisions of the Standing Orders applicable to the establishment and certified under the Industrial Employment (Standing Orders) Act, 1946.

(2) No order or discharge on ground of misconduct shall be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to defend himself and explain the circumstances alleged against him.

COMMENT

Scope of the provisions.—From a reading of Rule 20 of the Rules, it appears that the charges on which the petitioner was dismissed from his services have been enumerated in the list of acts which may be termed as misconducts, namely, theft, dishonestly, habitual or gross neglect of work and further breach of the provisions of the Standing Orders applicable to the Establishment and in that view of the matter. The charges levelled against the petitioner and the grounds on which the petitioner has been dismissed, are in accordance with the provisions laid down under Rule 20 of the Rules.¹

21. Complaint under sub-section (2) of Section 26.—(1) Any employees aggrieved by an order of dismissal or discharge under Section 26, may make a complaint to Labour Court constituted under the Industrial Disputes Act, 1947 (14 of 1947) or to an officer authorised in this behalf by a notification in the Official Gazette, either himself or through an officer of a registered Trade Union. Such Court or Officer shall entertain the complaint petition and hear the same in manner prescribed in sub-rules (4) to (8).

(2) The complaint petition shall be prepared in the form of a memorandum in duplicate, setting forth concisely the grounds of objection to the order complained against. The memorandum shall be accompanied by an affidavit sworn before a Magistrate of the First Class that the contents of the memorandum are true to the knowledge and belief of the applicant and that no such complaint has been filed and heard before any other authority.

(3) Every such memorandum shall bear a Court-fee stamp of Rs. 5/-.

1. *Abdul Rahim v. Presiding Officer*, 1994 (2) PLJR 238 at p. 242.

*DL e original as presented by wife of petitioner
no. 10/L-61030/96 LRB-177 dt. 11.11.96.*

*and otherwise determined, inserted vide notam no. 1668 dt. 31/8/12
A* - or notary Public*

Provided that the authority may, in consideration of the poverty of the applicant, reduce or remit this fee.

(4) The authority entertaining the complaint petition shall call upon the employer by a notice to appear on the date fixed before him either personally or through his agent at a specified time and place together with all relevant documents and witnesses, if any, and shall inform the complainant of the said date, time and place of the hearing of the said case.

(5) If the employer or his agent fails to appear on the date fixed at the specified time, and place, authority may proceed to hear and determine the complaint petition *ex parte* unless for proper reasons to be recorded in writing the hearing is adjourned to another date.

(6) If the complainant fails to appear on the date fixed or any date subsequent thereto to which the hearing may be adjourned for reasons considered proper the authority may dismiss the complaint.

(7) An passed order under sub-rule (5) or sub-rule (6) may, on sufficient cause being shown within thirty days of the date of the order, be set aside and the complaint re-heard, notice being served on the opposite party of the date fixed for hearing.

(8) The Labour Court or the officer authorised in this behalf, as the case may be, shall record briefly the evidence adduced before him, hear the parties summarily and after making such further enquiry as he may consider necessary, pass orders giving reasons thereof. The orders, so passed, shall be communicated to the parties immediately.

(9)
UD
COMMENT

Labour Court, has jurisdiction to allow amendment of pleadings provided of course it does not change the nature of the case.¹

✓ **22. Application under sub-section (1) of Section 28.—**(1) An application under sub-section (1) of Section 28 shall be made to a Sub-divisional Magistrate or an Assistant Commissioner of Labour² [or Deputy Commissioner of Labour] of the local area or the Presiding Officer of the Labour Court, mentioned in column 2 of the Schedule hereto annexed having their respective jurisdictions as specified in column 4 of the said Schedule or an Officer authorised in this behalf by notification in the Official Gazette within six months from the date on which the deduction from the wages was made or the date on which the payment of wages was due to be made as the case may be.

Provided that an application may be admitted after the period of six months if the applicant satisfies the authority that he had sufficient cause for not making the application within such period :

1. Manindra Nath Ganguly v. Presiding Officer, 1977 PLJR 265.
2. Added by S.O. 1680, dated 10.12.1973.

1[SCHEDULE

Sl. No.	Designation of the Officers	Headquarters	Local limits of Jurisdiction
1	2	3	4
1.	Presiding Officer, Labour Court, Patna Division	Patna	Districts of Patna, Nalanda, Gaya, Nawadah, Aurangabad, Bhojpur and Rohatas of Patna Division.
2.	Presiding Officer, Labour Court, Bhagalpur Division	Bhagalpur	Districts of Bhagalpur, Monghyr and Santhal Parganas of the Bhagalpur Division and Districts of Saharsa, Purnea and Begusarai of Kosi Division.
3.	Presiding Officer, Labour Court, Tirhut Division	Muzaffarpur	Districts of Muzaffarpur, Vaishali, Sitamarhi, Darbhanga, Samastipur, Madhubani, East Champaran, West Champaran, Saran and Siwan of the Tirhut Division.
4.	Presiding Officer, Labour Court, Ranchi.	Ranchi	Districts of Ranchi, Palamau and Hazaribagh of the Chotanagpur Division.
5.	Presiding Officer, Labour Court, Bokaro Steel City	Steel City	District of Dhanbad and Giridih of the Chotanagpur Division.
6.	Presiding Officer, Labour Court, Jamshedpur	Jamshedpur	District of Singhbhum of Chotanagpur Division.

Provided that the cases pending before the Presiding Officer of Labour Courts from before shall be heard and disposed of by them.

(2) An application under sub-section (1) of Section 28, by or on behalf of an employee shall be made in duplicate in Form XII, Form XIII or Form XIV, as the case may be, one copy of which shall bear the requisite Court-fee as prescribed in Rule 25. The application shall be accompanied by a certificate signed by the applicant to the effect that the contents of the application are true to the knowledge and belief of the applicant, and that no such application for the same dues has been filed before any other authority.

(3) The authorisation to act on behalf of an employee or employees under Section 28 shall be given by a certificate in Form XV and shall be presented to the authority hearing the application and shall form part of the record.

(4) Documents relevant to an application may be presented in person or sent by registered post to the authority at any time during such hours as may be fixed by the authority for this purpose.

(5) The authority shall at once endorse or cause to be endorsed on each document the date of the presentation or receipt, as the case may be.

(6) (i) The authority may refuse to entertain an application presented under sub-rule (1), if after giving the applicant an opportunity of being heard, the authority is satisfied for reasons to be recorded in writing, that the applicant is

1. Subs. by Notification No. II/S6-1031-73 L & E—1650 dated 28.6.1973.

entitled to present an application or the application is barred by reason of the provisions in sub-rule (1) or the application shows no sufficient cause for making a direction under Section 28.

(ii) The authority may refuse to entertain an application which is insufficiently stamped or is otherwise incomplete, and if he so refuses, he shall return it with a note about the defects, the application suffers from. If the application is presented again after removing those defects, the date of representation shall be deemed to be the date of presentation for the purposes of provision in sub-rule (2).

(7) If the application is entertained, the authority shall call upon the employer by a notice in Form XIV to appear before him at a specified time together with all relevant documents and witnesses if any, and shall inform the applicant of the time so specified.

(8) The authority shall briefly record the evidence adduced before him, shall hear the parties summarily and after making such further enquiry as he may consider necessary for a just and proper decision, shall pass orders recording in writing the direction which he may issue under sub-section (3) of Section 28, as the case may be, giving the reasons therefor, and communicate the same to the parties without delay.

(9) If the employer or his authorised agent fails to appear at the specified time, the authority may proceed to hear and determine the application *ex-parte*.

(10) If the applicant fails to appear at the specified time, the authority may dismiss the application.

¹[(11) An order passed under sub-rule (9) or sub-rule (10) may on good cause being shown within thirty days of the said order, be set aside and the application re-heard, notice being served on the opposite party of the date fixed for re-hearing.]

(12) The authority shall in all cases enter the particulars of every direction under sub-section (2) of Section 28 in Form XVII which shall be signed and dated by him.

²[(13) The State Government may by notification in the Official Gazette withdraw or recall any case or appeal pending before an authority prescribed under sub-section (2) of Section 26 or sub-sections (1) and (7) of Section 28 of the said Act and transfer the same to another prescribed authority for disposal.]

COMMENT

Compensation—Grant of.—Courts do not find any justification for non-payment of the wages to the employee immediately after 12.12.1974 when CWJC No. 1326 of 1972 was dismissed by the High Court upholding the decision of the Labour Court that the termination of the service of the petitioner is wholly illegal. The dispute thereafter cannot be termed as *bona fide* at all. The Courts below, therefore, erred in law to hold that in view of the existence of a *bona fide* dispute the petitioner is not entitled to any compensation whatsoever.³

1. Subs. by S.O. 6, dated 3.1.1974.

2. Ins. by S.O. 115, dated 9.2.1974.

3. *Sri Shatrughanjee Sahay v. Industrial Tribunal Patna*, 1983 PLJR 186 at p. 191.

Sections 28 (4) and 40 (2) (f)

23. Recovery of amount directed to be paid by authority.—Any amount directed to be paid under Sections 26 and 28 may be recovered—

- Recovery of amount*
- (a) if the authority is a Magistrate, by authority as if it were a fine imposed by him as Magistrate; and
 - (b) if the authority is not a Magistrate, by any Magistrate, to whom the authority sends written requisition duly signed and sealed in this behalf, as if it were a fine imposed by such Magistrate.

Sections 28 (7) and 40 (2) (g)

24. Appeal under sub-section (7) of Section 28.—(1) An appeal under sub-section (7) of Section 28 shall be preferred within thirty days of the date on which the decision was made before the Industrial Tribunal, Patna, Bhagalpur and Tirhut Division in respect of the cases relating to Patna, Tirhut, Kosi and Bhagalpur and Tirhut Divisions and before the Industrial Tribunal, Chhotanagpur in respect of cases relating to Chhotanagpur Division or an officer authorised in this behalf by a notification in the Official Gazette :

Provided that the appeals already pending before the Presiding Officer, Industrial Tribunal, Patna, Bhagalpur and Tirhut Divisions, Patna (Appellate Authority) shall be heard and disposed of by him.

(2) An appeal shall be preferred in the form of a memorandum in duplicate, one copy of which shall bear the requisite Court-fee stamps as prescribed in Rule 25 setting forth concisely the grounds of appeal and accompanied by a certified copy of the direction against which appeal is preferred.

(3) When an appeal is lodged, the Appellate Authority shall cause a notice to be issued to the respondent in Form XVIII through registered post with acknowledgment due.

(4) The Appellate Authority after hearing the parties and after making such further enquiry, if any, as it may deem necessary, may confirm, vary or set aside the direction from which the appeal is preferred, and shall record an order accordingly with reasons therefor. The order so passed shall be communicated to the parties without delay.

Section 28

25. Fees.—The Court-fee payable in respect of proceedings under Rule 22 and Rule 24 shall be—

- (a) for every application summon a witness—¹[four annas in respect of each witness;
- (b) for every application made under sub-section (1) of Section 28 by or on behalf of an individual before the authority—²[eight annas;
- (c) for every application made under sub-section (1) and sub-section (8) of Section 28 by or on behalf of an unpaid group before the

1. Now paisa equivalent to that.

2. Now paisa equivalent to that.

authority—¹[four annas for each member of the group subject to the maximum of five rupees;

(d) for every appeal under sub-section (7) of Section 28—five rupees :

Provided that the authority may, in consideration of the poverty of the applicant, reduce or remit this fee :

Provided further that no fee shall be chargeable in respect of an application presented by an Inspecting Officer.

COMMENT

It has been provided in this rule that four *annas* shall be paid for every application to summon a witness. 8 *annas* fees has been fixed for every application made under sub-section (1) of Section 28 but the authority may reduce or remit the fees if it appears that the applicant is a poor person but no fees shall be chargeable if an application has been presented by an Inspecting Officer.

CHAPTER V

INSPECTING STAFF

Sections 30 (1) and 40 (2) (i)

26. Power of Inspecting Officer.—An Inspecting Officer shall, for the purpose of giving effect to the provisions of the Act and these rules, have powers to do all or any of the following things, namely—

- (a) to inspect and make such examination of the premises and of the registers, records and notices as may appear to him to be necessary for the purpose of satisfying himself that the provisions of the Act and of the rules and any orders passed by Government under the Act are being properly observed;
- (b) to prosecute and to assist in the conduct and defence of any complaint or other proceedings arising under the Act or in the discharge of his duties as an Inspecting Officer;
- (c) to satisfy himself at each inspection that—
 - (i) the registers, records and notices required to be maintained or exhibited under the Act or these rules are properly maintained and exhibited;
 - (ii) the intervals for rest and the holidays required to be granted under the Act are granted and that the limits of hours of work and spread over laid down under the Act are not exceeded;
 - (iii) the provisions of the Act relating to the payment for overtime work are duly observed;
 - (iv) no child below the age of twelve years is allowed to work in any establishment to which the Act applies;
 - (v) the provisions of the Act and any order issued by the Government regarding the opening or closing hours are duly observed; and

1. Now paisa equivalent to that.

- (vi) how far the defects pointed out at previous inspections have been removed and how far orders previously issued have been complied with; and
- (d) to point out all such defects or irregularities as he may have observed and to give orders for their remedy or removal and hand over to the employer a summary of the defects or irregularities and of his orders.

Sections 30 (1) and 40 (2) (m)

27. **Records of inspection.**—The Inspecting Officer shall keep a separate file of the records of his inspection of each establishment.

¹[27-A. **Register of Establishment.**—The Inspecting Officer shall earmark one page exclusively of the Register of Establishment prescribed in Form II for the purpose of registration/renewal/amendment of each establishment.

Sections 30 (1) and 40 (1) (m)

28. **Service of order passed by Inspecting Officer.**—Every order by the Inspecting Officer under the Act and the rules shall be served on the employer of an establishment—

- (a) by delivering a copy of the same to him personally or at his office; or
- (b) by registered post.

Sections 30 (1) and 40 (2) (m)

²[29. **Inspection book.**—(1) Every employer shall maintain an Inspecting Officer's Visit and Inspection Book, in which Inspecting Officer may record his remarks regarding any defect that may come to light in the course of an inspection of the establishment, and shall produce it whenever required to do so by an Inspecting Officer.

(2) The Inspecting Officer's Visit and Inspection Book shall be a bound book of size 7" x 6" containing at least 100 (one hundred) pages, every second page thereof shall be consecutively numbered and the unnumbered page between each two consecutively numbered page shall have a vertical perforated straight line on the margin side at a margin of 1". Every numbered page shall contain the following heading at the top : (1) The name of establishment or employer, (2) Locality, (3) Registration number of establishment (4) Date of inspection (5) Time and (6) Remarks.

(3) In case of the Visit Book containing the remarks passed by an Inspecting Officer is lost, the employer shall forthwith report in writing the loss of the Visit Book to the Inspecting Officer and immediately maintain a new Visit Book.

30. **Hours of Inspection.**—An Inspecting Officer shall ordinarily visit or inspect an establishment during the normal working hours, but he may visit an establishment at any time if he has reasonable doubts that the employer is infringing the provisions of the Act or the rules beyond such hours.

1. Ins. by S.O. 6, dated 3.1.1974.

2. Renumbered as 29 (1), (2) and sub-rule (3) ins. by *ibid.*

COMMENT

It has been provided under this rule that normally an Inspecting Officer shall visit or inspect an establishment during the normal working hour but he may visit at any time if he has a reasonable doubt that the employer is infringing the provisions of the Act or the Rules.

**CHAPTER VI
MISCELLANEOUS**

31. **Display of notices.**—Every employer shall exhibit in the establishment a notice containing such extract of the Act and these rules as the Inspecting Officer may direct.

32. **Manner in which notice should be exhibited.**—Any notice required to be exhibited under these rules shall be exhibited at the main entrance of the establishment and shall be renewed whenever it becomes defaced or otherwise ceases to be clearly legible.

33. **Entries in registers, records and notices.**—In any register or record which an employer is required to maintain, under these rules, the entries relating to a day and shall be made on such day shall be signed and dated.

34. **Periods for which registers, records and notices should be preserved.**—Save as otherwise provided, the registers, records and notices relating to any calendar year shall be preserved for a period of three years after the end of the calendar year, to which they relate.

35. **Suspension of operation of the Act.**—The operation of all or any of the provisions of the Act may be suspended by a notification in the Official Gazette up to a period of thirty days at a time in any area in respect of an establishment or any class of establishments on account of public holiday or occasions or for any other reason as the Government may determine :

Provided that the employees of the establishment or class of establishments so exempted shall be entitled in respect of the overtime to wages at the rate laid down in Section 21.

Section 40 (2)

36. **Drinking water.**—The employer shall make arrangement for the supply of adequate and wholesome drinking water for the employees. The area around the place where drinking water is distributed shall be kept clean and properly drained.

COMMENTS

The area around the place where drinking water is distributed shall be kept clean. It is the duty of the employer to make arrangement for the supply of adequate and whole some drinking water for the employees.

The rules enjoin certain duties upon the employer and prescribe certain procedures required to be followed.¹

²[36-A. **Cleanliness.**—(1) (a) In every establishment all the inside wall of the room and all the ceilings of such rooms, whether such walls or ceilings be plastered

1. *Beldih Club v. Presiding Officer, Labour Court*, 1991 (1) PLJR 81.

2. Ins. by S.O. 6, dated 3.1.1974.

or not and all the passages and staircases shall be lime-washed or colour-washed at intervals of not more than twelve months dating from the time when they were last lime-washed or colour-washed and shall be maintained in a clean state.

(b) All beams, rafters, window-frames and other wood work with the exception of floors shall be either lime-washed, colour-washed at intervals of not more than twelve months, dating from the time when they were last lime-washed or colour-washed or shall be painted or varnished at intervals of not more than seven years dating from the time when they were last painted or varnished and shall be maintained in a clean state.

(2) Rubbish, filth, or debris shall not be allowed to accumulate or to remain on any part of the establishment for more than 24 hours and shall be disposed within the said period. All filth and other decomposing matters shall be kept in covered receptacles.

(3) The establishment and the compound surrounding shall be maintained in a strictly sanitary and clean condition. The floor shall be swept or otherwise cleaned at least once daily, and the ceiling, shall be dusted at least once a month.

¹[36-B. Ventilation.—In every establishment arrangement for ventilation openings shall be provided and the opening shall be such as to admit of a continued supply of fresh air.

37. Maintenance of records and registers.—(1) Save as otherwise provided, all registers, records and notices required to be maintained, exhibited or given under these rules shall be either in English or in Hindi in Devanagri script or in the Court language of the area.

(2) All such registers and records shall be kept both at the office of the establishment and the place of business.

(3) If the Inspecting Officer is of the opinion that any muster roll register maintained in an establishment gives in respect of any or all of the employees in that establishment, the particulars required in the Forms IX, X and XI, he may, by order in writing direct that such muster roll or register shall to be corresponding effect be maintained in place of and be treated as the registers required to be maintained in Forms IX, X and XI of that establishment.

38. Proof of age.—An Inspecting Officer may require an employer to produce an authentic extract from the records of any School, Village Panchayat or Municipality, or in the absence of such extract at least a certificate from a Registered Medical Practitioner showing the age of any person employed by such employer.

39. Payment of fees.—(1) The fees to be paid into the local treasury under these rules be deposited under the head of account ²[XXXII Miscellaneous Social and Development Organization-Receipts from Bihar Shops and Establishment Act, 1953.

1. Ins. by S.O. 6, dated 3.1.1974.

2. See Now Head of Account.

(2) No claim for any refund of the fees payable under these rules shall be entertained.

40. **Fees for copies of papers and documents.**—The authorities appointed under Rules 15, 21, 22 and 24 may issue copies of papers and documents to the parties on payment of fees prescribed in the Bihar Records Manual, 1951, for supply of papers and documents in district offices.

✓41. **Legal Practitioners.**—No legal practitioner shall be allowed to appear in appeals under Sections 16 and 26. → See Section 28-A

42. **Annual Returns.**—Every employer shall send to the Inspecting Officer an annual return for the calendar year giving such information in respect of employment, wages and other matters relating to working conditions of employees as may be required by the Chief Inspecting Officer so as to reach him on or before the 31st March of the succeeding year.

COMMENT

It has been provided under this rule that every employer shall send the annual return to the Inspecting Officer on or before 31st March of the year. In the annual return all the information in respect of employment, wages and other matters relating to working condition of the employees shall be mentioned.

43. **Quarterly returns.**—Every employer of an establishment employing ten or more persons shall furnish within thirty days of the end of each quarter to the Inspecting Officer of the area concerned a quarterly return in Form XIX for the quarters ending on the 31st March, 30th June, 30th September and 31st December of each year. The Inspecting Officer will compile the return and submit the same to the Chief Inspecting Officer. The Chief Inspecting Officer will furnish consolidated return to the Commissioner of Labour every quarter in Form XX.

¹44. **Carrying of loads.**—(1) No man, woman or young person shall, unaided by another person be required or allowed to lift, move and carry by hand or on head, any load exceeding the maximum limit in weight set out in the following schedule.

SCHEDULE

Persons	Maximum Limits in Weight	
	Kgs.	
Adult male	75	
Adult female	30	
Adolescent male	30	
Adolescent female	20	
Male child	16	
Female child	13	

1. Ins. by S.O. 906, dated 16.5.1979.

(2) No person shall either individually or in conjunction with others engage in lifting, moving or carrying by hand or on head any material, article, tool and appliance, if the weight thereof exceeds the maximum limits fixed by the Schedule to sub-rule (1) for any of the persons engaged, multiplied by the number of the persons so engaged

(3) Where due to technical or practical difficulties it is not possible to reduce the weight to the maximum permissible limits prescribed under sub-rules (1) and (2) above, mechanical devices such as wheel barrows and fork lifts shall be provided for the transportation of loads and action will be taken to ensure that help is made available to the loader to lift such loads for removing them from the wheel barrows or fork lifts etc.]

FORM I

(Rule 3)

Application for Registration

1. Name of establishment
2. Type of establishment—(a) Shops, (b) Restaurant or Eating house, (c) Residential hotel, (d) Theatre or any other place of public amusement.
3. Full postal address of the establishment.
4. Location of the establishment (including the number of the holding and name of the police station in which it is situated).
5. Whether the establishment is registered under the ¹[Bihar Sales Tax Act, 1947, and, if so, the registration no. and date.
6. Maximum number of persons proposed to be employed on any day during the calendar year in which this application is filed—
 - (a) Adults (male and female).....
 - (b) Young person (male and female).....
 - (c) Children (male and female).....
 - (d) Number of employers' family.....
7. Particulars of person having interests in the establishment as employer [see Section 2 (5).]

Serial No.	Name and parentage	Designation	Permanent address	Nature of interest
1	2	3	4	5

1. Now Bihar Finance Act, 1981.

8. Name, designation and permanent address of the employer (Manager, Agent or any other person) who is in the immediate charge of the General Management or Control of the establishment.

9. Amount of fee Rs.....(rupees.....) paid in Crossed Indian Postal Order (No.).....(enclosed)/..... Treasury on..... (vide Challan No.....enclosed).

Signature with designation of the Employer

(mentioned in serial 7)

(Date.....)

¹[FORM I-A

(Rule 3-A)

To,

The Inspecting Officer

The Bihar Shops and Establishment Act, 1953

Sir,

As the period of registration certificate no.....originally granted subsequently received is due to expire on.....or has already expired.....I have to enclose herewith the certificate of Registration no.....along with a Crossed Indian Postal Order no.....for Rs.....(Rupees.....), dated.....or have deposited Rs.....only in Treasury (*vide* Challan no.....) and to request for its renewal.

Signature of employer.

Date.....

Place.....

Note.—If the number of employer is more than one or if the Establishment is a public limited company the application, will be signed by the person who is duly authorised for the purpose. If the employer is minor, the application shall be signed by the legal guardian of the minor as well.

²[FORM II

(Rule 3)

Register of Establishment

District.....

Serial No.	Name with full address of establishment	Name(s) of employer(s)	Designation if any of employer(s)	Address of employer(s)	Type of business's trade or profession carried on.
1	2	3	4	5	6

1. Ins. by S.O. 6, dated 3.1.1974.

2. Subs. by S.O. 6, dated 3.1.1974.

Maximum number of person proposed to be employed	Sales Tax Registration no. if any	Amount of the fee deposited (give particulars of Challan or Postal Orders) as the case may be	Registration No.
7	8	9	10

Date of renewal	Date of amendment	Date of transfer of registration certificate	Signature of Inspecting Officer with date of registration	Remarks
11	12	13	14	15
X	9	9	X	?

¹[FORM III

(Rule 3)

Certificate of Registration

1. Registration mark and number....
2. Name of establishment....
3. Full postal address of the establishment....
4. Location of the establishment....
5. Type of business, trade or profession carried on.
6. Name and designation on the Manager or Agent or any other person in the immediate charge or control of the establishment.
7. Name and designation of other persons having interest as employer in the establishment.
8. Maximum number of persons to be employed on any day.

This is to certify that the establishment, the particulars of which have been given above, has been registered under the Bihar Shops and Establishments Act, 1953, on the.....of.... 19....., this certificate of registration shall remain valid till the 31st, day of December, 19.....

Seal of the Inspecting Officer.

Inspecting Officer

Under the Bihar Shops and Establishments Act

Place of registration.....

1. Subs. by S.O. 6, dated 3.1.1974.

Renewals

Date of renewal	From	To	Signature of the Inspecting Officer with seal
1.			
2.			
3.			
4.			
5.			

FORM IV
(Rule 4)

Amendment of Certificate of registration

To,

The Inspecting Officer
Under the Bihar Shops and
Establishment Act

Subject.—Issue of fresh certificate of registration.

Sir,

The following changes in respect of the information concerning my establishment (no. and date of registration.....), furnished in Form 3/Form 4, have taken place. Please issue a fresh certificate of registration.

I have deposited Rs.....(rupees.....) only in the..... Treasury (*vide* Challan no.....) I am enclosing a Crossed Indian Postal Order no..... for Rs..... (rupees.....) date.....enclosed.

Changes.....

- 1.
- 2.
- 3.
- 4.

Yours faithfully

Name of employer
Name of establishment
Address of establishment

FORM V
[Rule 9 (1)]
Notice of Closure

To,

The Inspecting Officer,
The Bihar Shops and
Establishment Act, 1953.
.....District

Sir,

Please note that my establishment, whose registration no. is.....has been closed from.....

Name of establishment.....

Address.....

Reason for closure.....

Probable period of closure.....

Number of employees affected.....

Signature of employer,
Name and address of establishment,
Date.....

FORM VI

[Rule 11(1)]

Notice of Weekly Closure

Name of establishment.....

Address.....

Registration no.....

Notice is hereby given that with effect from.....the above establishment shall be closed on.....

Signature of employer,
Date.....

FORM VII

(Rule 12)

Notice of Holiday

Name of establishment.....

Address.....

The persons employed in this establishment shall be given holiday on the day mentioned below in the week following the day of this notice and until further notice :-

Serial No	Names of employees	Day on which holiday is allowed.
1	2	3

Signature of employer,
Date.....

FORM VIII

(Rule 13)

Notice of period of works of Employees

Name of establishment.....

Registration No.....

Serial No.	Name of employees	Whether adult or child	Period of work						Remarks
			From	To	From	To	From	To	
1	2	3	4	5	6	7	8	9	10

¹[FORM IX

(Rule 14)]

Leave with Wages Register

Serial No.	Name of employee	Whether adult or child	Date of appointment	Date of application	No. of days of leave applied for	Remarks
1	2	3	4	5	6	7

Whether granted	If refused, the reason for refusal	Nature of leave applied for	Nature of leave granted	Total leave taken during the year	Balance carried over
8	9	10	11	12	13

1. Subs. by S.O. 6, dated 3.1.1974.

12/24

FORM X
(Rule 17)

Register of Wages and Overtime payment

1	2	3	4	5	6	7	8	9	10	11	12	13
Serial No.	Name of employee	Date on which overtime worked	Extent of overtime on each occasion	Total overtime worked	Wage period	Rate of wages payable	Total overtime earning during the wage period	Gross wage payable	Deductions, if any	Actual wages paid	Signature or thumb impression of employee	Signature of employer or any person authorised by him

FORM XI
(Rule 19)
Register of Fines and Deductions

Name of establishment.....

Name of employer.....

Serial No.	Name of employee	Sex	Nature and date of the offence/damage or loss for which fine imposed/deduction made	Whether the employee showed cause against fine/deduction. If so enter date	Rate of wages	Date and amount of fine/deduction imposed	Date on which fine/deduction imposed is realised	Remarks
1	2	3	4	5	6	7	8	9

N.B.—Entries not necessary may be struck off.

FORM XII

(Rule 22)

Form of Individual Application

*In the Court of the Authority appointed under the
Bihar Shops and Establishments Act, 1953*

for.....area

Application No.....of 19.....

Between A, B, C.....Applicant.

[Through.....a legal practitioner/an official of..... (which is a registered Trade Union)] and—X, Y, Z..... Opposite Party.

1. A,B,C is a person employed in the.....establishment and resides at.....The address of the applicant for the service of act notice and processes is.....

2. X,Y,Z, the opposite party, is the person responsible for the payment of his wages under Section 19 of the Act and his address for the service of all notices and processes is.....

3. (1) The applicant's wages have not been paid for the following wage periods (give dates), or a sum of Rs..... has been unlawfully deducted from his wages of.....

(Amount) for the wage period(s) which ended on [give date(s)]

(2) (Here give any further claim or explanation).

4. The applicant estimates the value of relief sought by him at the sum of Rs.....

5. The applicant prays that a direction may be issued under sub-section (2) of Section 28 for—

(a) payment of this delayed wages as estimated or such greater or lesser amount as the Authority may find or refund of the amount illegally deducted;

(b) Compensation amounting to.....

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

*Signature or thumb impression of the
employed person or legal practitioner of
official of a registered Trade Union duly
authorised.*

FORM XIII

(Rule 22)

Form of Group Application

In the Court of the Authority appointed under
the Bihar Shops and Establishments Act, 1953.

for.....area

Application No.....of 19.....

Between A,B,C (state the number).....and others—Applicants.

[Through.....a legal practitioner/an official of..... (which is a registered Trade Union)] and—X,Y,Z..... Opposite Party.

The applicants state as follow :—

1. The applicants whose names appear in the attached schedule are persons employed in the.....establishment. The address of the applicants for service of all notices and processes are.....

2. X,Y,Z the opposite party, is the person responsible for the payment of wages under Section 19 of the Act, and his address for the service of all notices and processes is.....

3. The applicant's wages have not been paid for the following wages period(s).

4. The applicants estimate the value of the relief sought by them at the sum of Rs.....

5. The applicants pray that a direction may be issued under sub-section (2) of Section 28 for—

(a) payment of the applicants' delayed wages as estimated or such greater or lesser amount as the authority may find to be due;

(b) Compensation amounting to.....

The applicants certify that the statement of the facts contained in this application is to the best of their knowledge and belief accurate.

*Signature or thumb impression of two of
the applicants or legal practitioners or an
official of a registered Trade Union duly
authorised.*

Schedule

Name of applicants

- 1.
- 2.
- 3.
- 4.
- 5.

FORM XIV

(Rule 22)

Form of application by an Inspecting Officer or person authorised to act

*In the Court of the Authority appointed under
the Bihar Shops and Establishments Act, 1953*

for.....area

Application No.....of 19.....

Between A,B,C (designation.....an Inspector under the Bihar Shops and Establishment Act, 1953 or a person authorised to act under sub-section (1) of Section 28).....Applicant.

and X,Y,Z.....The opposite party.

The applicant states as follows :—

1. X,Y,Z, the opposite party, is the person responsible under the Act for the payment of wages to the following person(s) :—

(1)

(2)

(3)

2. His address for the service of all notices and processes is—

3. The wages of the said person(s) due in respect of the following wages period(s) have been paid/have been subjected to the following illegal deductions :—

4. The applicant estimates the value of the relief sought for the person(s) employed at a sum of Rs.....

5. The applicant prays that direction may be issued under sub-section (2) of Section 28 for—

(a) payment of the delayed wages estimated or such greater or lesser amount as the Authority may find to be due or refund of amount illegally deducted.

(b) compensation amounting to.....

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

Signature.

FORM XV

(Rule 22)

Certificate of Authorisation

I/We employed person(s) hereby authorise a legal practitioner/an official of.....which is a registered Trade Union to act on my/our behalf under Section 28 of the Bihar Shops and Establishments Act, 1953, in respect of the claim against..... on account of the delay in payment of illegal deduction from my/our wages.....

Witnesses	Signature
(1)	(1)
(2)	(2)
(3)	(3)

I accept the authorisation

Signature

Legal Practitioner/Official of
registered Trade Union.

FORM XVI

(Rule 22)

Notice for the disposal of Application

To,

Whereas under the Bihar Shops and Establishment Act, 1953, a claim against you has been presented to me in the application of which a copy is enclosed, you are hereby called upon to appear before me either in person or by any person, duly instructed and able to answer all material questions relating to the application or who shall be accompanied by some person able to answer all such questions on the.....day of.....19.... ato'clock in the forenoon/afternoon to answer the claim and as the day, fixed for your appearance is appointed for the final disposal of the application, you must be prepared to produce on that day all the witnesses upon whose evidence and the documents upon which you intend to rely in support of your defence.

Take notice, that in default of your appearance on the day before-mentioned, the application will be heard and determined in your absence.

Give under my hand and seal, this day of.....19....

Authority

FORM XVII

(Rule 22)

Record of Direction

- (1) Serial number
- (2) Date of the application
- (3) Name or names, parentage, addresses of the applicant or some of all of the applicants belonging to the same unpaid group.
- (4) Name and address of the employer
- (5) Amount claimed—
 - (a) As delayed wages Rs.
 - (b) As deducted from wages Rs.
- (6) Plea of the employee and his examination (if any)

- (7) Finding, and in the case of a direction under Section 23, a brief statement of the reason therefor
- (8) Amount awarded—
- (a) Delayed wages Rs.
- (b) Deducted wages Rs.
- (9) Compensation awarded Rs.
- (10) Penalty imposed Rs.
- Singed.....
- Dated.....

Note.—In case of appeal, attach on a separate sheet the substance of the evidence.

FORM XVIII

(Rule 24)

Notice to Respondent of the day fixed for hearing of the appeal under Section 28 (7) of the Bihar Shops and Establishments Act, 1953

Appeal from the decision of the Authority for the.....area.....dated the.....day of.....19....
To,

Take notice that an appeal of which a copy is enclosed from the decision of the Authority for.....area has been presented by.....(and others), and registered in this Court and that the day of.....19.....has been fixed by the Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and the seal of the Court, this.....day of.....19....

Seal of the Court.

Appellate authority

FORM XIX

(Rule 43)

Quarterly report for the month of March/June/September/December

1. Name of Establishment/Employer—
2. Address
 - Town
 - District
 - State
3. Type of the establishment
4. Number of days worked during the month
5. Normal working hours

6. Rest interval (Hours)

7. Employment and earning of hired workers

Serial No.	No. in employment at the end of the quarter	No. of man days worked during the month	Emolument paid in cash before deduction	Money value of payment	Ex-gratia cash payment	Contribution to social security funds
1	2	3	4	5	6	7

Men

Women

Young

8. Number of unpaid helpers

N.B.—Ex-gratia cash payments including profit-sharing bonus may be paid annually, quarterly or over any other period and other *ad hoc* cash payments, if any.

Whether the establishment is a—

- (i) shop;
- (ii) commercial establishment;
- (iii) restaurant, eating house or hotel;
- (iv) theatre or a place of public entertainment; or
- (v) other type should be mentioned here;

FORM XX

(Rule 43)

Quarterly Returns on employment and employee compensation of the calendar month March/June/September/December, 19

Category of Shop and Commercial establishment	Total No. of Shops and Commercial establishments employing 10 or more persons		Total number in employment	Total number of working days	No. of man days worked	Total emoluments paid in cash before deduction	Money value of concession	Ex-gratia cash payments	Contribution to social security funds	Total
	Covered under B.S. & E. Act	Submitting returns								
1	2	3	4	5	6	7	8	9	10	11

1. Shops (Total)

(a) Men

(b) Women

(c) Children

- 2. Commercial Establishment (Total)
 - (a) Men
 - (b) Women
 - (c) Children
- 3. Restaurant, Eating Houses, Hotels (Total)
 - (a) Men
 - (b) Women
 - (c) Children
- 4. Theatres or any place of public amusement or entertainment (Total)
 - (a) Men
 - (b) Women
 - (c) Children
- 5. Others (Total)
 - (a) Men
 - (b) Women
 - (c) Children
- 6. Total
(1, 2, 3, 4, 5)

FORM XXI
(See Rule 12-A)
Service Card to Employee

Name of the Establishment.....Address.....
Registration No.....

Personal particulars of employees	Nature of work with wages at particular date			Signature or thumb impression of the employees	Signature of employer	Signature of Inspecting Officer	Remarks
	Designation	With effect from	Rate of wages				
1	2	3	4	5	6	7	8

- 1. Name.....
- 2. Father's name.....
- 3. Permanent address.....
- 4. Local address.....
- 5. Age at the time of appointment.....
- 6. Date of appointment.....