MANUAL ON RIGHTS OF TEA PLANTATION WORKERS

VOL. II

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Foreword

Tea Plantations located in the states of Assam, Kerala, Tamil Nadu and West Bengal employ about one million regular workers. As such they are the largest employers in the organised private sector.

There are a number of legislations aimed at protecting and regulating the employment of plantation workers. The plantation workers are, however, unaware of the most of these legislative provisions, primarily, due to their relative isolation. The present publication, which is in the form of a manual, is intended to inform the workers in tea plantation industry about their rights and responsibilities in an understandable manner. The manual, which is being produced in two volumes, is jointly prepared by Dr. Sharit K. Bhowmik of the University of Bombay, Dr. Virginius Xaxa of the University of Delhi, Dr. Sarath C. Davala of the Indian Institute of Management-Bangalore, and Mr. Tapan K. Deb a trade unionist based at Birpara in West Bengal. The draft manuals were extensively discussed with trade unionists during meetings held at Darjeeling and Birpara in West Bengal and in Tamil Nadu. First volume of the manual covered The Plantation Labour Act, Maternity Benefit Act and Minimum Wages Act as also related standing Orders issues by the Government and Collective Agreement Awards. This volume covers the Industrial Dispute Act, Payment of Gratuity Act and Employees Provident Fund Act.

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Gerd Botterweck,
Friedrich Ebert Stiftung,
New Delhi.
October, 1995

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Introduction

Tea plantations in India employ around 10 lakh permanent workers. This makes the Indian tea industry the largest employer in the organised production sector. The total number of permanent workers employed in the organised production sector (large factories, mines, etc.) is around 70 lakhs. This means that the tea industry, with its 10 lakh permanent workers, constitutes one-seventh of this work force. It implies that one out of every seven workers in the organised production sector is a tea plantation worker. This industry has around 5 lakh temporary workers also.

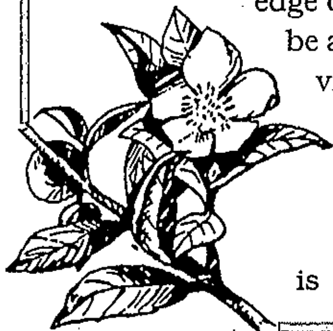
Tea plantations in West Bengal employ more than 2.5 lakh permanent workers as such one-fourth of the tea plantation workers in the country are in this state. According to the Tea Board of India, in 1991 there were 1,15,218 males, 1,21,107 females, 7,136 adolescents and 9,459 children working as permanent workers in the tea plantations in the Jalpaiguri and Darjeeling districts of West Bengal.

Tea is a very important product for the country's economy as it has a very high demand. It is also an important export item as it helps the country to earn a significantly large amount of foreign exchange. This is more true for Darjeeling Tea as most of it is exported. Unfortunately, the sad part is that tea plantation workers are the most exploited section of the workers employed in the organised industrial sector. The wages of tea workers are low as compared to other workers in the organised sector. For example, a worker in a coal mine gets three times the wages of a tea worker. The wages of mine workers are less than those of workers in factories such as steel, heavy engineering, etc. The level of literacy of tea workers is much lower than the rest of the population of West Bengal. The tea gardens are situated in remote areas as such the workers are isolated. They do not have access to information about their rights unlike the workers in more

developed and urban areas. However, it is true that the living and working conditions of tea plantation workers have improved considerably after the country attained independence from British Rule. In the pre-independence period, the government did not provide any protection to plantation workers. Further, trade unions were not allowed to exist. The workers were, thus, totally under the control of the employers. There were no regulations on the type of work to be done; on the hours of work; etc.

This crude form of exploitation ended after independence. The then government of India tried to impose some regulations on the employers through legislations. Laws were passed which granted some legal protection to workers. Alongside, the trade union movement started to spread rapidly. The workers were now able to form or join trade union which would protect them and would also ensure that the legal rights which were granted to them were enforced. Some of these legislations were, Industrial Disputes Act, Minimum Wages Act, Maternity Benefit Act, and so on. The most important legislation affecting plantation workers is the Plantation Labour Act of 1951 which came into effect in 1954. This Act provides for regulation of work and several welfare measures for plantation worker.

However, even though these legislations were enacted with the intention of providing protection and benefits to the workers they could not achieve the desired effect among plantation workers. There were several reasons for their failure, the most important being the workers' ignorance about the provisions of the various laws. Thus employers could mislead them about the actual provisions of the laws. If the workers have the knowledge of the contents of these different legislations they would be able to pressurise their employers to implement the provisions or they could seek redressal from the government or through their trade unions in a more effective manner.



Knowledge about the rights given through legislations is extremely important for improving the working and living conditions of tea plantation workers. This will help them in their trade union activities also. It is hoped that this Manual will help tea plantation workers in gaining knowledge about their rights. This is the second volume. The first volume explained three legislations namely, Plantation Labour Act, Maternity Benefit Act, and Minimum Wages Act.This volume explains other three ligislations namely, Industrial Disputes Act, Payment of Gratuity Act, and Provident Fund Act. The first is Industrial Disputes Act. This is a very important Act for all workers as it provides them protection in their work. The other two Acts are related to social security measures for the workers. Gratuity is the money a worker receives from his or her employer on retirement. Workers must know the provisions of this Act so that they are able to get the correct benefits on their retirement. Provident Fund is the savings of the worker. He gets this amount after retirement also. He can also take loans from his Provident Fund account for various purposes even before retirement. All these provisions have also been discussed so that a worker actually knows what advantage he can get while he is working and also after retirement.

As in the earlier volume, in this too, the authors have explained all the provisions of the three Acts in a simple language so that most of the literate workers can read and understand the Act. We hope that this volume will be of help to tea plantation workers in their struggle for a better life.

Sharit K. Bhowmik
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Industrial Disputes Act

A. Dispute Settlement

Plantations, unlike other agricultural operations, are considered to be an industry. The employment conditions of plantation workers are, therefore, protected under law just as in the case of industrial workers. Industrial Disputes Act (ID Act) provides an elaborate official machinery to resolve disputes between workers and their employer[s].

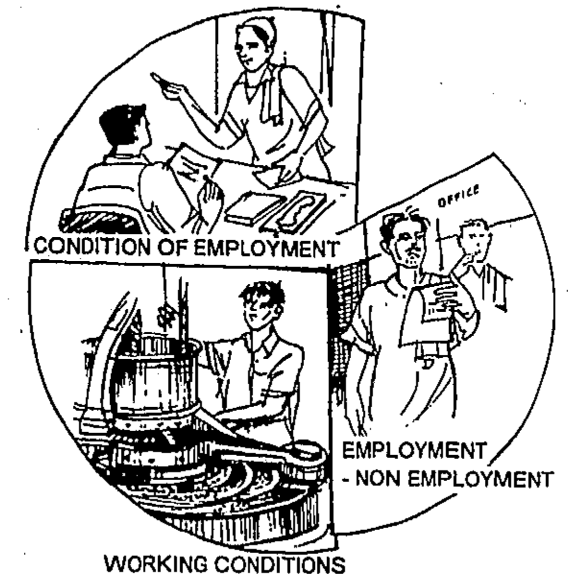
Q. What is an industrial dispute?

An industrial dispute is a controversy or difference between employer and a group of workers or between groups of workers, over any issue related to employment relationship. In cases of dismissals, retrenchment and refusal of employment by the employer, controversy between an individual worker and the concerned employer is also considered to be an industrial dispute.

Q. What are the issues on which industrial disputes can exist?

Industrial dispute can exist on:

i. Legality of any order passed by an employer.



ii. Application and interpretation of Standing Orders.

iii. Withdrawal of a benefit which a worker is already enjoying.

iv. Issues related to wages and benefits.

v. Hours of work and rest intervals.

vi. Issues related to holidays and paid leave.

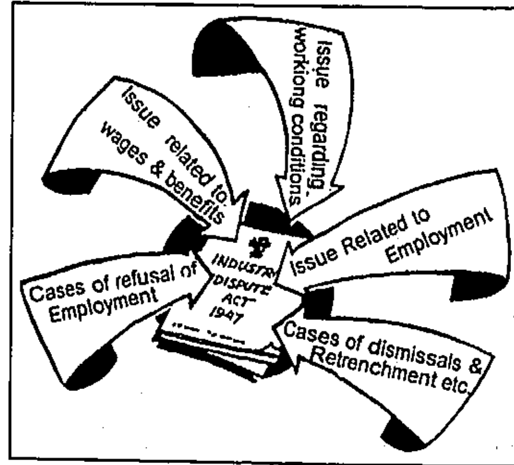
vii. Bonus, profit-sharing, provident fund and gratuity.

viii. Classification of grades.

ix. Rules of discipline.

x. Changes in work organisation under rationalisation.

xi. Retrenchment of workers, closure of establishment.



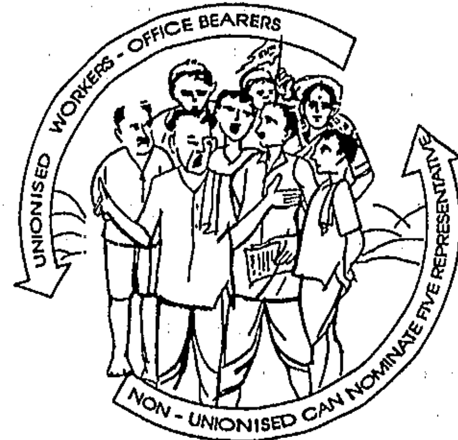
The law prescribes that if an employer proposes to effect any changes with regard to any of the above-mentioned issues, he is

(a) required to give a notice to the workmen likely to be affected by it, giving the details of the nature of changes proposed;

(b) forbidden to implement those changes within 42 days (21 days in states other than West Bengal) of such a notice.

Q. Who can raise a dispute?

i. In case of disputes concerning a group of workers :



(a) if they are unionised, their union office bearers can raise a dispute;

(b) if they are not unionised, they can nominate five representative who, on their behalf, can raise a dispute;

ii. In case of disputes concerning an individual worker :

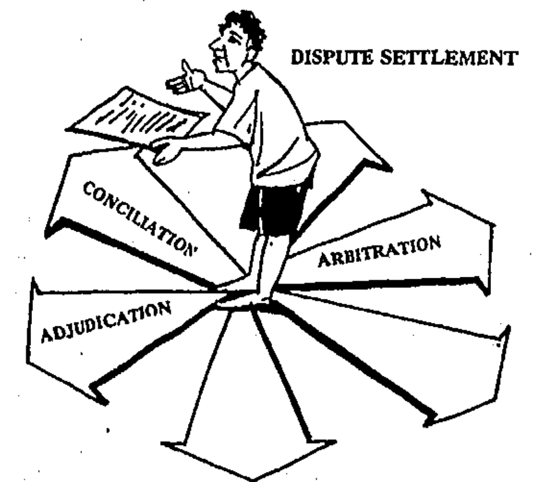
The worker can himself raise dispute, or can nominate another worker who can do so on his behalf.

Q. What kind of official machinery is available to a worker or a group of workers to settle their disputes?

i. The law provides the following procedures for settlement of individual and collective disputes:

Grievance Settlement Authority: The Act stipulates that every employer employing 50 or more workers shall provide a grievance settlement authority for settlement of disputes connected with individual workers employed in the establishment.

(a) **Conciliation** : Every industrial region has a Conciliating Officer appointed by the government. A dispute may be referred to him by either of the affected parties or he himself, if he apprehends a dispute, may initiate conciliatory proceedings. His job is to persuade the disputing parties to arrive at a settlement. He however has no power



to compel them nor can he pass an order. If his efforts do not succeed he submits a Failure Report to the government.

(b) **Adjudication** : This procedure involves Labour Courts. The government, on receiving the Failure Report from the Conciliating Officer, decides whether the case can be referred to a Labour Court. It can also choose not to refer. Once referred, the Court goes through legal proceedings and gives an award, which is binding on the parties. However, if either of the parties is not satisfied with the judgement, it can approach the High Court or the Supreme Court.

(c) **Arbitration**: This procedure involves an independent third party. The employer and the aggrieved workers may mutually select an independent person whom they trust, to mediate and resolve the dispute. The decision of this person is however binding on the parties.

Q. How do you raise an industrial dispute?

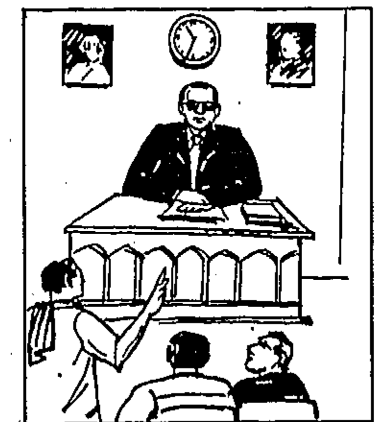
The aggrieved party, whoever it may be, has to fill-in a prescribed form detailing the facts regarding the dispute and submit it to the Conciliating Officer.

Q. What happens in conciliation?

The Conciliating Officer, on receiving a notice from the aggrieved party, informs the other parties that the proceedings would begin. The conciliation proceedings are supposed to end within 60 days, but can be extended by mutual consent. This extension however, must be agreed upon in writing by all the parties to the dispute, and cannot go beyond six months. Conciliation ends when a settlement is signed or a Failure Report is submitted to the government within the above mentioned period.

Q. What is government supposed to do on receiving the Failure Report?

The government on receiving the Failure Report must decide whether the case merits reference to the labour court or not. It may decide not to refer to the labour court. In which case it has to clearly state the reasons for the same. There is no clear-cut time limit within which the government must take a decision. It is supposed to act within reasonable time. The government, when it decides to refer the case to the labour court, must specify the time limit for the disposal of the case. In case of disputes concerning individual workers, the court must decide within a period of three months.



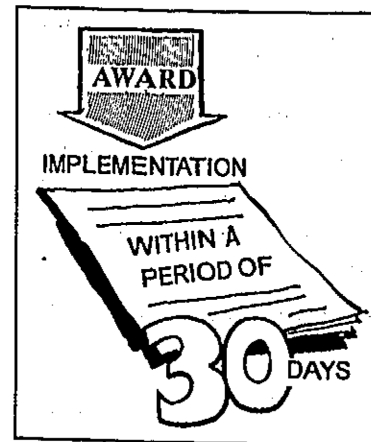
Q. Can you directly approach a labour court with your dispute?

In West Bengal, under certain conditions, in the case of an industrial dispute concerning an individual worker, the concerned worker can directly approach the labour court. When the dispute is under conciliation and for sixty days no settlement has resulted, then the concerned worker may take a certificate from the conciliating officer stating the case, and apply to the designated labour court in his region. The labour court must treat this application on par with a dispute referred to it by the government, and give a hearing within a period of 30 days, and give its award within three months.

In the case of collective disputes, you cannot, even in West Bengal, approach a labour court directly. The case has to be referred to it by the government on receiving a Failure Report from the Conciliating Officer. However, if you and your employer together agree to go to court, you may do so after taking the permission of the appropriate authority in the government.

Q. What happens after the labour court passes judgement?

The judgement of the labour court is called an Award. It has to be



implemented within a period of 30 days. It is binding on all the parties to the dispute. In West Bengal, the labour court has the power of the civil court to execute its own award as a decree of a civil court. Also in cases concerning discharge, dismissal and retrenchment of a workman, the court should determine within a period of sixty days the quantum of interim relief that is admissible. However, this amount should not be less than the amount stipulated in the West Bengal Payment of Subsistence Allowance Act 1969.

After the labour court gives its final judgement, if either of the parties is dissatisfied with the outcome, it may file a writ in the High Court or the Supreme Court. In case an employer is dissatisfied with the award and wishes to approach a High Court or the Supreme Court, he is liable to pay full wages to the concerned worker or workers till such time the case is not concluded. For this to come to effect the concerned worker(s) has to file an affidavit in the appropriate court.

Q. Is there any method other than going to the labour court?

Yes, there is. The parties can opt for voluntary arbitration which means they should together seek mediation of an arbitrator — an independent person of

their choice. This decision must, however, be taken before the government refers the case to a labour court. The decision of an arbitrator, unlike that of a conciliator, is final and binding on the parties. There is no appeal against it. The decision can also be binding on all the employees if the government is of the opinion that the parties represent the majority of the employees.

B. Strikes and Lock-Outs

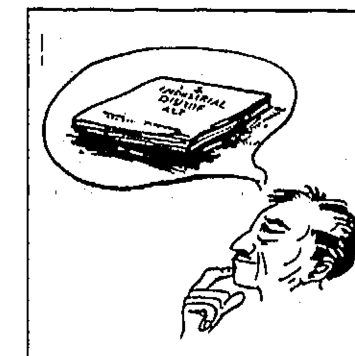
When a group of workers, on the basis of a common understanding, refuse to work, it is called a strike. A strike is the ultimate weapon in the hands of labour to fight their employer. Though a powerful weapon, workers must use it judiciously after careful planning. Reckless resort to strike may ultimately go against their own interests.

Q. What are the most important considerations a union must take into account before launching a strike?

The two most important considerations a union must take into account are:

- Is the strike legal ?
- Is it justified ?

Q. What is a legal strike ?



For a strike to be legal it should not be declared:

(a) While conciliation is in progress and seven days after its conclusion;

(b) While adjudication is in progress and two months after it has concluded;

(c) While arbitration is in progress and two months after its conclusion;

(d) During any period in which a settlement or an award is in operation;

If a strike is declared as a result of an illegal lock-out, it is considered as a legal strike.

Q. When is a strike justified?

Generally the courts have upheld a strike to be justified if:

(a) It is not motivated by demands unconnected with workers grievances;

(b) It is not unnecessarily prolonged;

(c) There has been no violence or damage to property.

It must be remembered that the claim for wages during the period of strike will be considered more favourably by the courts if the strike is a legal and justified one.

Q. When a strike or a lock-out is illegal, are there penalties?

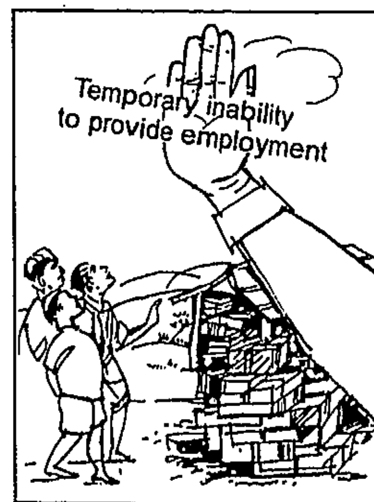
Yes. Whether it is a worker/group of workers in the case of a strike, or employer in the case of a lock-out, the punishment for an illegal strike/lock-out is imprisonment upto one month or a fine of Rs. 50/- or both.

C. Lay-Offs

Employment, being the source of livelihood, is very important to workers. For most workers unemployment means starvation. Taking all this into account, the law, in various ways, protects employment.

Q. What is a lay-off?

The temporary inability, failure or refusal on the part of the employer to provide employment to workmen who are on muster rolls is called a lay-off. The employer is allowed this as a temporary measure provided it is specifically mentioned in the standing orders or the employment contract.



Q. Does lay-off mean discharge from service?

No. It does not mean discharge from service. In legal terms, lay-off is only a temporary measure. The employment relationship continues during this period. For example, the duration of lay-

off is included while calculating the period of continuous service.

Q. Is a worker entitled to wages/ compensation during the period of lay-off?

Yes. The law prescribes compensatory wages to the worker during the period of lay-off. For this purpose the industrial establishments are categorised into three groups :

(a) Units employing less than 50 workers;

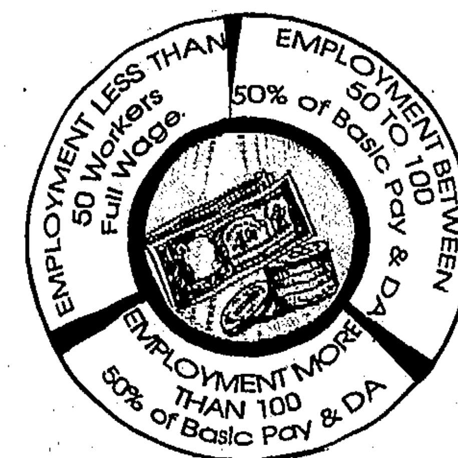
(b) Units employing between 50 and 100 workers;

(c) Units employing more than 100 workers.

Q. What are the different rates of compensation wages for these different groups?

(a) In establishments employing less than 50 workers, a worker is entitled to full wages during the period of lay-off. However, if lay-off without compensation is specifically mentioned in the employment contract, the employer is not obliged to pay any compensatory wage.

(b) Where employment is between 50 and 100, all workers who have completed one year in continuous employment are entitled to 50% of the basic wage and dearness allowance as com-



pensation during the period of lay-off.

(c) Where employment is more than 100, all those workers who have completed one year of continuous service are entitled to 50% of basic wage and dearness allowance as compensation.

Q. Are there any other conditions for becoming eligible to compensatory wage during lay-off?

Yes, there are. To be eligible for compensatory wage, You must,

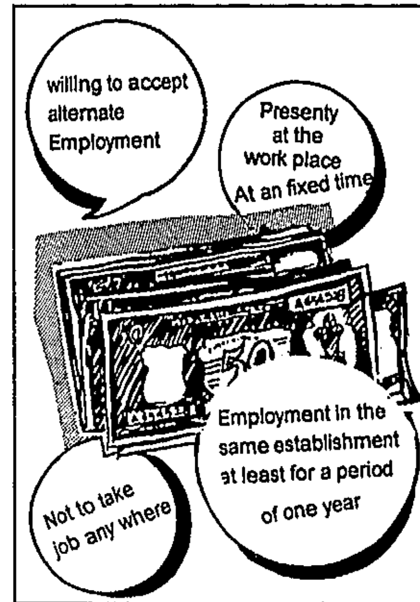
(a) be willing to accept alternative employment either in the same establishment or in any other establishment owned by the same employer within 5 miles radius;

(b) present yourself at the workplace at an appointed time at least once a day; and if the lay-off continues for more than seven days, then once in a week.

(c) not take up a job anywhere else;

(d) have been employed in the same establishment at least for a period of one year preceding the date of lay-off;

If the lay-off results from either a strike or a go-slow by workers in another part of the establishment, the employer is not obligated to pay compensation.



Q. Will a worker get compensation indefinitely, as long as the lay-off continues?

Yes, in West Bengal, the law does not stipulate any specific period to which a worker is eligible for compensation. Therefore, by implication, it may continue during the entire period of the lay-off. According to the original ID Act, the compensation may stop after 45 days provided it is specifically mentioned in the employment contract.

Q. Should the employer take permission from the government before he lays-off workers?

The employer should take prior approval of the government only in case of the units employing more than 100 workers.

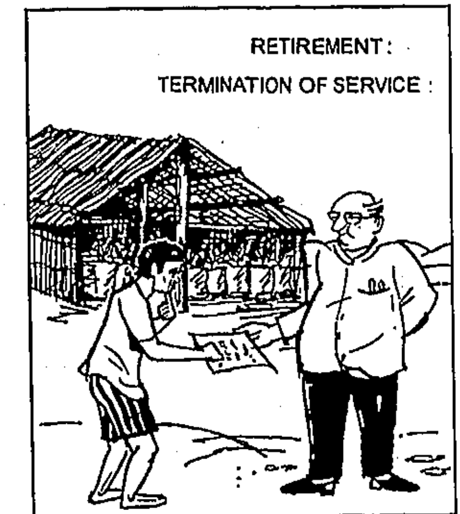
Q. Is the employer obliged to give notice to workers before they are laid-off?

Yes, but only in the case of units employing more than 100 workers.

D. Retrenchment

Q. What is retrenchment?

Retrenchment means termination of



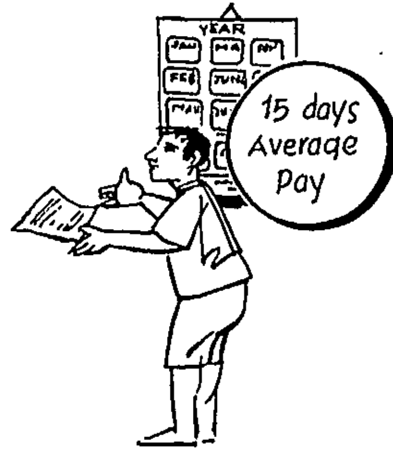
services of an employee or a group of employees' for any reason except the following:

(a) employment terminated as punishment by way of disciplinary action;

(b) employment terminated as a result of voluntary retirement;

(c) when a contract expires or a worker retires on attaining superannuation;

(d) where termination is due to continued ill health.



Q. Are retrenched workers entitled to compensation?

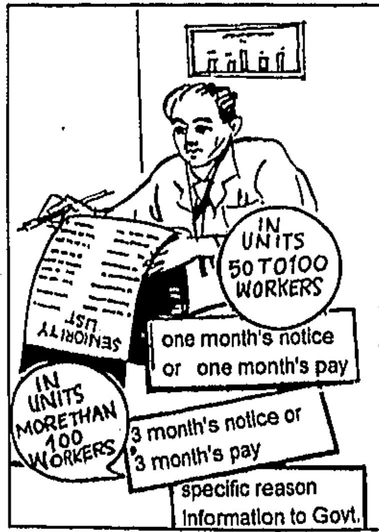
Yes, every retrenched worker is entitled to compensation of 15 days average pay for each year of service completed.

Q. What are the other rules the employer should follow before retrenching workers?

In addition to the above rule, the employer should follow certain procedures before effecting retrenchment:

(a) He should prepare a seniority list seven days prior to retrenchment. In choosing the workers who must be retrenched he must follow the principle of last come first go.

(b) In units employing between 50 and 100 workers,



- he must give one month's notice or one month's pay to the workers;
- specific reasons for retrenchment must be indicated;
- he must pay the compensation at the time of retrenchment;
- and finally, he must inform the government within three days of retrenchment.

(c) In units employing more than 100 workers,

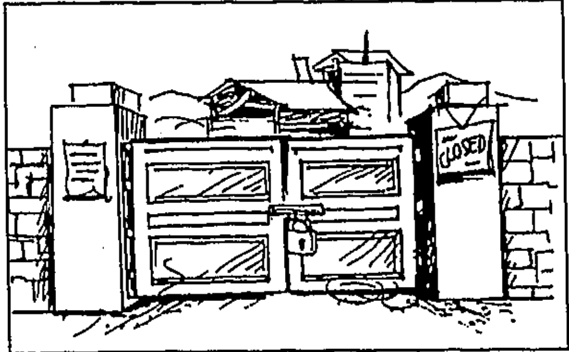
- he must give three months' notice or three months' pay to the workers;
- prior permission has to be obtained from the government;
- specific reasons for retrenchment must be indicated;
- If these rules are not followed, retrenchment will be rendered invalid.

E. Closures

Q. Does law permit permanent closure of industrial establishments?

Yes, but there are very stringent conditions that have to be fulfilled before an employer closes down a unit permanently. The following are the conditions with respect to different categories of establishments:

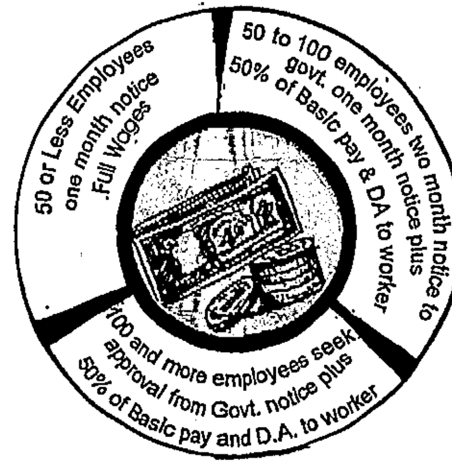
- In case of units employing less



than 50 workers, the employer is obliged to give one month's notice to workers and pay compensation as in the case of retrenchment. He does not require prior permission of the government, nor is he obliged to give notice to the government.

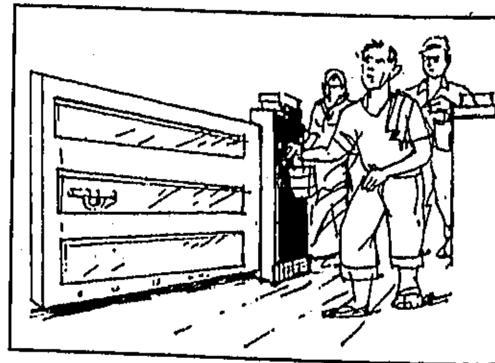
• In case of units employing between 50 and 100 workers the employer must give one month's notice to workers and two months' notice to the government. The rules of compensation are the same as in the case of retrenchment. However, if the closure is due to reasons beyond the control of the employer, the 60 days' notice need not be given and the compensation will be only three months' average pay.

• In case of units employing more than 100 workers the employer should apply to the government for permission at least 90 days prior to closure. Simultaneously, a notice must be given to the employees. A unit cannot be closed without government's permission. The rules of compensation are the same as in the case of retrenchment.



Q. When a closed unit is reopened again do former employees have any claim of employment?

When an employer wants to reopen a closed unit and proposes to recruit people, he should give preference to the workers who were retrenched at the time of closure.



PREFERENCE TO THE RETRENCHED WORKERS

Q. If an employer does not follow any of the rules specified in the case of lay-offs, retrenchment and closure, are there any penalties?

Yes. In case of units employing between 50 and 100 workers an employer who does not follow the rule stipulated under the law, is liable for punishment by imprisonment upto 6 months, or a fine of Rs. 5000, or both.

In case of units employing more than 100 workers, an employer who either lays-off or retrenches workers without prior permission of the government is punishable with imprisonment for a period of upto one month, or a fine upto Rs. 1000, or both. If he closes down the unit without prior permission of the government, he is punishable with an imprisonment upto six months, or a fine upto Rs. 5000, or both.

Payment of Gratuity Act

Introduction

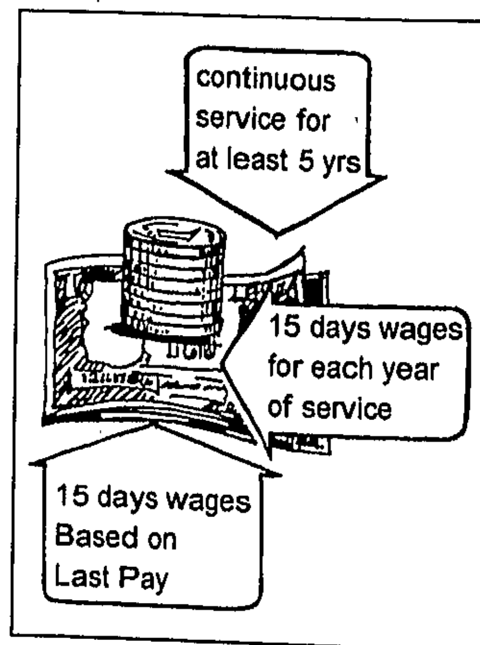
Gratuity is an amount given in cash by the employer to the employee at the time retirement or resignation from service. The payment of gratuity is not a charity by the employer but a legal right of the employee. The government has passed laws to this effect which lay down the amount which the employee should receive when he or she retires or resigns. The payment of Gratuity Act was passed in 1972 and it has been amended in 1984 and 1987. A further amendment is pending before Parliament.

Q. Who can get gratuity?

Any worker who has put in continuous service for at least 5 years is eligible for gratuity. At present the Act covers workers drawing up to Rs.2,500 per month. The new amendment will increase this amount to Rs.3,500 per month.

Q. What is the amount which a worker can get?

Normally a worker will get 15 days wages for each year of service. However if a worker works for six months or more



in any year his service will be counted as one year and he will get 15 days wages for that year as gratuity. This point should be noted because very often employers do not count a year even when the worker has been on leave for two or three months. This is wrong because even if a worker takes upto six months leave in one year he is entitled to be paid gratuity for that year.

The calculation of 15 days wages will be based on the last pay drawn by the worker before his or her retirement or resignation. For example, if a worker has worked for 20 years he will be entitled to 10 months wages of his last pay.

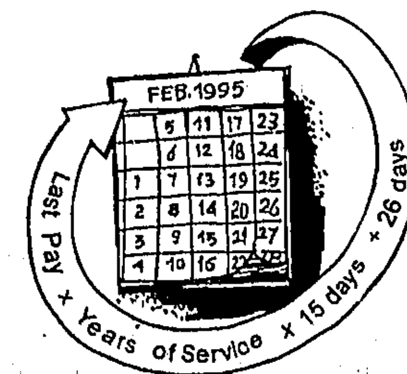
The calculation of gratuity of daily rated workers and monthly rated workers is different.

For a monthly rated worker it is — Last pay drawn × Number of years of service × 15 (days) this is then divided by 26 days.

Let us take an example. Suppose a sub-staff member who has put in 30 years of service draws Rs. 1,000 per month at the time of his retirement. His gratuity will be calculated as:

1,000 × 30 × 15 = 450,000. This amount is divided by 26 which comes to 17,308. Hence this person will get Rs.17,308 as gratuity from his employers.

For daily rated workers the last pay drawn may not be favourable. We have

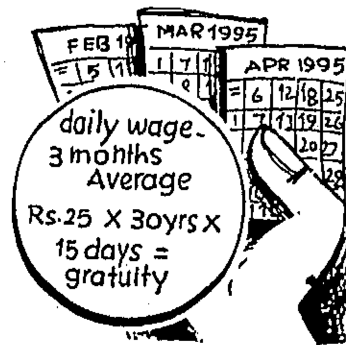


mentioned in Volume I that the wage of a plantation worker includes time rate wage (hazri) as well as piece rate wage (doubly). Therefore if a worker retires at a time when there is no piece work then his last pay will be lower than his wage during the season. Hence to overcome such problems the Act lays down that in order to calculate last pay, the average wage of the worker for three months before his or her retirement must be taken. Hence the calculation of gratuity is as follows.

Average daily wage for three months prior to retirement × Number of years of service × 15 days.

Let us take an example. Suppose the worker's average daily wage is Rs.25 per day and he or she has put in 30 years of service. His gratuity will be:

25 × 30 × 15 = 11,250. Hence his gratuity is Rs.11,250.

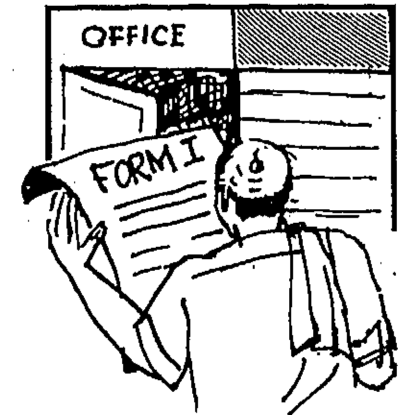


Q. Is there any limit to the total amount of gratuity?

Yes, in very rare cases gratuity can be forfeited. There are two conditions under which this can happen. Firstly, if the services of the worker are terminated due to any act which has caused damage or loss to the employer's property. If such a thing happens then the amount of damage caused will be deducted from the gratuity payable. Secondly, if the worker's services are terminated due to riotous or violent behaviour or disorderly conduct or because of moral turpitude.

It should be noted by the worker that the employer cannot withhold a worker's gratuity for recovery of his/her past dues. For example, if a worker took a loan in the past which has not been repaid, the employer cannot tell him that he will get his gratuity only after he repays the loan. The gratuity amount cannot be attached by any civil or criminal court. In other words the employer is bound to pay a worker gratuity at any cost.

Q. How does a worker apply for gratuity?



A worker has to apply for gratuity in writing to the employer soon after retirement or resignation through Form I of the Payment of Gratuity Act. This form is available with the employer. If the employer does not supply the form, the worker can get it from the Labour Department (Assistant Labour Commissioner's office).

After the worker makes the application the employer will determine the actual amount of gratuity to be paid. He then has to give a notice to the worker through Form L of the Payment of Gratuity Act and a copy of this will be sent to the Controlling Authority (ALC).

The employer is bound to pay the worker the amount within 30 days of the issue of the notice in Form L. If he does not do so he will have to pay interest to the worker. This is fixed at 10 percent per annum simple interest.

Q. Can the amount calculated by the employer be challenged?

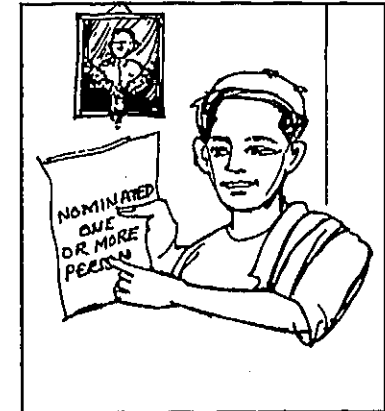
Yes, it can be challenged by the worker if the worker feels that the amount is not correct. Many times employers make mistakes regarding the actual years of service of the worker and, hence the total amount of gratuity payment is reduced. In such cases the worker can appeal to the controlling authority (ALC) to check the facts. In such cases the employer has to deposit the amount of gratuity which he has calculated with the controlling authority.

Q. What if the employer refuses to pay the worker gratuity?

There are cases when, after a worker retires, the employer agrees to give the worker's son or daughter or any other relative his job. The employer then tells the worker that since his job has been given to his relative he will not get gratuity. This is wrong and illegal. On retirement a worker must apply for gratuity even if his job is given to someone of his choice. If this is not paid to him within 30 days he has to make an appeal through Form N of the Act to the controlling authority (ALC). The controlling authority will then examine the case. The worker must note that the controlling authority has magisterial powers in matters concerning gratuity. If the employer refuses to pay gratuity the controlling authority will direct the Collector (District Magistrate) to recover the amount by selling the employer's property.

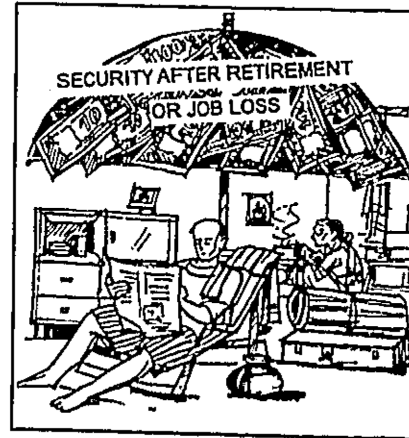
Q. If a worker dies then who will get his gratuity?

Any worker who has completed one year of service can nominate one or more members of his family to receive his gratuity. Under the Act the word family is explained as, the worker, his/her spouse, his/her married or unmarried children, his/her dependent parents, his/her grandchildren provided the children are dead.



Employees Provident Fund Act

Like gratuity, Provident Fund (PF) is another means of providing for some security to a worker after retirement or job loss. However unlike gratuity, PF is created out of the contributions of both employer and worker. Therefore the worker has greater rights in using this fund. The amount of the fund is the worker's own and he can get the full amount after retirement or if he or she leaves the job or is removed from it. Besides this, it is possible for a worker to draw money from his or her PF for some purposes, such as illness, education and marriage of children, house construction etc., while in service. Therefore, the PF of a worker is a very important and precious form of saving. It comes of use not only after retirement when the worker has no source of income but also when he or she is working and there is a sudden need for large amounts of money. Workers in tea gardens must realise the importance of this fund as it is their only form of security. They must ensure that their employers regularly deposit their PF money to the concerned authority or else they themselves will be the losers. We are stressing on this aspect because it is often found that the employers in the tea gardens in West Bengal do not always deposit the funds. If this happens



workers must report the matter to the PF Authority so that legal action can be taken against these employers.

In this chapter we will explain the details of the Provident Fund scheme. The workers will thus know what this scheme is, how much of their money is deposited, when and how they can draw money from the scheme and what are the punishments for misuse of the fund. The important point to note is that the Provident Fund of the worker is a right given to him or her by the government. It is not some form of charity given by the employers.

The Employees Provident Fund Act and Scheme came into effect from 1 November 1952 for the whole country, except the state of Jammu and Kashmir where the state government had another Act for this purpose. The objective of this Act was to ensure that workers' have some form of compulsory saving which will be of use to them after retirement or during their service or, in case of death, the dependents can have this security. This scheme is in effect in almost all the tea gardens in West Bengal. The only gardens where this scheme does not apply are those which are very small and employ less than 20 workers. In other words, all tea gardens which are covered by the Plantation Labour Act must also have the Provident Fund scheme.

When a worker is appointed as a permanent employee in a tea garden he or she is entitled to save under the Provident Fund scheme.

When a worker is appointed as a permanent employee in a tea garden he or she is entitled to save under the Provident Fund scheme. The worker is made a member of this scheme and is given a PF Number. Every Worker should find out the number from his or her employer.

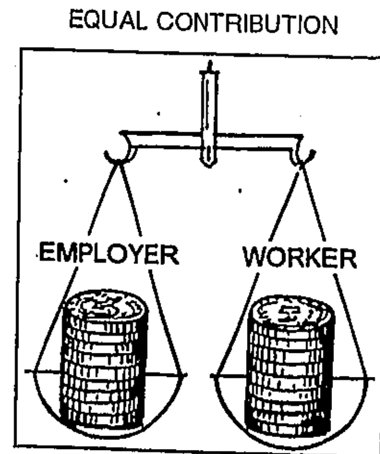
Q. How is the Provident Fund scheme financed?

Section 6 of the Act states that the PF is made up of contributions from the employer and the worker. The worker will contribute eight and one-third percent of his or her wages to the fund every month and the employer will make contribution of the same amount. It must be noted here that the wage, according to the Act, constitutes the cash wage given to the worker as well as the cash equivalent of food concessions (rations) given.

The amount eight and one-third percent of the wage actually means one month's wage in a year. Hence the worker should know that the total amount in his or her PF in each year is one months wage from his contribution and one months' wage from the employer's. Hence in every year a worker will have two months wages deposited in his or her PF account.

The worker's contribution to PF is deducted by the employer from the monthly wages. This amount along with the employer's contribution is deposited with the Provident Fund Organisation which is managed by the Central Government. This organisation invests the money collected in different forms of securities. The interest from these investments is deposited in the worker's PF account. Hence the worker not only has the contributions to the fund but also gets interest on this.

EQUAL CONTRIBUTION



Q. When can a worker withdraw the total amount of his or her Provident Fund?

Para 69 of the Act lays down the conditions under which a worker can get full refund of the amount deposited in his or her PF account. By full refund we mean the worker's contribution, the employer's contribution and the interest accumulated on the amount. These conditions are.

i.Retirement: Any worker who retires at the age of 55 or more or any worker who has to retire from work because of physical or mental reasons before the age of 55. A worker who has contacted T.B., leprosy or cancer is also regarded as being physically incapacitated under the Act.

ii. Termination of service: Any worker whose services are terminated due to

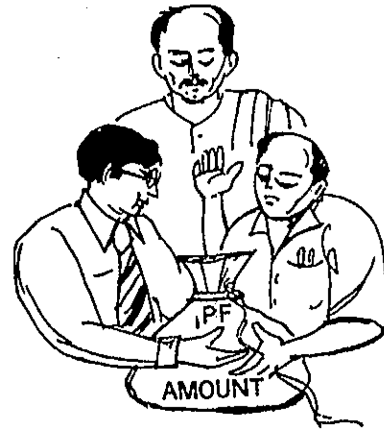
The worker's contribution to PF deducted by the employer from the monthly wages along with the employer's contribution is deposited with the Provident Fund Organisation.

mass retrenchment or individual retrenchment or a worker who has retired voluntarily with the consent of the employer, or if the worker is discharged and is given compensation under the Industrial Disputes Act.

iii. When a worker is leaving the country to seek employment or to settle down in a foreign country, he can withdraw the full amount of his or her Provident Fund even though the worker may not have reached the age of retirement. Thus if a worker decides to settle down in Nepal, Bangladesh or any other foreign country he or she can withdraw the full amount of the Provident Fund.

Q. Can the employer or the government withhold a part of the Provident Fund amount at the time of withdrawal?

No, the Provident Fund due to a worker at the above mentioned times belongs entirely to the worker. Even the contribution made by the employer and the interest accumulated on the fund belong to the worker. Therefore neither the employer nor the government can withhold or make any deductions on the PF of the worker. This is an important aspect to be noted. Earlier it was possible for the employer to withhold his contribution under specific cases. This has been abolished through an amendment



of the Act from 1 January 1990. Therefore, no employer can now withhold or forfeit any part of the worker's total due from his Provident Fund account.

Q. If a worker dies before receiving his or her Provident Fund who will get the money?

When a worker becomes a member of the Provident Fund scheme he or she must fill Form-2 in order to nominate one or more person. This person(s) will be entitled to receive the Provident Fund due to the worker at the time of his or her death. If no nomination is made then the amount will be given to the natural successor of the worker but only after a succession certificate is obtained. Hence in order to avoid confusion it is always better for a worker to nominate one or more person(s) of his or her choice. If a nomination is made then the nominees will get the amount of the worker's fund without a succession certificate.

Q. Can a worker take advances from his or her Provident Fund before retirement?

Yes. It is possible for a worker to take one or more advances from his or her Provident Fund for some specified purposes which are laid down in the Provident Fund Scheme under the Act.

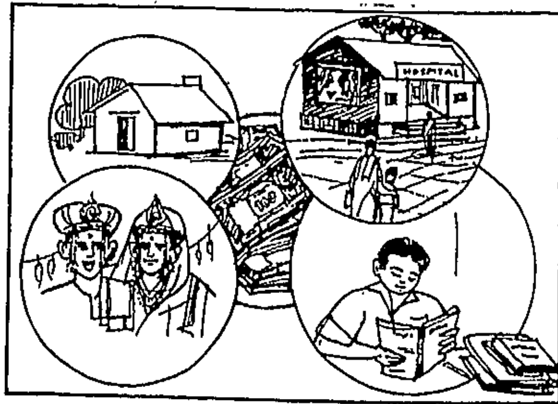
These purposes are mentioned below.

i. If a worker wants to purchase a dwelling place or buy land for building a house, an advance can be granted for this purpose(Para 68B). However the worker must be a member of the Provident Fund scheme for at least five years and his or her own contribution must be more than Rs.1,000. The property can be purchased under the worker's own name or that of his or her spouse and it must be free from any legal problems.

Para 68B(2) notes that the maximum amount of withdrawal will be 36 months of the worker's total wage.

ii. In case of illness resulting in hospitalisation for more than a month or requiring major surgery the worker can get an advance (Para 68J) but the total amount will not be more than three months of his or her wage. If the worker is suffering from TB, leprosy, paralysis, cancer, heart disease or mental illness then too an advance equivalent of three months wage can be taken. It should be noted that this advance will be given only if the employer does not provide the medical services needed.

iii. In case of marriage or education of children too advance can be taken. Para 68K states that a worker can take advances upto 50 percent of his or her contribution. This can be for the worker's own marriage or the marriage of his



son, daughter, brother or sister.

Similarly advance can be taken for post-matriculation (college) education of his or her children, brother or sister up to the same amount.

It should be noted that for both types of advances there are two conditions. Firstly, the worker must be a member of the scheme for atleast seven years and not more than three advances can be taken for each purpose.

iv. It is also possible for a worker to pay for the premium on his Life Insurance Policy through his or her Provident Fund contribution. Para 62 of the scheme allows this. The worker must inform his employer about this and the necessary amount will be deposited from the worker's contribution.

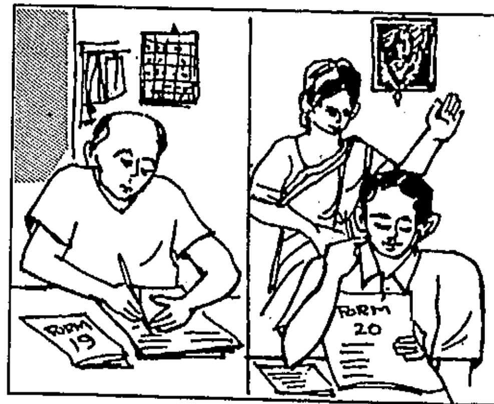
v. In case of a lockout or closure of a garden the worker can get advances from the Provident Fund. Para 68H states that if there is a lockout or closure for 15 days or more and a worker is not paid regular wages for two months or more then he or she can withdraw the total amount of his or her contribution. In case the lockout or closure is for more than six months the worker can withdraw in addition to the total amount of his or her contribution the employer's contribution as well. According to this Para any lockout or closure whether it is legal or illegal is considered as a closure. In case a worker is discharged

It is possible for a worker to take one or more advances from his or her Provident Fund for some specified purposes which are laid down in the Provident Fund Scheme under the Act.

or dismissed from work then he or she can draw upto half of his/her contribution. This is allowed so that the worker can get some money while he or she searches for another job.

Q. How does a worker claim his or her Provident Fund amount?

The claim for getting the amount due as Provident Fund has to be made by the worker through Form 19 which has to be provided by the employer (Para 72). In case a worker is dead then his or her nominee has to make the claim through Form 20. These forms have to be sent to the incharge of the nearest Sub Regional Office of the Provident Fund Commissioner through the employer. It is also possible for a worker or his or her nominee to send the form directly to the Sub Regional Office after attesting the claim by any of the following: Magistrate, Gazetted Officer, Post/Sub Post Master, Gram Panchayat Pradhan, Chairman/Secretary/Member of Municipal Committee or Zilla Parishad, office bearers of a registered trade union and some others. It is important to note that the claim attested by the above mentioned persons or the employer are to be treated as valid claims. If the Provident Fund Officer has any doubts about the validity he has to verify this from his own source. He cannot ask the worker or his



or her nominee to provide further verification.

Q. If an employer does not deposit the contributions to the Provident Fund what action can be taken?

The Act has made certain provisions to safeguard the interests of the workers. Para 32 notes that the employer has to make his contribution to the worker's Provident Fund every month. He has to do this from his own funds and he cannot deduct money from the worker's wage for this purpose.

In case the employer fails to deduct the worker's share of the Provident Fund from the worker's wage every month he cannot recover the arrears from the worker's wages later. He will have to make these contribution from his own funds(Para 32). In other words, if an employer fails to deduct the worker's contribution regularly he is bound to deposit the outstanding amount from his own resources.

If an employer fails to deposit the Provident Fund deductions from the worker's wages and his own contribution with the Provident Fund authorities, then he will be liable to be punished under Section 14 of the Act and also under Sections 405, 406 and 409 of the Indian Penal Code. This means

Failure by employers to deposit PF deductions with the Authorities make the employer liable for severe punishment.

that the employer will be charged with misappropriation and criminal breach of trust. Both these actions involve heavy punishment which can lead to jail upto five years and /or fine.

The above discussion of Provident Fund has covered some of the main points which will be of concern to tea garden workers in West Bengal. It should be quite clear to the workers that their Provident Fund is a very important aspect of the rights of tea garden workers. We also find that there are a large number of violations on the part of the employers regarding depositing or payment of Provident Fund. The only way to overcome this problem is by checking on the Provident Fund deposits made by the employers. Any violation by the employer should be brought to the notice of the Sub Regional Office or the Provident Fund Commissioner so that legal action can be taken. Workers should realise that Provident Fund is a very important source of security for them and their dependents and they should not allow anyone to misuse this.

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