



GSTIN : 29AABAK0318H1ZW

Off : 080 - 26613091 / 26607167
42103360 / 26761877

Email : kea@kea.co.in
Web : www.kea.co.in

KARNATAKA EMPLOYERS' ASSOCIATION

Date: 14-05-2020

CIRCULAR NO - 96/2020

To
All Members of the Association

KEA SUBMITS MEMORANDUM TO GOVERNMENT ON URGENT REFORMS REQUIRED IN LABOUR LAWS TO FACE POST COVID-19 SITUATION

Karnataka Employers' Association (KEA) led by its President along with industry leaders today met the Principal Secretary, Industries and Commerce and Principal Secretary, Labour and had a detailed discussion with regard to the urgent reforms required to be implemented by Karnataka for revival of industry in the post COVID-19 world. A detailed memorandum was also submitted to the Principal Secretaries during the meeting.

The Principal Secretaries appreciated the efforts undertaken by KEA in promoting quick revival of industries and promised to take necessary action in this regard.

A copy of the memorandum is attached.

For Karnataka Employers Association

Sd/-

B C PRABHAKAR
PRESIDENT.

☎ Off : 080-26613091 / 26607167
080-42103360 / 26761733
Email : kea@kea.co.in
Web : www.kea.co.in

KARNATAKA EMPLOYERS' ASSOCIATION

NO.74, 2nd FLOOR, SHANKARA ARCADE, VANIVILAS ROAD,
BASAVANAGUDI, BENGALURU - 560 004
Reg. No. TU 507 / 20-3-1962



B.C. Prabhakar, B.A., B.L.,
President

Date: 14.05.2020

To:

Principal Secretary
Department of Labour
Government of Karnataka
Bengaluru

Respected Sir,

On behalf of Karnataka Employers' Association (KEA), I extend my warm greetings and congratulations to your good-self on taking over as the Principal Secretary, Department of Labour, Government of Karnataka.

COVID-19 situation has brought a sense of urgency in amending the Labour Laws to make it responsive to the emerging opportunities. Our existing Labour Laws being archaic are found to be woefully wanting. The need for Labour Law reforms have been stressed by all – from Prime Minister to Chief Ministers of several states including Karnataka as an important means of attracting more investment as well as encouraging existing industries.

Uttar Pradesh (UP) has taken the lead by proposing to suspend all Labour Laws except 3 for a period of 1000 days. This move by UP has the potential to attract a huge chunk of investment. Other states are also following suit. Karnataka should also consider a similar legislation in order to remain competitive. However, if that is not possible, Karnataka must strive to at least substantially amend Labour Laws so as to remain an attractive destination for new investment as well as existing industries to operate without hindrance.

Keeping this in mind, KEA is enclosing this Write-up for your kind perusal. The first part deals with regard to the policy and new approach to be adopted by the Labour Department. The second part consists of suggestions with regard to Amendment to the Labour Laws within the State Sphere.

We request your good-self to consider the suggestions and initiate appropriate action.

For KARNATAKA EMPLOYERS' ASSOCIATION

B. C. Prabhakar

**(B.C.PRABHAKAR)
PRESIDENT**

☎ Off : 080-26613091 / 26607167
 080-42103360 / 26761733
 Email : kea@kea.co.in
 Web : www.kea.co.in

KARNATAKA EMPLOYERS' ASSOCIATION

NO.74, 2nd FLOOR, SHANKARA ARCADE, VANIVILAS ROAD,
 BASAVANAGUDI, BENGALURU - 560 004
 Reg. No. TU 507 / 20-3-1962



B.C. Prabhakar, B.A., B.L.,
 President

Date: 14.05.2020

PART-I

SUGGESTIONS OF KARNATAKA EMPLOYERS' ASSOCIATION ON KARNATAKA STATE LABOUR POLICY

1. Karnataka State has been traditionally known for good Industrial Relations atmosphere. The situation is slowly moving towards a thing of past. A State of confusion and uncertainty looms large on the industrial relation scenario. Unless the Labour Department steps in effectively and brings about overall improvement in the functioning of the Labour Department, the situation may deteriorate further. As a first step towards this, there is imperative need for complete revamping the department. Some of the difficulties experienced by the Industrial Establishment are high-lighted below:-

- The industrial establishment experienced multiple difficulties and problems in obtaining licenses and registration under different enactments. The processing of the Applications is delayed by different ways and means and by making unwarranted queries and objections. Even in cases where licenses are granted, the terms and conditions are stipulated contrary to the provisions of the relevant Statute and the Rules. The Authority assumes jurisdiction when they do not have. Even the online

B. C. Prabhakar

registration and renewal is posing difficulties and wrong dates are shown and when approached for corrections the usual excuses and demands are made.

- Certification of Standing Orders is another area of concern for the Establishments. Even in cases where the Employers and the workmen have agreed for all the clauses, the Certifying Officer inserts certain clauses which are contrary to the accepted terms and conditions between the Employer and the employee. The notices are issued for complying with the provisions of the Industrial Establishment (Standing Orders) Act, to the Establishment which are not even covered under the Act. The certification proceedings take unduly long time and even after conclusion of the proceedings there is delay in certifying the standing orders.
- Large Team of officials of the Department visit rather conduct raid the industrial establishment on the apparent ground of conducting inspection of the Establishment for compliance with the Labour Laws and thus harass the employers.
- Prosecution proceedings are initiated against the Establishment without even correctly examining whether there is violation of the provisions of law warranting the extreme steps of prosecuting the top officials who are not even connected with the day to day affairs of the Establishment. The Labour Department Officials are more interested in finding fault with the Employer and initiating prosecution proceedings against the Employer and even the overseas Directors who are not connected with the day to day administration of the Establishment are not spared. The observations of the Hon'ble High Court of Karnataka

B. C. Phalguni

in W.P. No. 38947-60/2012 (L) in the case of Lupin Ltd., decided on 6.2.2014 are extracted below:-

“13. Section 10 of the Act states that where an offence under the Act is committed by a company, every person who, at the time the offence was committed was in charge of, and responsible to, the company for the conduct of the business of the company, as well as the company, shall be liable to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Therefore, the ingredients of a complaint necessarily required prima-facie, material of intention on the part of the petitioner company in not issuing the appointment order in Form-A and failure to produce service book in Form-C. In the absence of a finding by the Senior Labour Inspector over the claim and the counter, by the parties, in relation to the appointment letter and the service book and absence of relevant material, prima-facie, to establish, that petitioners 3 to 13 were in charge of the 1st Petitioner company, at the time of commission of alleged offences under the Act, the complaint in CC No.237/2011 is not only illegal but suffers from lack of material particulars. The complaint petition does not disclose what material was before the complainant over petitioners 3 to 13 being present at the time of alleged commission of offences though the complaint was made against the 14th Petitioner. The Inspector failed to comprehend this aspect of the matter.

14. The proceedings of the Assistant Labour Commissioner and Senior Labour Inspector supra leads to the only inference that incompetent persons are posted to hold responsible post. It is time the State Government makes necessary amends by training the officers before being posted to

B. C. Phalke

such position of Authority, or by appointing competent officers to hold such position, so as to put an end to unwarranted criminal prosecution of innocents. If regard is had to the provisions of IPC and Cr.P.C., the said Labour Inspector is susceptible to malicious prosecution.

15. In the result, these petitions are allowed. The Complaint in CC. No.237/2011 lodged by the Senior Labour Inspector, the order dated 12.12.2011 by the JMFC (II Court) Mysore taking cognizance and all further proceedings in C.C. No.237/11 are quashed."

- The conciliation proceedings or other proceedings before the Conciliation Officer are prolonged generally at the instance of the Trade Union of workmen to pursue their own interest. The Conciliation Officer initiates conciliation proceedings even without first hearing the management, though there is no case of initiation of proceedings. Further the conciliation proceedings are kept pending for a long time even though the Management makes its position clear that it cannot agree to the unreasonable demand.
- Militancy among the Trade unions is on increase. Charter of Demands contain exorbitant demands. Even after some understanding is arrived the Trade Unions resort to strike and violence and thus the production is disturbed at the plant. Even in cases where the strike continues indefinitely the department is slow to intervene and prohibit continuance of strike. Whereas the department, without even examining whether there was an illegal strike and consequent lockout, is in a great hurry to prohibit continuance of lockout rather than the prohibition of the strike itself.

B. C. Prabhakar

2. The Association suggests the following steps for revamping the department and for ensuring that the department effectively intervenes in Industrial Relations situation at the establishment wherever necessary.

- The procedure for processing the applications for grant of licenses/permission should be simplified and streamlined. Time frame should be set for disposing of the application. The licensing authorities should stipulate such conditions which are specifically laid down in the Act and Rules, particularly under CLRA Act. Further the Contractors should be instructed to produce the records they are required to maintain under the CLRA Act and Rules and other applicable law before the departmental officials on a given date. This would ensure complete compliance with the statutory provision and would go long way in protecting the interest of the contract labourers.
- The certification of Standing orders should be stream lined and the provisions as contained in the Maharashtra Amendment which provides that the Model Standing Orders are deemed to be certified Standing Orders and this should be incorporated in the Karnataka Rules. The Industrial Tribunal should be restored as the Appellate authority under the act.
- The inspection should be with due notice to the establishment and the department should follow the instructions recently laid down by the Government of India in this behalf.
- Prosecution proceedings against the establishments should be initiated only after obtaining permission from the Labour Commissioner.

B. C. Prahalad

- Conciliation proceedings should not be delayed unduly. In the event the Management have made their position clear undue demand of the union cannot be accepted the Conciliation Officer should take steps in accordance with the provisions of the I.D. Act without delaying the matter and close the proceedings and submit Failure Report to the Government. This will avoid Trade Unions misuse of the pending conciliation proceedings as a lever against the Managements.
- Whenever there is any labour dispute in the establishment the Labour Department should make complete and proper assessment of the situation instead of simply relying on the version put up by the Trade Union. The departmental official should have courage to call spade a spade and ensure that Trade Unions for pursuing their own ends should not disturb production resulting in loss of wages to the employees and loss of revenue to the State. If necessary, they should make on the spot inspection and get firsthand information about the reality of the situation. Needless to say such visits should be for first hand assessment of the situation and not a fault finding mission against the employers. Labour Department should Act to protect the interest of the industry and thus protect employment and revenue to the Government.
- Managements are not against the department in dealing with a situation of strike or lockout in accordance with law. The experience shows that the department is more inclined to prohibit lockout even though the management had to resort to lockout in order to ensure safety and security of its plant and personnel.

B. C. Prabhakar

☎ Off : 080-26613091 / 26607167
 080-42103360 / 26761733
 Email : kea@kea.co.in
 Web : www.kea.co.in



KARNATAKA EMPLOYERS' ASSOCIATION

NO.74, 2nd FLOOR, SHANKARA ARCADE, VANIVILAS ROAD,
 BASAVANAGUDI, BENGALURU - 560 004
 Reg. No. TU 507 / 20-3-1962

B.C. Prabhakar, B.A., B.L.,
 President

Date: 14.05.2020

PART-II

LABOUR LAW REFORMS:

I. INDUSTRIAL DISPUTES ACT, 1947:

A. Chapter V-B of the Industrial Disputes Act, 1947 needs to be deleted forthwith

Chapter V-B requires industrial establishments employing 100 or more workmen to seek permission of the Government for laying off, retrenching or closing down the establishment. A very elaborate procedure is prescribed for this purpose. As such, it becomes impossible to have flexibility of employment since every workman who works for 240 days will be deemed as permanent workmen. When such is the case, it is difficult to employ workmen. In fact, this is one of the reason for industry not expanding. India is the only country in the world where permission to close down an industrial establishment is stipulated. This creates scare amongst industrialists and therefore they would not think of expanding. The Government invariably refuses permission to lay-off, retrench or close as that would be a political decision. It is, therefore necessary to delete Chapter V-B of the Industrial Disputes Act, 1947 altogether.

B. C. Prabhakar

B. Section 9-A and Schedule IV of the Industrial Disputes Act, 1947 needs to be deleted

Section 9-A requires 21 days' notice to be given to workmen even for effecting very minor changes notified in Schedule IV to the Industrial Disputes Act, 1947. Notices are required to be issued even for altering hours of work and rest intervals, starting and discontinuation of shift, classification by grades etc. Industry cannot run its business with issuing such kind of notices where the trade unions take the matter to conciliation and thereafter, the matter goes for adjudication all of which takes years to complete. So, the change proposed cannot be implemented at all. Consequently, Schedule IV also needs to be deleted.

C. Section 33 of the Industrial Disputes Act, 1947 needs to be deleted

Section 33 of the Industrial Disputes Act, 1947 states that conditions of service should not be changed during conciliation proceedings and also calls for taking permission of the court to dismiss or to impose any punishment on certain workmen called as protected workmen. Even when proceedings are pending before the Labour Court, Industrial Tribunal or National Tribunal, protected workmen cannot be terminated without permission of the court. Till such time, permission is granted, full wages will have to be paid to such protected workmen. In respect of those not protected, approval need to be obtained. These are very cumbersome processes which should be eliminated, as there is a provision to challenge the order of dismissal. In fact, Karnataka High Court has clearly recommended more than once that Section 33 is superfluous. This provision is seriously affecting discipline in the industry, as the workers' leaders claim that no action can be taken against them because they are protected workmen. On account of this, there is gross violation of discipline in industry, apart from huge loss of production. Moreover, after insertion of Section 2(A) to the Central Act and insertion of Section 4(A) by Karnataka, the provision relating to Section 33 is no more required as the dismissed workmen

B. C. Prabhakar

can directly raise dispute before Labour Court challenging the dismissal.

D. Section 33-A of the Industrial Disputes Act, 1947 needs to be deleted

This is because once Section 33 is deleted, Section 33-A becomes redundant.

E. Section 17-B of the Industrial Disputes Act, 1947 needs to be deleted

There are a number of Court Awards, which on the face of it, are totally opposed to provisions of law. This is because, only civil judges are posted as Labour Court judges, who would not know elementary industrial law resulting in a number of wrong awards granting reinstatement in service. When employer challenges this, he is required to pay wages to workmen concerned in the dispute. Once the employer succeeds in the High Court, there is no way to recover the said amount. In appropriate cases, the Hon'ble High Court has the power to order payment of wages or part of wages to the workmen concerned in the dispute and therefore Section 17-B is superfluous.

F. Section 34(1) of the Industrial Disputes Act, 1947 to be amended to read as under:

"No court shall take cognizance of any offence punishable under this Act unless the complaint is filed by the Government."

G. Notification dated LAW 164 LCE 2014 dated 22.01.2015 issued by the Government of Karnataka may be withdrawn

The Government vide this notification has conferred the power of a Labour Court to all the Principal District and Sessions Judges, many of whom are delegating to Additional District and Sessions Judges. On account of this, the Judges who do not have knowledge of labour laws adjudicate labour disputes. Prior to this notification, only Labour Court / Industrial Tribunal adjudicated labour dispute. As such, there is absolute urgent need to withdraw the notification.

B. C. Prabhakar

II. FACTORIES ACT 1948:

- A.** Definition of Factory should be amended to cover the manufacturing unit employing 20 workers with working with aid of power or employing 40 workers if working without the aid of power.
- B.** Permit 12 hour work in a day with 4 hours of overtime with single wage.
- C.** Providing 12 hour shift with 2 breaks and providing spread over of up to 13 hours

III. CONTRACT LABOUR (REGULATION & ABOLITION) ACT 1970:

- A.** The Act should be made applicable to the establishment and the contractor employing 50 or more contract labourers instead of the existing number of 20 contract labourers.
- B.** A deeming provision to be inserted to stipulate that if the certificate of registration or the license is not issued within the stipulated period it shall be deemed that unconditional registration/license stands granted as applied for.
- C.** Introduce the "Contract Employer" definition and make Contractors accountable.
- D.** To exclude knowledge workers / high salary paid employees from the purview of the Act.
- E.** To exclude IT / ITES / BPO Knowledge based industry from the purview of the Act in so far as knowledge workers are concerned.

B. C. Phalguni

IV. Industrial Employment (Standing Orders) Act 1946

- A.** The Model Standing orders be made applicable to all the establishments automatically once the number of workmen employed reaches the stipulated strength of 50 workmen and declared as deemed Certified Standing Orders, as done in the state of Maharashtra. The existing model Standing Orders is outdated and it should be updated to suit the present day requirement.
- B.** Fixed term employment and Part Time Employment should be introduced in the model standing orders.
- C.** Age of retirement should be retained at 58 years only.
- D.** The Industrial Tribunal should be re-notified as Appellate Authority under the Act.

V. Sexual Harassment of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013

The Act provides for Appeal against the recommendations of the Internal Complaint Committee and also the decision of the Disciplinary Authority. The Rules framed under the Act provide that the Appeal may be filed before the Appellate Authority notified under the Industrial Employment (Standing Orders) Act, 1946.

In Karnataka Appellate Authority under The Industrial Employment (Standing Orders) Act, was originally Industrial Tribunal. Subsequently, the Government changed the Appellate Authority and the Additional Labour Commissioner was notified as Appellate Authority. The said position continues even now.

In other States, the Appellate Authority under the Standing Orders is Industrial Tribunal.

B. C. Prabhakar

The Association suggests that the Industrial Tribunal be notified as the 'Appellate Authority' under the Industrial Employment (Standing Orders) Act. This will not only ensure judicial scrutiny of Appeals against the Standing Orders certified by the Certifying Officer, but would also ensure that the Appeal under the SHWW Act, which is a very sensitive issue decided by the Judicial Authority instead of Administrative Authority.

VI. The Karnataka Shops and Commercial Establishment Act

- A.** Flexi working hours should be introduced as done in Tamil Nadu to facilitate particularly the IT and ITES establishment to conform to the working hours of the overseas establishments. In Tamil Nadu the Shops and Commercial Establishment Act is amended to facilitate to work up to 10 hours in a day subject to 48 hours in a week.
- B.** The working hours of Women employees during night shifts may be regulated by laying down the rules instead of each I.T. company obtaining permission. The department may ensure full compliance with the safety and security arrangement made for the women employees.
- C.** Self-certification should be introduced and the procedure of submitting returns etc., should be deleted.
- D.** The over time limit may be revised from 50 hrs for three consecutive months to 150 Hrs per quarter i.e. 2 hours every day and payment of double wages.

VII. General

- A.** Maintenance of all records in software should be permitted and e-filing of the returns may be introduced.
- B.** Self-Certification by the employer should be introduced for all legislations.

B. C. Prabhakar

- C. The Minimum Wage revision should be in tune with the neighboring State. Any drastic increase would affect viability of the industry resulting in closures and unemployment.

VIII. Lockdown period and wages ie 25.03.2020 to 17.05.2020

- A. During lockdown period, the establishments and factories who could not operate, the said period should be allowed to be treated as Lay Off as per Section 25C of the ID Act on the ground of natural calamity and paid 50% of the basic and DA. Further, post lockdown period, the establishments and factories should be allowed to Lay Off depending upon various situations on the grounds of natural calamity. In the case of factories employing more than 100 workers requirement of permission should be exempted both for lockdown period and post lockdown period for a period of 1 year.
 - B. If any employer is unable to pay wages for no work days of lockdown period, no show cause notice and no prosecution should be initiated.
 - C. If an employer wants to treat no work days of lockdown period as leave with wages at credit or leave on loss of pay, the same should be allowed.
 - D. In case of essential services and other industries allowed to resume work, there are instances where workers have not resumed work due to some apprehensions. Government and Labour Department should convince them to resume work. Workmen who do not report shall not eligible for wages on principle of 'no work no pay'. Besides, disciplinary action should be allowed
- IX.** Freeze DA and revision of minimum wages for the next one year at the level of March 2020.
- X.** Take immediate steps to revive the industries after lockdown by relaxing compliance requirements under various Acts for the next 12 months.

B. C. Prabhakar

- XI.** All licenses under various Labour Legislations may be deemed to be valid for next 12 months.
- XII.** Freeze all inspections, notices and proceedings against Labour Law violations.
- XIII.** Increase the maximum limit of 33% workforce to at least 50% of the workforce after the reopening of the industry to allow increase in production of goods and services to optimum level.

For KARNATAKA EMPLOYERS' ASSOCIATION

B. C. Prabhakar

**(B.C.PRABHAKAR)
PRESIDENT**