

PARLIAMENT OF CEYLON

2nd Session 1961-62



Industrial Disputes (Amendment) Act, No. 4 of 1962

Date of Assent : March 31, 1962

Printed on the Orders of Government

Printed at the GOVERNMENT PRESS, CEYLON. To be purchased at the GOVERNMENT PUBLICATIONS BUREAU, COLOMBO. Annual Subscription (including Bills) Rs. 30 (Local), Rs. 40 (Foreign), payable in advance to the SUPERINTENDENT, GOVERNMENT PUBLICATIONS BUREAU, P. O. Box 500, Secretariat, Colombo 1, before 20th December each year in respect of the year following. Late subscriptions will be accepted on the condition that Bills issued before the date of payment will not be supplied.

Price : 55 cents

Postage : 20 cents

L. D.—O. 19/60.

AN ACT TO AMEND THE INDUSTRIAL DISPUTES ACT.

[Date of Assent: March 31, 1962]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Industrial Disputes (Amendment) Act, No. 4 of 1962.

Short title.

2. Section 2 of the Industrial Disputes Act, hereinafter referred to as the "principal Act", is hereby amended as follows:—

Amendment of
section 2 of
Chapter 131.

(a) by the renumbering of that section as sub-section (1) of section 2; and

(b) by the addition, at the end of that section, of the following new sub-section:—

'(2) For the purposes of this section, "Commissioner" includes a Labour Officer.'

3. Section 3 of the principal Act, as amended by Act No. 62 of 1957, is hereby amended as follows:—

Amendment of
section 3 of
the principal
Act.

(a) in sub-section (1) of that section, by the substitution, in paragraph (d) of that sub-section, for the words "arbitrator appointed", of the words "arbitrator or a body of arbitrators appointed";

(b) by the renumbering of sub-section (2) of that section as sub-section (3); and

(c) by the insertion, immediately after sub-section (1) of that section, of the following new sub-section:—

"(2) A body of arbitrators appointed under paragraph (d) of sub-section (1) shall consist of—

(a) a person nominated by the employers,

(b) a person nominated by the workmen, and

(c) a person nominated as Chairman jointly by the employers and workmen, or, in the absence of such nomination, by the Commissioner.

The opinion on any matter of the majority of the members of a body of arbitrators shall be deemed to be the opinion of that body on that matter."

Amendment of
section 16 of
the principal
Act.

4. Section 16 of the principal Act, as amended by Act No. 62 of 1957, is hereby amended by the substitution, for all the words and figures from "Every order" to "settlement by arbitration", of the following:—

' Every order under section 3 (1) (d) referring an industrial dispute for settlement by arbitration to an arbitrator or a body of arbitrators (and accordingly the expression "arbitrator" shall hereafter in this Act be construed, where an industrial dispute has been referred to an arbitrator, as a reference to that arbitrator, or, where such dispute has been referred to a body of arbitrators, as a reference to that body of arbitrators), or every order under section 4 (1) referring such dispute to an arbitrator for settlement by arbitration '.

Amendment of
section 31B of
the principal
Act.

5. Section 31B of the principal Act, as amended by Act No. 62 of 1957, is hereby amended as follows:—

(a) in sub-section (1) of that section, by the substitution, in paragraph (c) of that sub-section, for all the words from "pertaining" to "and", of the following:—

"relating to the terms of employment, or the conditions of labour, of"; and

(b) by the substitution, for sub-section (2) of that section, of the following sub-section:—

"(2) A Labour Tribunal shall—

(a) where it is satisfied after such inquiries as it may deem necessary that the matter to

which an application under sub-section (1) of this section relates is under discussion with the employer of the workman to whom that application relates by a trade union of which that workman is a member, make order suspending its proceedings upon that application until the conclusion of that discussion, and upon such conclusion shall resume the proceedings upon that application, and, if a settlement is reached in the course of that discussion, shall make order according to the terms of such settlement, and

(b) where it is so satisfied that such matter constitutes, or forms part of, an industrial dispute referred by the Minister under section 4 for settlement by arbitration to an arbitrator, or for settlement to an Industrial Court, make order dismissing the application without prejudice to the rights of the parties in the industrial dispute.”.

6. Section 31C of the principal Act, as amended by Act No. 62 of 1957, is hereby amended in sub-section (1) of that section, by the substitution, for all the words from “as the Tribunal” to “by the application,”, of the following:—

Amendment of
section 31C of
the principal
Act.

“and hear all such evidence as the Tribunal may consider necessary,”.

Insertion of
new Part IVB
in the
principal Act.

7. The following new Part is hereby inserted immediately after Part IVA of the principal Act, as amended by Act No. 62 of 1957, and shall have effect as Part IVB of the principal Act:—

“ PART IVB.

*Provisions relating to Retrenchment
of Workmen.*

Application
of this
Part.

31E. (1) The provisions of this Part shall not apply—

(a) to any employer by whom less than fifteen workmen on an average have been employed for a working day in the month preceding the month in which notice of the intention to effect retrenchment in respect of any workman employed is given by the employer to that workman, or

(b) to any industry which is of a seasonal character or in which work is performed intermittently, or

(c) to the retrenchment of any workman who has been employed in any industry for a period which is less than one year.

(2) Where the Minister is of the opinion that the application of this Part to an industry is likely to affect that industry in such a manner as to cause serious repercussions to that industry, the Minister may by Order published in the *Gazette* declare that this Part shall not apply, or shall apply subject to such conditions as may be specified in that Order, to that industry.

Any Order made by the Minister under this sub-section shall be placed as soon as practicable before the House of

Representatives for approval. Any Order not so approved shall be deemed to have been of no effect.

(3) In the computation of the number of workmen for the purposes of subsection (1) (a), any workman who has been employed in the industry for a period of less than one year shall also be taken into account.

(4) If any question arises as to whether an industry is of a seasonal character or whether work in that industry is done only intermittently, such question shall be determined by the Commissioner and his decision on that question shall be final and conclusive.

Duty of employer to give notice of intended retrenchment to the workman, the trade union of which that workman is a member and to the Commissioner.

31F. Where an employer intends to effect retrenchment in respect of any workman employed in an industry carried on by that employer, he shall, unless such retrenchment is in consequence of an agreement between the employer or the representative of the employer and the workman or the representative of the workman, or a settlement or award under this Act,—

(a) give to that workman at least one month's notice in writing of such intention, and, if that workman is a member of a trade union, to that trade union, and

(b) send a copy of such notice to the Commissioner.

Retrenchment shall not be effected until after the expiry of two months after the date of the notice.

31G. Subject to the provisions of section 31H, no employer shall effect retrenchment in respect of any workman to whom he has given notice of his intention to do so until after the expiry of two months after the date of such notice.

Where an industrial dispute arising out of the intended retrenchment is referred for settlement, employer shall not effect the retrenchment within a period of two months, after the date of reference of such dispute.

31H. Where, before the expiry of two months after the date of the notice referred to in section 31F, any industrial dispute which exists or is apprehended in consequence of the retrenchment intended in that notice is referred—

(a) by the Commissioner to an authorised officer for settlement by conciliation, or

(b) by the Commissioner to an arbitrator for settlement by arbitration, or

(c) by the Minister to an arbitrator for settlement by arbitration, or to an Industrial Court for settlement,

the employer giving such notice shall not effect the intended retrenchment within a period of two months after the date of reference of such dispute unless such retrenchment is effected in terms of any settlement or award under this Act:

Provided, however, that where any such dispute is referred by the Commissioner to an authorised officer for settlement by conciliation and where the authorised officer fails to effect a settlement of such dispute, the employer may effect the intended retrenchment after the expiry of a period of thirty days calculated from the date of the report made under section 12 (4) if such dispute has not within the aforesaid period of thirty days been referred for settlement by arbitration under section 3 (1) (d) or section 4 (1), or to an Industrial Court for settlement under section 4 (2).''

8. Section 33 of the principal Act, as amended by Act No. 62 of 1957, is hereby amended as follows:—

Amendment of
section 33 of
the principal
Act.

(1) in sub-section (1) of that section—

(a) in paragraph (d) of that sub-section,—

(i) by the substitution, for the words
“ workman as an alternative to his
reinstatement,” of the word
“ workman,” and

(ii) by the substitution, for the full stop,
of a semi-colon, and

(b) by the addition, at the end of that sub-
section, of the following new paragraph:—

“ (e) as to the payment by any employer
of a gratuity or pension or bonus to
any workman, the amount of such
gratuity or pension or bonus and the
method of computing such amount,
and the time within which such
gratuity or pension or bonus shall be
paid.”; and

(2) in sub-section (2) of that section,—

(a) by the substitution, for the words “ compen-
sation as an alternative to his reinstate-
ment,” of the words “ compensation,
gratuity or pension or bonus, ”; and

(b) by the substitution, for the words “ amount
specified in that certificate as payable ”,
of the words “ amount of such money ”.

9. Section 36 of the principal Act, as amended by
Act No. 62 of 1957, is hereby amended in sub-section
(1) of that section by the substitution, for the words
“ Labour Tribunal, arbitrator or authorised officer ”,
of the words “ Labour Tribunal, arbitrator, authorised
officer or Labour Officer ”.

Amendment of
section 36 of
the principal
Act.

Amendment of
section 40 of
the principal
Act.

10. Section 40 of the principal Act, as amended by Act No. 62 of 1957, is hereby amended as follows:—

(a) in sub-section (1) of that section—

(i) in paragraph (c) of that sub-section by the substitution, for the word and figures “ section 32 ” of the words and figures “ section 32 or section 50 ”;

(ii) by the substitution, for paragraph (k) of that sub-section, of the following paragraph:—

“ (k) being an employer, without good cause terminates the services of, or reduces to a lower grade or class, or otherwise punishes, any workman for the reason that he has become entitled to the benefit of any collective agreement, or an Order under section 10 (2), or any settlement or award of an Industrial Court or arbitrator, or an order of any Labour Tribunal under this Act;”,

(iii) in paragraph (p) of that sub-section, in sub-paragraph (ii) of that paragraph, by the substitution for the words “ arbitrator; or ”, of the word “ arbitrator;”,

(iv) in paragraph (q) of that sub-section, by the substitution, for the comma at the end of that paragraph, of a semi-colon, and

(v) by the insertion, immediately after paragraph (q) of that sub-section, of the following new paragraphs:—

“(r) being an employer, contravenes the provisions of section 44C or section 44D;

(s) being an employer, contravenes the provisions of section 31F or section 31G or section 31H;

(t) fails to furnish such means required by any officer specified in section 44E as is necessary for any entry or inspection or the exercise of his powers under that section;

(u) hinders or molests any officer in the exercise of his powers under section 44E;

(v) refuses or fails without reasonable cause to produce any register or record or give any information which any officer requires him to give under the powers conferred by section 44E;

(w) prevents or attempts to prevent any other person from answering any question put by any officer to such other person during an interrogation of such other person under section 44E;

(x) makes or causes to be made any register or record which is false in any material particular, or produces or causes or knowingly allows to be produced any such register or record to any officer acting under the powers conferred by section 44E, knowing such register or record to be false; or

(y) furnishes any information to any officer acting under the powers conferred by section 44E, knowing such information to be false,"; and

(b) by the addition, at the end of that section, of the following new sub-section:—

“ (3) In any prosecution of an employer for an offence relating to compliance with any settlement or award under this Act, or with an order of a Labour Tribunal, or with an Order under section 10 (2), the burden of proving that the settlement, award, order of the Labour Tribunal or Order under section 10 (2) was complied with shall lie on the employer.”.

Amendment of
section 43 of
the principal
Act.

11. Section 43 of the principal Act, as amended by Act No. 62 of 1957, is hereby amended as follows:—

(a) in sub-section (1) of that section, by the substitution, for the expression “sub-section (4)”, of the expression “sub-section (5)”;

(b) in sub-section (2) of that section, by the substitution, in paragraph (ii) of that sub-section, for the words “such day,”, of the words “such day and on each day of the period commencing on the date on which he should have been reinstated in service according to the terms of the award or order and ending on the date of the conviction of such employer,”;

(c) by the renumbering of sub-sections (3) and (4) of that section as sub-sections (4) and (5);

(d) by the insertion, immediately after sub-section (2) of that section, of the following new sub-section:—

“ (3) On the conviction of an employer for an offence under section 40 (1) (k) for terminating without good cause the services of, or reducing to a lower grade or class, any workman,—

(a) the court shall, in addition to any punishment that it may impose on such employer under sub-section (1), order such employer—

- (i) where the services of the workman were terminated without good cause, to reinstate in service such workman, or
- (ii) where the workman was reduced to a lower grade or class, to restore such workman to his proper grade or class, or
- (iii) where such workman was otherwise punished, to grant such relief as the Court may consider necessary,

and if such employer fails to comply with such order, such employer shall be liable to pay a fine of fifty rupees for each day on which the failure is continued after conviction thereof; and

(b) such employer shall be liable to pay such workman—

- (i) if his services had been terminated without good cause, the remuneration which would have been payable to him if he had been in service on each day of the period commencing on the date on which his services had been terminated and ending on the date on which he is reinstated in service, computed at the rate of salary or wages to which he would have been entitled if his services had not been terminated, or
- (ii) if he had been reduced to a lower grade or class, the sum which represents the difference in remuneration between the amount which ought to have been paid to him if he had not been so reduced and the amount actually paid to him.

Any sum which an employer is liable to pay under paragraph (b) of this sub-section may be recovered on the order of the court by which he was convicted as if it were a fine imposed on him by the court and the amount so recovered shall be paid to the workman.", and

(e) in renumbered sub-section (4) of that section, by the substitution, for all the words from "any settlement or award under this Act" to "is not so paid", of the following:—

"any settlement, award or collective agreement under this Act, or with any order of a Labour Tribunal or with any Order under section 10 (2), relating to the payment of any sum of money by such employer to a workman, or to the grant of any benefit to which that workman is entitled, the court may, in addition to any other sentence that it may impose on such employer, order that such sum be paid, or, if such benefit is capable of being computed in terms of money, that such amount as may be determined by the court (whose determination shall be final) as the value of such benefit be paid, within the period specified in the order of the court, and if such sum or the amount so determined is not so paid,".

Insertion of
new sections
43A and 43B in
the principal
Act.

12. The following new sections are hereby inserted immediately after section 43, and shall have effect as sections 43A and 43B, of the principal Act:—

"Recovery of
sums of
money due to
workmen in
certain cases.

43A. (1) Where an employer has been convicted for failing to comply with any term or condition of any settlement or award under this Act, or with an order of a Labour Tribunal, or with an Order under section 10 (2), relating to the payment of any sum of money due by such employer to a workman, or the grant of any benefit to which that workman is entitled, then, if a notice in the

prescribed form of the intention so to do has been served on such employer at any time before the commencement of the trial, evidence may be given of the failure on the part of such employer to pay any sum of money, or to grant such benefit, to any other workman or workmen under that award or settlement or order of the Labour Tribunal or Order under section 10 (2), and, on proof of such failure, the court may order such employer to pay such sum of money or, if such benefit is capable of being computed in terms of money, such amount as may be determined by the court (whose determination shall be final) to such other workman or workmen. Any sum of money ordered to be paid under this sub-section may be recovered in the same manner as a fine.

(2) The power of the court to make an order under sub-section (1) shall not be in derogation of any right of the workman or workmen to recover the sum of money, or the value of the benefit if it can be computed in terms of money, by any other proceedings.

(3) Where a workman has not been paid any sum of money, or granted any benefit, which may be due to him from any employer in accordance with any term or condition, of a settlement or award under this Act, or with an order of a Labour Tribunal, or with an Order under section 10 (2), the Commissioner may, if he thinks fit so to do, by written notice require such employer to pay such sum of money, or, if such benefit is capable of being computed in terms of money, such amount as may be determined by the Commissioner (whose determination shall be final) as the value of the benefit, to the Commissioner within the time specified in the notice so that the Commissioner may remit it to such workman. If the employer on being served with the notice pays the sum of money

or the amount so determined directly to the workman instead of remitting it to the Commissioner as required by the notice, the employer shall be deemed not to have paid such sum of money or amount so determined to such workman.

Immediate employer being himself in the employment of another person.

43B. Where the immediate employer of any workman is himself in the employment of some other person, and that workman is employed to do any work in the course of and for the purpose of the trade, business, occupation or undertaking of that other person, that other person shall, for the purposes of subsection (1) of section 40, be deemed to be the employer of that workman jointly with his immediate employer.”.

Insertion of new sections 44B, 44C, 44D and 44E in the principal Act.

13. The following new sections are hereby inserted immediately after section 44A (inserted by Act No. 62 of 1957), and shall have effect as sections 44B, 44C, 44D and 44E, of the principal Act:—

Power of Commissioner or trade union to recover by suit money due to a workman.

44B. (1) Notwithstanding anything to the contrary in any other written law—

(a) a suit for the recovery of any sum due under this Act from any employer to any workman may be instituted in a court of competent jurisdiction in the name of the Commissioner or in the name of a trade union of which that workman is a member;

(b) any sums due under this Act from an employer to two or more workmen may be sued for in a single suit instituted in the name of the Commissioner or in the name of a trade union of which those workmen are members;

(c) a suit for the recovery of any sum due under this Act from any employer to any workman shall be maintainable if

it is instituted within two years after that sum has become due;

(d) in any such suit instituted in the name of the Commissioner, he may be represented by any Deputy or Assistant Commissioner or any Labour Officer; and

(e) in any such suit instituted in the name of a trade union, such union may be represented by any of its officers.

(2) For the purposes of this section, "sum of money" includes, where any benefit is due under this Act from an employer and where such benefit is capable of being computed in terms of money, such amount as may be determined by the court in which the action for the recovery of the value of such benefit is brought.

Employers to make available for inspection by the Commissioner or any Labour Officer or any other prescribed officer registers or records.

44C. Every employer shall make available for inspection by the Commissioner or any Labour Officer or any other prescribed officer any registers or records required to be maintained by him under the Wages Boards Ordinance, the Maternity Benefits Ordinance, the Shop and Office Employees (Regulation of Employment and Remuneration) Act, or the Employees' Holidays Act, No. 6 of 1959, and such other registers or records as may be prescribed.

Inclusion of prescribed particulars in register or record kept under any other written law.

44D. (1) Where an employer is by virtue of the Wages Boards Ordinance, the Maternity Benefits Ordinance, the Shop and Office Employees (Regulation of Employment and Remuneration) Act, or the Employees' Holidays Act, No. 6 of 1959, required to maintain any register or record, he shall, if so required by any regulation made under this Act, include in that register or record such particulars as may be prescribed in respect of any prescribed class or description of his workmen.

(2) Where by any regulation made under this Act any prescribed particulars are required to be included in any such register or record as is referred to in sub-section (1), that register or record shall, for the purposes of this Act, be deemed to be a register or record maintained under this Act.

Powers of
entry,
inspection, etc.

44E. Subject to such conditions and restrictions as may be prescribed, the Commissioner or any Labour Officer or any other prescribed officer shall have the power—

- (a) to enter and inspect at all reasonable hours of the day or night any place in which any workmen are employed, for the purpose of examining any register or record maintained or deemed to be maintained under this Act or such other registers or records as are required under this Act to be available for inspection;
- (b) where at the time of such inspection any such register or record is not available for examination, to require the production of such register or record on such date and at such place as he may specify;
- (c) to take copies of the whole or any part of any such register or record; or
- (d) to interrogate any person whom he finds at the place where the workmen are employed and whom he has reasonable cause to believe is an employer or a workman engaged or employed in the trade, business, occupation or undertaking carried on in such place.

14. Section 48 of the principal Act, as amended by Act No. 62 of 1957 and therein referred to as section 47, is hereby amended as follows:—

Amendment of section 48 of the principal Act.

(a) in the definition of “ Commissioner ”—

(i) in paragraph (a) of that definition, by the omission of the word “ and ”, and

(ii) by the addition, at the end of that definition, of the following paragraph:—

“(c) in respect of the power conferred on the Commissioner by section 3 (1) (b), any Labour Officer;”;

(b) in the definition of “ industrial dispute ” by the substitution, for the words “ between employers ”, of the words “ between an employer and a workman or between employers ”; and

(c) by the insertion, immediately after the definition of “ lock-out ” and “ strike ”, of the following new definition:—

“ “ retrenchment ” means the termination by an employer of the services of a workman or workmen on the ground that such workman or workmen is or are in excess of the number of workmen required by such employer to carry on his industry; ”.

15. The following new section is hereby inserted immediately after section 48, and shall have effect as section 48A, of the principal Act:—

Insertion of new section 48A in the principal Act.

“ Labour Officers subject to the general or special directions of the Commissioner.

48A. Where a Labour Officer exercises any power of the Commissioner under this Act, such officer shall be subject to the general or special directions of the Commissioner.”.

16. The following new section is hereby inserted immediately after section 49, and shall have effect as section 50, of the principal Act:—

Insertion of new section 50 in the principal Act.

“ Re-employment of retrenched workman.

50. Where after any employer has effected any retrenchment in respect of any workman the employer proposes to employ any new workman, he shall give preference to the workman retrenched by him if such workman offers himself for re-employment. ”.