ACT NO. IV OF 1936.

[PASSED BY THE INDIAN LEGISLATURE.]

(*Received the assent of the Governor General on the 23rd April, 1936.*)

An Act to regulate the payment of wages to certain classes of persons employed in industry.

WHEREAS it is expedient to regulate the payment of wages to certain classes of persons employed in industry; It is hereby enacted as follows:—

Short title, extent, commencement and application.

1. (*1*) This Act may be called the Payment of Wages Act, 1936.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

(*4*) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

(*5*) The Local Government may, after giving three months' notice of its intention of so doing, by notification in the local official Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments.

(*6*) Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*i*) "factory" means a factory as defined in clause (*j*) of section 2 of the Factories Act, 1934; XXV of 1934.

(*ii*) "industrial establishment" means any—

(*a*) tramway or motor omnibus service;

(*b*) dock, wharf or jetty;

(*c*) inland steam-vessel;

(*d*) mine, quarry or oil-field;

(*e*) plantation;

(*e*) plantation ;

(*f*) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale ;

(*iii*) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose ;

(*iv*) "prescribed" means prescribed by rules made under this Act ;

(*v*) "railway administration" has the meaning assigned to it in clause (*6*) of section 3 of the Indian Railways Act, 1890 ; and IX of 1890.

(*vi*) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—

(*a*) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the Governor General in Council or Local Government ;

(*b*) any contribution paid by the employer to any pension fund or provident fund ;

(*c*) any travelling allowance or the value of any travelling concession ;

(*d*) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or

(*e*) any gratuity payable on discharge.

Responsibility for payment of wages.

3. Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act :

Provided that, in the case of persons employed (otherwise than by a contractor)—

(*a*) in factories, if a person has been named as the manager of the factory under clause (*e*) of sub-section (*1*),

of sub-section (*1*) of section 9 of the Factories
XXV of 1934. Act, 1934,

(*b*) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment,

(*c*) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.

Fixation of wage-periods.

4. (*1*) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(*2*) No wage-period shall exceed one month.

Time of payment of wages.

5. (*1*) The wages of every person employed upon or in—

(*a*) any railway, factory or industrial establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(*b*) any other railway, factory or industrial establishment, shall be paid before the expiry of the tenth day,

after the last day of the wage-period in respect of which the wages are payable.

(*2*) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(*3*) The Governor General in Council may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such persons or class of such persons.

(*4*) All payments of wages shall be made on a working-day.

Wages to be paid in current coin or currency notes.

6. All wages shall be paid in current coin or currency notes or in both.

Deductions which may be made from wages.

7. (*1*) Notwithstanding the provisions of sub-section
IX of 1890. (*2*) of section 47 of the Indian Railways Act, 1890, the wages of an employed person shall be paid to him without

without deductions of any kind except those authorised by or under this Act.

Explanation.—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(*2*) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely :—

(*a*) fines ;

(*b*) deductions for absence from duty ;

(*c*) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default ;

(*d*) deductions for house-accommodation supplied by the employer ;

(*e*) deductions for such amenities and services supplied by the employer as the Governor General in Council or Local Government may, by general or special order, authorise ;

Explanation.—The word 'services' in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.

(*f*) deductions for recovery of advances or for adjustment of over-payments of wages ;

(*g*) deductions of income-tax payable by the employed person ;

(*h*) deductions required to be made by order of a Court or other authority competent to make such order ;

(*i*) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925, applies or any recognised provident fund as defined in section 58A of the Indian Income-tax Act, 1922, or any provident fund approved in this behalf by the Local Government, during the continuance of such approval ; and XIX of 1925. XI of 1922.

(*j*) deductions for payments to co-operative societies approved by the Local Government or to a scheme of insurance maintained by the Indian Post Office.

Fines.

8. (*1*) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the Local

Local Government or of the prescribed authority, may have specified by notice under sub-section (*2*).

(*2*) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(*3*) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

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

(*5*) No fine shall be imposed on any employed person who is under the age of fifteen years.

(*6*) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.

(*7*) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(*8*) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.—When the persons employed upon or in any railway, factory or industrial establishment are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Deductions for absence from duty.

9. (*1*) Deductions may be made under clause (*b*) of sub-section (*2*) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(*2*) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent

absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work :

Provided that, subject to any rules made in this behalf by the Local Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Deductions for damage or loss.

10. (*1*) A deduction under clause (*c*) of sub-section (*2*) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(*2*) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

Deductions for services rendered.

11. A deduction under clause (*d*) or clause (*e*) of sub-section (*2*) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and, in the case of a deduction under the said clause (*e*), shall be subject to such conditions as the Governor General in Council or the Local Government may impose.

Deductions for recovery of advances.

12. Deductions under clause (*f*) of sub-section (*2*) of section 7 shall be subject to the following conditions, namely :—

(*a*) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling-expenses ;

(*b*) recovery of advances of wages not already earned shall be subject to any rules made by the Local Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

13. deductions

Deductions for payments to co-operative societies and insurance schemes.

13. Deductions under clause (*j*) of sub-section (*2*) of section 7 shall be subject to such conditions as the Local Government may impose.

Inspectors.

14. (*1*) An Inspector of Factories appointed under sub-section (*1*) of section 10 of the Factories Act, 1934, shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

XXV of 1934.

(*2*) The Governor General in Council may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(*3*) The Local Government may, by notification in the local official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(*4*) An Inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(*5*) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

15. (*1*) The Local Government may, by notification in the local official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area.

(*2*) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (*1*), may apply to such authority for a direction under sub-section (*3*) :

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which

which the payment of the wages was due to be made, as the case may be :

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(*3*) When any application under sub-section (*2*) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter :

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(*a*) a *bonâ fide* error or *bonâ fide* dispute as to the amount payable to the employed person, or

(*b*) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(*c*) the failure of the employed person to apply for or accept payment.

(*4*) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(*5*) Any amount directed to be paid under this section may be recovered—

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

(*b*) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

Single application in respect of claims from unpaid group.

16. (*1*) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same

wage-period

wage-period or periods have remained unpaid after the day fixed by section 5.

(*2*) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (*3*) of section 15 shall be ten rupees per head.

(*3*) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (*2*) of this section, and the provisions of that sub-section shall apply accordingly.

Appeal.

17. (*1*) An appeal against a direction made under sub-section (*3*) of section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency-town or in Rangoon before the Court of Small Causes and elsewhere before the District Court—

(*a*) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(*b*) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(*c*) by any person directed to pay a penalty under sub-section (*5*) of section 15.

(*2*) Save as provided in sub-section (*1*), any direction made under sub-section (*3*) or sub-section (*5*) of section 15 shall be final.

Powers of authorities appointed under section 15.

18. Every authority appointed under sub-section (*1*) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898.

V of 1908.

V of 1898.

Power to recover from employer in certain cases.

19. When the authority referred to in section 15 or the Court referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

20. (*1*) whoever

Penalty for offences under the Act.

20. (*1*) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and sections 7 to 13, both inclusive, shall be punishable with fine which may extend to five hundred rupees.

(*2*) Whoever contravenes the provisions of section 4, section 6 or section 25 shall be punishable with fine which may extend to two hundred rupees.

Procedure in trial of offences.

21. (*1*) No Court shall take cognizance of a complaint against any person for an offence under sub-section (*1*) of section 20 unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(*2*) Before sanctioning the making of a complaint against any person for an offence under sub-section (*1*) of section 20, the authority empowered under section 15 or the appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to—

(*a*) a *bonâ fide* error or *bonâ fide* dispute as to the amount payable to the employed person, or

(*b*) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(*c*) the failure of the employed person to apply for or accept payment.

(*3*) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(*4*) In imposing any fine for an offence under sub-section (*1*) of section 20 the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

Bar of suits.

22. No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

(*a*) forms the subject of an application under section 15 which has been presented by the plaintiff

the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

(*b*) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(*c*) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(*d*) could have been recovered by an application under section 15.

Contracting out.

23. Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

Powers to be exercised by Governor General in Council.

24. The powers by this Act conferred upon the Local Government shall be exercised by the Governor General in Council in any case in which the exercise of such powers affects any persons employed by a railway administration.

Display by notice of abstracts of the Act.

25. The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory, as may be prescribed.

Rule-making power.

26. (*1*) The Governor General in Council may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.

(*2*) The Local Government may, subject to the control of the Governor General in Council, by notification in the local official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(*3*) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (*2*) may—

(*a*) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the form thereof;

(*b*) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;

(*c*) provide for the regular inspection of the weights, measures and weighing machines used by employers

employers in checking or ascertaining the wages of persons employed by them ;

(*d*) prescribe the manner of giving notice of the days on which wages will be paid ;

(*e*) prescribe the authority competent to approve under sub-section (*1*) of section 8 acts and omissions in respect of which fines may be imposed ;

(*f*) prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10 ;

(*g*) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (*2*) of section 9 ;

(*h*) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended :

(*i*) prescribe the extent to which advances may be made and the instalments by which they may be required with reference to clause (*b*) of section *12* ;

(*j*) regulate the scales of costs which may be allowed in proceedings under this Act ;

(*k*) prescribe the amount of court-fees payable in respect of any proceedings under this Act ; and

(*l*) prescribe the abstracts to be contained in the notices required by section 25.

(*4*) In making any rule under this section the Local Government may provide that a contravention of the ule shall be punishable with fine which may extend to two hundred rupees.

(*5*) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (*3*) of section 23 of the General Clauses Act, 1897, shall not be less than three months from the date on which the draft of the proposed rules was published. X of 1897.

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