

QUESTIONS FOR JUDICIAL OFFICERS' WORKSHOP
TO BE HELD ON 22.03.2015

: Subject :

(a) Applicability of Industrial Employment
(Standing Orders) Act.

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- Que-1] What is the object of the Industrial Employment (Standing Orders) Act, 1946?
- Que-2] Under what circumstances provisions of Model Standing Orders are applicable to the Industrial Establishment?
- Que-3] Whether Industrial Establishment of the Government Departments are exempted from the provisions of the Industrial Employment (Standing Orders) Act, 1946?
- Que-4] Which Industrial Establishment cannot be governed under the Industrial Employment (Standing Orders) Act, 1946?
- Que-5] Whether Certified Standing Orders will prevail over Model Standing Orders if it is contrary to the Model Standing Orders?
- Que-6] When settlement between employer and employee is inconsistent with provisions of the Model Standing Orders whether it will be binding on them?
- Que-7] In absence of amendment to the Certified Standing Orders whether age of retirement of workman can be settled as per agreement, settlement, award with the employer or Rule 27 of Bombay Industrial Employment

Standing Rules will prevail?

- Que-8] Whether it is mandatory to get exemption from applicability of Model Standing Orders to the Industrial Establishment to apply Certified Standing Orders or Rules framed by the Industrial Establishment?
- Que-9] What is the scope and power of Certifying Officer under Section 5 of the Industrial Employment (Standing Orders) Act, 1946?
- Que-10] Whether the Industrial Employment (Standing Orders) Act, 1946 cease to apply to Industrial Establishment, if number of employees in Establishment falls below required strength?
- Que-11] Whether service conditions of employees of the Zilla Parishad, Panchayat Samiti, Municipal Council and Municipal Corporation are governed under the provisions of Industrial Employment (Standing Orders) Act, 1946?
- Que-12] When the Establishment is not covered under Industrial Employment (Standing Orders) Act, 1946 whether departmental enquiry initiated against employee by employer under service rules is illegal?
- Que-13] On which date the provisions of Certified Standing Orders will come into force/operation in absence of specific date of it's application?
- Que-14] Whether the Industrial Employment (Standing Orders) Act, 1946 is applicable to the Educational Institution?
- Que-15] Whether any agreement of employment can said to be valid if it is conflict with the provisions of Certified Standing Orders under the Industrial Employment

(Standing Orders) Act, 1946?

- Que-16] What is the procedure for modification of Model Standing Orders?
- Que-17] Whether the terms of Standing Orders are binding on employer and workman?
- Que-18] Whether there can be two sets of Model Standing Orders one for old workmen and one for new workmen?
- Que-19] Whether workman can be penalised for the misconduct committed by him which were not found in the Standing Orders?
- Que-20] Whether employee can be asked to sign muster at the gate of Factory as per Section 10-A of Standing Orders during suspension period in during pendency of enquiry?
- Que-21] If a Government Establishment itself notifies its Service Rules, would it be sufficient for the purpose of Section 13-B of the Model Standing Orders of Industrial Employment (Standing Orders) Act, 1946?
- Que-22] Can a workman file an appeal against the order of the Certifying Officer?
- Que-23] Whether the provisions of any special law would prevail over the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946?
- Que-24] When the Standing Orders provided for probation period of three months can Company appoint workman on probation for six months?

- Que-25] Whether order rejecting application for modifying Standing Orders is appealable?
- Que-26] Who can file application for modification of the Standing Orders?
- Que-27] Whether probationer impliedly can confirm on the expiry of initial or extended period of probation?
- Que-28] When the employee is dismissed from service as per Civil Services Rules without following Model Standing Orders whether such dismissal is illegal?
- Que-29] Whether the matter not specified in the Schedule can be covered in the Standing Orders?

: Subject :

- (b) Amended provisions of the Employees Compensation Act, 1923. Different aspects related to The Employees' Compensation Act, 1923 Practice, procedure, interpretation of various provisions of The Employees' Compensation Act, 1923.**

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- Que-1] Whether the employer can directly pay amount of compensation to legal heirs of deceased workman?
- Que-2] Whether person suffering from heart-attack dies during the course of employment is entitled for compensation?
- Que-3] Whether the Commissioner can award compensation for non schedule injury?

- Que-4] When the accident occurred on 10.5.1993 and Commissioner awarded compensation on the basis of amendment which came into force on 15.9.1995 i. e. after accident, whether workman can claim compensation as per amended provisions?
- Que-5] What is principle of “added peril” and whether employee suffering from disability during the course of employment is entitled for compensation if the principle of “added peril” is involved?
- Que-6] What is mean by “contracting out” under the Employee's Compensation Act, 1923?
- Que-7] Whether interim award can be granted to the Petitioner on “no fault liability” basis?
- Que-8] Whether it is mandatory to issue publication while deciding application for distribution?
- Que-9] Whether any limitation is provided for filing claim for compensation under the Employee's Compensation Act, 1923?
- Que-10] What factors are required to be considered while determining compensation under Employee's Compensation Act, 1923?
- Que-11] Whether re-marriage of widow after accident of husband arising out of and in the course of employment disentitle her from claiming compensation under Employee's Compensation Act, 1923?
- Que-12] What is the procedure/test to be applied for determination of percentage of permanent disability and loss of earning capacity?

- Que-13] Whether the provisions of Civil Procedure Code and Evidence Act are applicable to the proceedings before the Commissioner under Employee's Compensation Act, 1923?
- Que-14] Whether the claimant is eligible to claim compensation under the Motor Vehicles Act as well as Employee's Compensation Act, 1923?
- Que-15] What is the meaning of expression "arising out of and in the course of employment"?
- Que-16] Whether an apprentice as defined by Apprentice Act is entitled to compensation under Employee's Compensation Act, 1923?
- Que-17] When relationship of employer and employee is denied, Whether a person can claim compensation under Employee's Compensation Act, 1923?
- Que-18] Whether it is mandatory to examine Medical Officer to prove disability certificate?
- Que-19] Whether the agreement relinquishing right of compensation between the employer and employee is void?
- Que-20] Whether a person engaged for only one day as a driver can be a workman within the meaning of Section 2 of Employee's Compensation Act, 1923?
- Que-21] Whether it is mandatory to give show cause notice to employer before imposing penalty on him?

- Que-22] Whether injury sustained is one of the injuries specified in Schedule I, can Commissioner make its own assessment of loss of earning capacity and award compensation which is not in conformity with the Schedule?
- Que-23] If sole dependent of deceased employee died during the course of claim who will be entitled to compensation under Employee's Compensation Act, 1923?
- Que-24] What is the principle of Notional Extension under Employee's Compensation Act, 1923?
- Que-25] Whether second wife of deceased workman is entitled for share in the compensation?
- Que-26] What are the restrictions to award compensation and obligations on the part of Commissioner under the Employee's Compensation Act, 1923?
- Que-27] Who is liable to pay compensation to an employee if he is injured while employed by the contractor?
- Que-28] Whether the Insurance Company is liable to pay the amount of penalty to the claimant in absence of condition in the contract of insurance?
- Que-29] The Establishment does not register either under the Shop and Establishment Act or under the Factories Act, whether employee is liable to pay

compensation to its employee who meet with an
accident?

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ANSWERS FOR DISCUSSION IN THE WORKSHOP TO BE HELD ON
22.03.2015

: Subject (a):

(a) Applicability of Industrial Employment
(Standing Orders) Act.

Ans. to Que. No.1 : Prior to passing of the Act the conditions of employment obtaining in several Industrial Establishment were governed by the contracts between employer and their employees. Sometimes the conditions were reduced to writing but in many cases they were not reduced in writing and were governed by oral agreements. In many cases, the conditions of service were not well defined and there was ambiguity or doubt in regard to their nature and scope. Therefore, Legislature took the view of in regard to Industrial Establishment to which the Act apply the conditions of employment subject to which industry labour was employed; should be well defined and should be precisely known to both the parties. With this object the Act made provisions for making Standing Orders which on being certified, prescribed the conditions of service between the Industrial Establishment in question and their employees so that what used to govern by contract, would now be governed by the Statutory Standing Orders in so far as matters dealt with by the Statutory Standing Orders are concerned. The object of the Act is to have uniform Standing Orders providing for the matters enumerated in the Schedule to the Act. It was not enacted that there should be different conditions of service or those are employed before and those are employed after the Standing Orders

came into force and finally bind all those employees.

Ans. to Que. No.2 : The provisions of Model Standing Orders are applicable to the Industrial Establishment where 100 employees are employed by the employer in the establishment on any day of the preceding twelve months. The Government of Maharashtra by Notification dated 15th June, 1982 had made applicable the provisions of Industrial Employment (Standing Orders) Act, 1946 to the Industrial Establishment wherein 50 or more employees are employed on any day of preceding twelve months.

Ans. to Que. No.3 : No. The industrial establishment of Government Department are not exempted from the provisions of Industrial Employment (Standing Orders) Act, 1946 unless the Government had issued notification as per provisions of Section 13-B of the said Act.

Ans. to Que. No.4 : Following Industrial Establishment cannot be governed under the Act.

- 1] An industry to which the provisions of the Bombay Industrial Relations Act are applicable.
- 2] Where the number of employees is less than 100 in Maharashtra 50.
- 3] Any Industrial Establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 apply.
- 4] To an industrial establishment where the workman employed to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians

in Defence Services (Classification, Control and Appeal) Rules, or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette.

Ans. to Que. No.5 : No. If the Certified Standing Orders are contrary to the Model Standing Orders they will not prevail over the Model Standing Orders.

Ans. to Que. No.6 : The Settlement between employer and employee if it is inconsistent with the provisions of Model Standing Orders it will not be binding on them.

Ref. : Engineering Workers' Association vs. J. D. Jamdar, Member Industrial Court & Ors. 2004 III CLR 315 (Bom. H. C.)

Ans. to Que. No.7 : In absence of amendment to the Certified Standing Orders the age of retirement of workman cannot be settled as per agreement, settlement, award with the employer. As per Model Standing Order 27 employee is liable to be retired after completion of age of 60 years.

Ref. : Engineering Workers' Association vs. J. D. Jamdar, Member Industrial Court & Ors. 2004 III CLR 315 (Bom. H. C.)

Ans. to Que. No.8 : Yes. As per provisions of Section 13-B & 14 of the Industrial Employment (Standing Orders) Act, 1946 it is mandatory

to get exemption from applicability of Model Standing Orders to the Industrial Establishment to apply certified Standing Orders or Rules framed by the Industrial Establishment.

Ans. to Que. No.9 : Every Certifying Officer shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling discovery and production of documents.

When the employer submits draft Standing Orders for certification the Union of the employees should be given an opportunity of hearing before certifying the Standing Orders. The Certifying Officer has to forward copies of the Draft Standing Orders to the Unions. The Certifying Officer certify the provide amendment after making any notification therein as required and thereafter sent copies of certified amendment thereof.

Ref. : Bharat Petroleum Corporation Ltd. vs. Maharashtra General Kamgar Union and Ors., 1999 I CLR 518 (S.C.).

Ans. to Que. No.10 : Once the Industrial Employment (Standing Orders) Act, 1946 applied to an Industrial Establishment it does not cease to apply on account of fall in the number of employees in the Establishment below the required strength of employees.

Ref. : Balkrishna Pillai & Ors. vs. Anant Engineering Works Pvt. Ltd., & Anr., 1975 II LLJ 391 (Bom. H. C.).

Ans. to Que. No.11 : The service conditions of the employees working in Zilla Parishad, Panchayat Samiti, Municipal Council and Municipal Corporation are governed under the provisions of Industrial Employment (Standing Orders) Act, 1946 as the provisions of this Act are applicable to them. Unless Notification issued by the Government as per Section 13-B of the Employment (Standing Orders) Act, 1946 the provisions of Model Standing Orders will prevail over the service rules of these establishments.

Ref. : i] **Pyarelal vs. The Municipal Council, Ramtek ,1992 I CLR 327(Bom.H.C.).**

ii] **Kishor J. Echperi vs. M. R. Bhope, 1987 II LLN 263(Bom.H.C.)**

iii] **Municipal Corporation of Greater Bombay vs. Laxman Saideo Timmanyapyati & Ors., 1991 I CLR 653(Bom.H.C.).**

Ans. to Que. No.12 : When the industrial establishment is not covered under the Industrial Employment (Standing Orders) Act, 1946 the departmental enquiry initiated against employee by employer under Service Rules is not illegal.

Ans. to Que. No.13 : As per Section 7 of the Industrial Employment (Standing Orders) Act, 1946, the provisions of Certified Standing Orders will come into force on the expiry of 30 days from the date on which authenticated copies thereof sent under Sub-section 3 of Section 5 or where an appeal is preferred on the expiry of seven days from the date on which copies of the order of the Appellate Authority are sent under Sub-section 2 of Section 6 when there is no specific date is mentioned for application of the provisions of Certified Standing Orders.

Ans. to Que. No.14 : The Industrial Employment (Standing Orders) Act, 1946 is not applicable to the Educational Institution.

Ref. : Hindi Sahitya Sammelan Prayag vs. Presiding Officer, Labour Court, Allahabad 2005 (104) FLR 834 (Allahabad H.C.).

Ans. to Que. No.15 : If the employer unilaterally or by an agreement with the workman started giving better terms of employment than those prescribed Certified Standing Orders, an agreement contrary to the provisions of Standing Orders is permissible without following the procedure prescribed or modification of the Standing Orders under Section 10 of the Act or without executing award under the Industrial Disputes Act, 1947.

Ans. to Que. No.16 : The Certified Standing Orders shall not except an agreement between employer and workmen or where Trade Union or other representative body of the workmen is in existence liable to modification until the expiry of six months from the date on which the Standing Orders or amendments or the last modification came into operation. Where Model Standing Orders have not been amended the Model Standing Orders shall not be liable to such modification until expiry of one year from the date on which they were applied under Section 2-A. An employer or workmen or Trade Union or representative body or prescribed representatives of workmen desiring to modify the Standing Orders or the Model Standing Orders together with the amendments finally certified under the Act or the Model Standing

Orders supplied under Section 2-A as the case may be are required to make an application to the Certifying Officer in that behalf and such application shall be accompanied by five copies of the Standing Orders or the Model Standing Orders together with all amendments in which the modification proposed to be made and where such modification are proposed to be made by an agreement between employer and employee/workman. The certified copy of agreement shall be filed alongwith the application.

Ans. to Que. No.17 : Yes. The terms of Standing Orders which are conditions of service of the workman are binding on the employer and workman.

Ans. to Que. No.18 : No. There can be no two sets of Model Standing Orders one for old workman and one for new workman. Model Standing Orders are binding to all employees working in the establishment either they are old or new workmen employed by the employer in the establishment.

Ref. : **Agra Electric Supply Co. Ltd. vs. Alladin and Ors., 1969 II LLJ 540 (SC).**

Ans. to Que. No.19 : The workman cannot be penalised for the misconduct committed by him which are not found in the Standing Orders.

Ref. : **Glaxo Laboratories (India) Ltd. vs. Labour Court Meerut & Ors., 1984 I LLJ 16 (S.C.).**

Ans. to Que. No.20 : No. The Standing Orders do not prescribe the condition asking the employee to sign the muster at the gate of factory during suspension period in pending enquiry. Contract of employment is suspended and it does not suspend the relationship between the parties.

Ans. to Que. No.21 : As required under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 the notification is required to be issued by the appropriate Government. A Notification issued by Government itself cannot be regarded as having been issued under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946.

Ref. : Air India vs. Union of India, 1991 (78) FJR 137.

Ans. to Que. No.22 : Yes. Any employer, workman, trade Union or prescribed representative of the workman aggrieved by the order of Certifying Officer under Sub-section 2 of Section 5 can make an appeal to the Appellate Authority.

Ans. to Que. No.23 : In the case of Goteti Umamaheshwara Prasad & Ors. vs. A. P. State Electricity Board, 1974 II LLJ 419 the Hon'ble High Court of Andhra Pradesh observed that the Industrial Employment (Standing Orders) Act, 1946 and the Model Standing Orders framed thereunder do not override the provisions of Electricity Supply Act. The latter is a special Act and provides for making rules and regulations

relating to employment of personnel. That being so, the Industrial Employment (Standing Orders) Act being a general Act, will not apply to the respondent Board.

Ans. to Que. No.24 : The Standing Orders are binding on the employer as well as the employees. The agreement providing for six months probation is in contravention of Standing Orders which prescribed the provision of three months to become permanent employee of the establishment. The Company cannot impose special agreement on the presumption that employee has voluntarily accepted the appointment for six months.

Ref. : i) **The Western India Coal Match Company Ltd. vs. Their Workmen, 1973 AIR (S.C.) 2656 (V 60 C 475).**
 ii) **The U. P. Co-operative Spinning Mills Ltd., Etawah vs. State of U. P., & Ors. 1978 LIC 1137 (Allahabad H. C).**

Ans. to Que. No.25 : The appeal can be made as per Rule 13 of Bombay Industrial Employment (Standing Orders) Rules, 1959 against the order of rejecting application for modifying standing orders.

Ans. to Que. No.26 : Yes. As per Rule 5 of Bombay Industrial Employment (Standing Orders) Rules, 1959 an employer or workmen or trade Union or prescribed representative body of workmen may apply to the Certifying Officer to have the Standing Orders modified.

Ans. to Que. No.27 : Confirmation if not given at the end of

probation period the probationer remains a probationer.

Ref. : Kedarnath Bahal vs. State of Panjab, 1972 S. C. 873 = 1972 LIC 433.

Ans. to Que. No.28 : Yes. When the establishment is covered under the Industrial Employment (Standing Orders Act, 1946 and the employee is dismissed from service as per Civil Service Rules the Service Rules cannot supersede the Standing Orders. The dismissal is illegal.

Ans. to Que. No.29 : Industrial Employment (Standing Orders Act, 1946 does not prohibit inclusion of matter not mentioned in the Act. The Act requires is minimum to be provided for any Standing Order to be framed under the said Act and if such a minimum has been provided for and if found to be reasonable then Certifying Officer is bound to certify the same.

: Subject :

- (b) **Amended provisions of the Employees Compensation Act, 1923. Different aspects related to The Employees' Compensation Act, 1923 Practice, procedure, interpretation of various provisions of The Employees' Compensation Act, 1923.**

Ans. to Que. No.1 : No. Employer cannot directly pay amount of compensation to the legal heirs of deceased workman because as per

Section 8 (1) “No payment of compensation in respect of an [employee] whose injury has resulted in death and no payment of a lumpsum as compensation to a woman or person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation”. Hence, employer cannot directly pay amount of compensation to the legal heirs of deceased workman unless he deposit the same with the Commissioner.

Ans. to Que. No.2 : It cannot be said that whenever a person dies at the work spot, he died due to the stress and strain of the working conditions. If the workman did not die on account of any injury sustained by him “in any accident arising out of and in the course of his employment”, no award of compensation can be made. It has to be established that there was some casual connection between the death of the workman and his employment. If the employment is a contributory cause or has accelerated the death, then only the employer would be liable to pay compensation.

Ref. : i] **Jyothi Ademma vs. Plant Engineer, Nellore & Anr.,**

2006 III CLR 438 (S.C.).

ii] **Param Pal Singh [MST] through his father vs.**

National Insurance Co. & Ors., 2013 I CLR 1. (S.C.)

Ans. to Que. No.3 : Yes. In view of Section 4 Sub-section 1 (c) (2) Commissioner has power to grant compensation in a case of non-schedule injury assessed by the qualified medical practitioner.

Ans. to Que. No.4 : No. The employer becomes liable to pay compensation as soon as personal injury is caused. Thus relevant date of determination of rate of compensation is the date of accident and not the date of adjudication of claim.

Ref. : **Kerala State Electricity board & Anr. vs. Valsala K. & Anr., 1999 (83) FLR 508= 1999 (4) LLN 1183(S.C.)**

Ans. to Que. No.5 : According to the doctrine of added peril if a workman while performing his duty does something which he is not required to do and which involves extra danger, the employer would not be liable to pay compensation if any injury is caused to him. For example, where a fitter, to take out some scrap, unnecessarily went under a machine which when started caused a permanent injury to his hand, it was held that the injury arose out of an added peril and the employer was not liable to pay compensation to the fitter.

Ref. : i] **Devidayal Ralyaram vs. Secretary of State, AIR 1937 Sind. 288.**

ii] **Mackinnon Mackenzie & Co. Pvt. Ltd. vs. Ibrahim Mahommad Issak, 1970 Lab. I. C. 1413(Vol. 3) = AIR 1970 S. C. 1906 (V 57 C 406).**

Ans. to Que. No.6 : Under Section 17 of the Act a employee is prohibited from contracting out of the benefits of the Act, i. e. from giving up his right to receive compensation from his employer under the Act. Any contract or agreement made by him relinquishing such right is null and void insofar as it removes or reduces the liability of any person to pay compensation under the Act.

Ans. to Que. No.7 : Yes, only if in the accident the vehicle is involved then Court can grant interim compensation because Chapter X Liability without fault in certain cases is applicable to the Employees Compensation Act, 1923 as per Section 143 of the Motor Vehicles Act.

Ref. : **Oriental Insurance vs. Lalita, 1999 ACJ 1447**

Ans. to Que. No.8 : No it is not mandatory to issue publication while deciding application for distribution it is a discretionary power of Court to issue publication if he thinks necessary as per Section 8 (4) of the Employee's Compensation Act, 1923.

Ans. to Que. No.9 : Yes. In view of Section 10 of the E. C. Act the limitation for filing claim is of two years and thereafter employee/dependent can file application for compensation alongwith application for condonation of delay.

Ans. to Que. No.10 : For determination of compensation amount under the Employees Compensation Act, 1923 it is necessary to see (i) whether the accident took place during the course of employment and out of employment while performing his duties; (ii) salary; (iii) age; (iv) relationship between employer and employee.

Ans. to Que. No.11 : No. As per the ratio laid down by **Hon'ble Kerala High Court in Veerappan and Anr. vs. Muthamma Verappan, 1995 LIC 484** though the widow remarried after accident of her

husband she never lost the status of dependent.

Ans. to Que. No.12 : Permanent disability is of two types. One comes under the Schedule injury and another is non-schedule injury. In the schedule injury which is given in Schedule 1 the description of injury and percentage of loss of earning capacity is given. If permanent disability caused to the employee comes under non-schedule injury then Court can take assistance of qualified Medical Practitioner and with the help of qualified Medical Practitioner Court can assess the loss of earning capacity of employee.

Ans. to Que. No.13 : The provisions of Civil Procedure Code and Evidence Act are not applicable to the cases of Employee's Compensation Act, 1923 as it is a social welfare legislation. The Hon'ble Apex Court in the case of **Om Prakash Batish vs. Ranjit @ Ranbir, 1998 II CLR 887** has held that, "Commissioner can lay down his own procedure and he can rely on the documents produced before him. Civil Procedure Code and Evidence Act are not applicable because it is summary trial.

Ans. to Que. No.14 : No. The claimant can choose only one forum either the Employee's Compensation Act or under the Motor Vehicles Act. As per Section 167 of Motor Vehicles Act option regarding claims for compensation given by Court he can choose any forum for filing Claim Petition but not under both.

Ans. to Que. No.15 : The words “arising out of duty or employment” are understood to mean “during the course of the employment or service”. The words “in the course of employment” mean “in the course of work which the workman is employed to do and which is incidental to it. The words suggest that there must be a causal relationship between the accident and the employment.

Ref. : **N. A. Chauhan vs. N. K. Shah, 1991 I CLR 361.**

Ans. to Que. No.16 : Section 16 of the Apprentices Act, 1961 entitles an apprentice to claim compensation under the Employees Compensation Act for such injury .

Ref. : **Divisional Controller, GSRTC vs. Ashok Kumar Keshavlal Pareskh, 1999 I CLR 586 (Guj.H.C.)**

Ans. to Que. No.17 : Yes. Though the employer denied the relationship but the employee is entitled for compensation if he proves that there is a relationship of the employer and employee.

Ans. to Que. No.18 : No. It is not mandatory to examine the Medical Officer in the Court to prove disability certificate. In the case of **D. Venu vs. Senen Fernandez, 1995 II CLR 354 (Kerala H. C. Division Bench)** the Hon'ble Kerala High Court has held that, “there is no necessity to examine the Medical Officer in the Court because provisions of Evidence Act are not applicable to proceeding before Commissioner.

Ans. to Que. No.19 : Yes. As per Section 17 any agreement

where employee relinquishes his right of compensation, the agreement is null and void.

Ref. : i] Roshan Deen vs. Priti Lal 2001 (99) FJR 653 (SC)

ii] Naseera Nazir vs. Executive Engineer, 1999 III

LLJ 1122

Ans. to Que. No.20 : He was a workman under the Act. The owner had a definite control over the person. The person was driving the vehicle on the direction of the owner of the vehicle. His engagement for one day only will not throw him out of the definition of workman under Section 2 (n) of the Act.

Ref. : New India Assurance Co. Ltd. vs. Mohan Kumar

Sahoo, 2004 II CLR 118 (Ori. H. C.)

Ans. to Que. No.21 : No. If the Court notice is already served to the non-applicant and non-applicant having knowledge about the pendency of the case before Commissioner then it is not mandatory to give separate show cause notice to the employer.

Ref. : Ramlu Sagar vs. Rambhau, 2006 LIC 1028 = 2006

(111) FLR 648.

Ans. to Que. No.22 : Injuries specified in Schedule-I are called Scheduled injuries, specified in Part-1 of the Schedule are deemed to result in permanent total disablement. They are supposed to cause hundred per cent loss of earning capacity. Injuries specified in Part-II are deemed to result in permanent partial disablement. They are

supposed to cause such percentage of loss of earning power as is specified against them. These provisions are called as statutory mandate. The Commissioner has to follow the mandate and award compensation in conformity with the provisions of the Schedule read with Section 4 and definition of total disablement and partial disablement.

Ans. to Que. No.23 : If the sole dependent of deceased employee died during the course of claim then legal heirs of dependent are entitled for grant of compensation.

Ref. : **Gopal Synthetics vs. Workmen's Compensation Commissioner, Kota & Anr., 1994 II CLR 874 (Rajasthan H.C.).**

Ans. to Que. No.24 : According to the doctrine of notional extension of employment an employer is liable to pay compensation for personal injury caused to a workman by accident occurring beyond his working hours and beyond his work place if there is nexus between the time and place of the accident and the employment of the workman.

Ref. : **Chairman, Cochin Dock Labour Board v. P. J. George & Anr., 1976 II LLJ 65 (Kerala H. C.).**

Ans. to Que. No.25 : No. As per Hindu Marriage Act, second wife is not permissible to the Hindu person but child from the said lady are entitled for compensation.

Ans. to Que. No.26 : Commissioner is under obligations to see :

- i] that the accident must occurred during the course of and out of employment; and
- ii] there should exists employer and employee relationship.

Ans. to Que. No.27 : When an employee is injured while employed by a contractor, the principal employer is liable to pay compensation to him, but he is entitled to be identified by the contractor. The employee is, however, free to recover compensation either from the principal employer or from the contractor.

Ans. to Que. No.28 : Penalty is to be imposed on employer because of his unjustified delay and due to his own personal fault, therefore, Insurance Company is not liable to penalty in absence of condition in the contractor of Insurance.

Ans. to Que. No.29 : The Employer should pay compensation to the injured person as the establishment though not registered as a factory is carrying on with certain manufacturing activity as a welding establishment. The establishment is covered under Schedule II of the Employee's Compensation Act which reads that the person employed in any premises or with precincts whereof manufacturing process as defined in clause (k) of Sec.-2 of the Factories Act or in any kind of the work whatsoever incidental to or connected with any such manufacturing process or with the article made (whether or not employed in any such work is within such premises or precincts) and steam, water or other mechanical power or electrical power is used. Since the worker has been doing welding work which is part of the

manufacturing process, the worker is naturally covered. The establishment need not register itself either as a Shop or as a Factory.

**Ref. : Sunil Industries vs. Ram Chander Pradhan and Anr.
2001 I CLR 180 (S.C.).**

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