

Standing order in Labour Law

This article is written by [Kruti Brahmhatt](#). This article deals with the meaning, importance and implementation of the standing order in labour law. This article also provides the meaning and functions of certifying officers and the process of getting a certified standing order.

Introduction

For many years, the concept of bonded labourers was prevalent in India. The exploitation of workers or employees was not a new problem in India. The employees had to face many problems such as unnecessary salary deductions, non-payment of wages, and lack of uniform rules for recruitment or dismissals. The employees regularly had to face such ill-treatment and misbehaviour.

The [Industrial Employment \(Standing Orders\) Act, 1946](#) (hereinafter referred to as “Act”) was brought to encounter the problems above-mentioned. The Act makes it necessary for the employer in the industrial establishment to define employment terms and conditions well in advance. It establishes a uniform set of rules and regulations for the potential agreements to be faced regularly. In furtherance of this Act, the [Industrial Employment \(Standing Orders\) Central Rules, 1946](#) (hereinafter referred to as “standing order Rules”) was also formulated by the Indian Government to provide model standing order and additional rules related to standing order.

What is a standing order

A standing order in the Indian labour laws provides clear rules and regulations in terms of the employment. It makes the communication between the employer and employee crystal clear. It covers all the subjects of employment whether it is regarding leaves, payment of wages or termination. Under [Section 2\(g\)](#) of the Industrial Employment (Standing Orders) Act, 1946 the standing orders are interpreted as rules relating to matters set out in the Schedule .

In the case of [Union Of India vs K.Suri Babu on 29 November \(2023\)](#), the Supreme Court held that the standing order being the special laws overruled all other laws. The service conditions are regulated by the Standing Order as far as disciplinary actions are concerned.

Nature of standing order in Labour Law

The nature of the Standing Order has been a debatable topic, with several different arguments and conflicting judgments. It is difficult to decide the category of the standing order. The debate is whether the standing order is “award” or is “contract”. The nature of standing order can be claimed as under:

Statutory nature

The standing orders are binding on the workmen, employees, trade unions and the employer of the industrial establishment. The entire process of certifying a standing order is rule-making process. The standing orders operate more as a statutory nature.

In the case of [*Bagalkot Cement Co. Ltd vs R. K. Pathan & Ors \(1962\)*](#), the Supreme Court of India has held that standing order deals with the terms of employment and making the terms precise and definite. These standing orders when certified become statutory in nature. This was followed in many subsequent judgments.

Contractual nature

The standing orders are implied contracts between the employer and the workmen. They are bound to follow them when certified. However, the standing orders specify the rights and liabilities of the employer and employees, raising arguments over its contractual nature.

In the case of [*The Buckingham And Carnatic Co. vs Venkatiah \(1963\)*](#), the Supreme Court held that the certified standing orders are binding on the employer and employees as private contracts. After the certification of the standing order, they must be followed as terms and conditions of the contract.

Apart from this, there have been arguments in favour of terming standing order as “awards”. However, describing standing orders as statutory, contractual or an award is difficult in itself. The nature of standing order may be interpreted depending upon the matter in dispute.

Matter to be provided in standing order

The Schedule of the Act provides for matters to be set out in standing order for all the industrial establishments. The Schedule includes matters such as the classification of workmen's, tickets, working hours, terms for leaves, etc. This makes uniform terms of employment. However, it should be noted that matters for standing order will not be limited to those given in Schedule, rather any additional matter can be prescribed.

The matters mentioned in the Schedule are as follows:

Classification of workmen

The standing order of an industrial establishment must specify whether the workmen are temporary workers or permanent workers. Further, it must specify the nature i.e. probation, apprentice or *badlis* workers. This particular specification helps in determining the rules and wages applicable to those categorised workmen.

Manner of intimation

The changes in the wages, working period or hours, any kind of new rules applicable or any change in pay rates how the intimation must be specified in standing orders. For example: the circular would be stuck at the general assembly point where it comes to employees'

notice easily, or notice can be provided individually, these are certain ways that can be used for intimation.

Working shifts, attendance and leave provisions

The standing orders must also include the rules regarding the working shifts, and latecomers, set procedures for entering the workplace and applying for leaves. Conditions, in regard to the same, must also be prescribed.

Rights and liabilities

In case any industrial unit or section has been closed or is temporarily closed or stopped in use, then in such a case the rights and liability of the workers and employer must be mentioned in the standing order.

Termination, suspension, or dismissal

The standing order must mention the acts or omission which is misconduct resulting in dismissal or suspension; the notice by the employer for these matters must be mentioned in standing order.

Redressal mechanism

In case of any kind of unfair treatment or wrongful act by the employer to the workmen, the redressal mechanisms for the benefit of the workers must be specified in the standing orders.

Model standing order in Labour Law

Model standing orders are the guidelines provided by the government, which may be used by the employers for drafting standing orders for their respective industrial establishments. The provisions regarding model standing order is provided in Rule 3 of the Industrial Employment (standing order) Central Rules, 1946 -

- Rule 3(1) of the Industrial Employment (standing order) Central Rules, 1946 mentions that Schedule provides the Model standing Order for all the industrial establishments, other than the industrial establishments relating to the coal mines.
- Rule 3(2) of the Industrial Employment (Standing Order) Central Rules, 1946 specifies that Model Standing orders for the industrial establishments relating to the coal mines are provided in Schedule 1A of the Industrial Employment (Standing Order) Central Rules, 1946.

To know more about model standing order, [click here](#).

Model standing order under Schedule of the rules

The Schedule of the Industrial Employment (Standing Orders) Central Rules, 1946 provides for the model standing orders for the industrial establishments, other than the industrial establishments relating to the coal mines. It covers the following matters:

- It specifies the classification of workmen.
- The Schedule provides the rules for publication of notices regarding the wages, shifts, working days, holidays, and wage rates.
- The Schedule specifies the provisions relating to leaves, casual leaves, payment of wages and for stoppage of wages.
- The rules for termination of employment are prescribed in the Schedule.
- The Schedule provides the fines for the misconducts; the misconducts which are specified in the Standing orders.
- The Schedule prescribes the liabilities of the employer in case the employer does not follow the provisions mentioned in the Industrial Employment (Standing Orders) Act, 1946.

Additional matters set out for coal mines under Schedule 1A of the rules

Rule 2A of the Industrial Employment (Standing Order) Central Rules, 1946 prescribes certain matters which must be specified in the standing orders of industrial establishments relating to the coal mines. The matters given in Schedule 1A of the rules will apply to coal mines. These matters are as follows:

- Medical aids to be provided in case of any accidents.
- The travel facilities via railway.
- Methods of filling vacancies and matters regarding transfers.
- Liability of the manager in the coal mine.
- Provisions for service certificates.
- Matters regarding exhibition and supply of the Standing order.

Additional matters for all the industrial establishments under Schedule 1B of the rules

There are certain matters which must be specified in the standing orders of all the industrial establishments regardless of whether they are related to coal mines or not. Under Schedule

1B of the Industrial employment (Standing Order) Central Rules, 1946 such matters have been provided which are as follows:

- Service records which includes the service cards, certificates, records of the residential address and age of the workmen
- Issuing letter of confirmation
- Specifying age of retirement
- Provisions regarding the transfer of the workman
- Medical aid in accident and medical examination
- Employee's secrecy and exclusive service towards the industrial establishment.

The Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 received its assent on 23rd April 1946. The object of the act was to have uniform standing orders addressing various matters in the course of employment.

Applicability of the Act

The Industrial Employment (Standing Order) Act, 1946 applies to the whole of India under [Section 1\(2\)](#) of the Act. As per [Section 1\(3\)](#) of the Act, It applies to every industrial establishment wherein **one hundred** or more workmen are employed or were employed on any day of the preceding 12 months. In addition to this, the appropriate government may apply this Act to such establishments who have less than a hundred workmen by giving notice (for not less than two months) of its intention to apply the Act.

In the case of [New Delhi Municipal Corporation v. Mohd. Shamim, \(2003\)](#) the department raised an objection that Mohd. Shamim is working in the electricity department, which does not come under the purview of the Industrial Employment (Standing Order) Act, 1946. The Delhi High Court has held that, under [Section 2\(e\)](#) of the Act, the industrial establishment may include such employers who generate, transmit and distribute electricity.

When the Act does not apply

There are certain exceptions under the applicability of the Industrial Employment (Standing Order) Act, 1946. Those exceptions are as follows:

- Under [Section 1\(4\)](#) of the Act, it is stated that the industries where [Bombay Industrial Relation Act, 1946](#) applies, on such industries, standing order Act will not be applicable.

- Further, in any such industries where the [Madhya Pradesh Industrial Employment \(Standing Order\) Act, 1961](#) is applicable in such industries the Industrial Employment (Standing Order) Act, 1946 shall not apply. However, if such industries are governed and are controlled by the Central Government then the Industrial Employment (Standing Order) Act, 1946 becomes applicable.
- [Section 13B](#) of the Act states that the Act does not apply to any industrial establishment and workmen employed in those industries if following Rules applicable to them:
 - ❖ The Fundamental and Supplementary Rules;
 - ❖ Civil Services (Classification, Control, and Appeal) Rules;
 - ❖ Civil Services (Temporary Services) Rules;
 - ❖ Revised Leave Rules;
 - ❖ Civil Service Regulations;
 - ❖ Civilians in Defence Service (Classification, Control, and Appeal) Rules; or
 - ❖ Indian Railway Establishment Code; or
 - ❖ Under any other rules and regulations prescribed by the appropriate government in the official gazette.

The objective of the Industrial Employment (Standing Order) Act, 1946

The objectives of the Industrial Employment (Standing Order) Act, of 1946 are as follows:

- It provides the established rules for certifying the standing orders under the Act.
- It recognizes the terms of employment, resulting in fewer chances of exploitation of the workmen.
- It leads to fewer disagreements and disputes between the administration of the industry and the trade unions or workers.
- The rights and obligations of the employer and the workmen are well-defined.
- The act does prevent the unnecessary demands of the workmen and trade unions.
- Most disputes are settled by arbitration or conciliation.

Penalties provided under the Act

The Act provides for the penalties resulting from failure to comply with the provisions given in the Act. Under [Section 13](#) of the Act, the penalties and procedure is specified as under:

Penalties

In case of violation of Section 3 which deals with submission of draft standing order and [Section 10](#) of the Act which specifies the duration and modification of the standing orders, a penalty of above Rupees 5000 will be imposed. In continuance of the offence, a fine of Rupees 200 on an everyday basis till the offence is committed.

If the employer or his establishment does not comply with the certified order under this Act, then he shall be punishable by Rupees 100 and, in continuance of the offence, Rupees 25 on an everyday basis till the offence is committed.

Procedure

It should be noted that no prosecution for an offence under this Act shall be instituted except the prior sanction of the appropriate government. Once a prosecution is initiated with approval of appropriate government, then the offence underlined shall be triable by the competent court. For the offence under this Act, the Metropolitan Magistrate or Judicial Magistrate Second Class can try offences.

Powers of appropriate government

The Industrial Employment (Standing Order) Act, 1946 defines the term "Appropriate Government" under [Section 2\(b\)](#). It states that in respect of the industrial establishments under the control of the Central Government or the railway administration or located at any major port, mine or oil field, the term "Appropriate Government" means the Central Government. In all the other cases, the term "Appropriate Government" means the State government. It is also stated that if any question arises as to whether any industrial establishment is under the control of the Central Government or not, then in such case the government is authorized to decide this question upon giving a reasonable opportunity of hearing to both the parties. The question of whether the Central Government is an Appropriate Government or not may be referred to the government by the employer or the workman or a trade union or other representative body of the workmen, or the government can take up the question on its own motion.

Further, the Appropriate Government is vested with certain powers under this Act which are listed below-

Power to exempt - Section 14

Under [Section 14](#) of the Act, the Appropriate Government can exempt any class of Industrial establishment or any industrial establishment from the application of this Act. For such an exemption, the Appropriate Government has to issue a notification in the official Gazette in that regard. Further, the Appropriate Government can either grant such an exception unconditionally or put some condition upon fulfilment of which, such exemption will be granted.

Power to make rules- Section 15

Under [Section 15](#), rule-making power of the Appropriate Government is being highlighted. It states that the Appropriate Government may make rules on the following subjects to carry out the purpose specified in this Act. Rules made afterward must be notified in the official gazette. Appropriate Government can make Rules to-

- Prescribe additional matters to be set out in the Schedule and procedure for modification of Certified standing order in accordance with the addition made to Schedule of the Act. However, it is a precondition to setting additional matters in Schedule that representatives of both employers and workmen shall be consulted by the Appropriate Government.
- Set out a model standing order to carry out the purpose of this Act;
- Prescribe procedure for certifying officer and appellate authority;
- Prescribe fees which can be changed for registration of certified standing order
- In any other matter which is to be or is prescribed.

Procedure of making rules

Every rule made by the Central Government under this Section shall be laid before each of the House of Parliament while it is in session for a total period of thirty days, which may be in one session or in two or more successive sessions. The proposed rule is to be presented before Parliament soon after it is made. Such a Rule comes into effect when both the House passes the agrees to it and passes it according to established procedure.

Delegation of powers of Appropriate Government - Section 14A

The Appropriate Government under this Act is allowed to delegate its power under [Section 14A](#) of the Act. The government may by notification in the official gazette delegate the powers given to it under this Act or Rule made thereunder. An Appropriate Government, while delegating powers under this Act, might put conditions which shall be followed by the authority in whose favour such delegation is made.

To whom such delegation be made

The authority in whose favour the delegation of powers is to be made is specified in Section 14A(a) and Section 14A(b).

- In cases where the Appropriate Government is the Central Government, the Appropriate Government may delegate its power-
 - To officers or authority which is subordinate to Central government;
 - To officers or authority which is subordinate to State Government or
 - To state government;

- In cases where the State Government is the appropriate government, it may delegate its power to such of the officer or authority which is subordinate to the State Government. The details about the delegation shall be mentioned in the notification in the official gazette.

Who is the certifying officer

According to [Section 2\(c\)](#) of the Industrial Employment (Standing Orders) Act, 1946 the certifying officer means:

- Labour Commissioner or a Regional Labour Commissioner; and
- Any officer appointed by the appropriate government to perform the functions of certifying officer under this Act.

Note- For a certifying officer, who is not a Labour Commissioner or a Regional Labour Commissioner, the appropriate government has to issue a notification in the official Gazette for the appointment of 'any other officer' as certifying officer under this Act.

The certified officer has been vested with important functions and responsibilities in the Act, which will be discussed in the latter part of this heading.

Role of certifying officer

The certifying officer has a role of responsibility under the Industrial Employment (Standing Order) Act, of 1946. There are various functions specifically given to the certifying officer, some of those are:

- As per [Section 3](#) of the Act, the certifying officer has to receive the five copies of draft standing orders proposed by the employer, for adoption in his industrial establishment.
- As per [Section 4](#) of the Act, it shall be the function of the certifying officer to adjudicate upon the fairness or reasonableness of the provisions mentioned in the standing orders. He has to ascertain that the terms of the draft standing order are in conformity with the provisions of the Act.
- As per [Section 5](#) of the Act, the certifying officer shall forward a copy of the draft standing order to the trade unions, once he receives the receipt of the draft standing order submitted by the employer of the industrial establishment. It should be noted that by way of such forwarding, the trade unions are given a chance to raise objections to the draft standing order submitted by the employer. Further, the role of the certifying officer extends to deciding whether to accept the modification presented by trade unions or not. That means, the decision to modify or amend the same is the discretion of the certifying officer.
- The certifying officer has also a role to certify the draft standing orders, with or without modification.

- As per [Section 8](#) of the Act, the registration of the final certified copy shall be done by the certifying officer in the register. Further, he shall furnish an approved copy of Standing Orders to any person applying for it upon payment of the prescribed fee.
- As per [Section 11](#) of the Act, the certifying officer shall receive evidence, administer oaths, enforce the attendance of witnesses, may compel the discovery and production of documents, and have all the powers of the civil court.

In the case of [Muthoot Pappachan Consultancy vs Labour Commissioner \(2007\)](#) the certifying officer following the prescribed procedure under Section 5 of the Industrial Employment (Standing Order) Act, 1946 had certified the Draft Standing Order. No parties had raised any objections and had accepted the Certified Standing Orders. After one and a half years, the certifying officer had issued a show cause notice asking for reasons why the certified standing orders should not be revoked or rescinded by the certifying officer. This was challenged in the High Court of Kerala. The court held that a certifying officer has no such jurisdiction under which he cancels his given order. It means that the originally certified standing order would stand.

In this case, the issue raised was whether the [Central Civil Services \(classifications, control, and appeal\) Rules, 1965 \(CCA rules\)](#) or the certified standing order of the company would prevail. The Supreme Court held that the CCA rules were the general rules and hence herein the special rules i.e. the certified standing order. Would prevail for the disciplinary actions for the workmen.

Submission of draft of standing orders in Labour Law

The draft of Standing order is the proposal made by the employer for adoption of Standing orders in that particular industrial establishment. This draft standing order must include all the matters set out in the 1st Schedule of the Act. Further, if Model standing orders have been prescribed for that industrial establishment, then the draft standing order shall be in conformity with such model, so far as practicable.

Under [Section 3](#) of the Act, the employer must submit such a draft of a standing order within the period of six months from the date on which the Act becomes applicable to an industrial establishment. The employer has the obligation to submit 5 copies of draft standing orders to the certifying officer which is proposed by him for adoption in that particular industrial establishment.

Draft to be accompanied by particulars of the workmen

The draft standing orders submitted to the certifying officer shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment. Among all other particulars, such as name, address etc. it shall also include the name of the trade union to which those employees belong.

The particulars of workmen mean the details regarding the workmen in the industrial establishment. Rule 5 of the Industrial Establishment (standing order) Central Rules, 1946 provides the list of particulars of the workmen they are as follows:

- Details regarding total number of people employed.
- Number of permanent workmen, temporary workmen and casual workmen
- Number of *badlis* or substitutes;
- Number of probationers and no. of apprentices.
- Name of the trade union or trade unions to which the workmen belong. It is not mandatory, that means if the workman does not belong to any trade union then this particular information could be avoided.
- Remarks

The draft standing order must be accompanied with the particulars of workmen prescribed above. It should be noted that for similar industrial establishments, more than one employer of such a similar industry may submit a joint draft of standing orders to the certifying officer.

Conditions for certifying standing orders in Labour Law

Before the certification of a standing order, there are certain conditions, upon fulfilment of which, a certification may be granted to a standing order proposed by an employer of that industrial establishment. The conditions for certifying a standing order are provided under [Section 4](#) of the Act. The two requisite conditions are:

- The matters mentioned in the draft standing order mention provisions related to every matter set out in 1st Schedule. Here, 'every matter' means whatever matter is applicable to that particular industrial establishment.
- The second condition is that the matters in the draft standing order should be in conformity with the provisions mentioned in the Industrial Employment (Standing Order) Act, 1946.

Upon the fulfilment of above-mentioned twin conditions, the draft standing order may be certified by the certifying officer. However, it shall be the duty of the certifying officer to adjudicate upon the fairness or reasonableness of the provisions of any standing orders which are submitted for certification. Prior to 1956, the certifying officer had no such power to check fairness or reasonableness of draft standing order. It was in 1956, Parliament amended the standing order Act to widen the scope of powers given to the certifying officer and gave them authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Certifications of standing orders in Labour Law

After the fulfilment of the requisite conditions set out under Section 4 of the Act, the draft standing order is processed for certification under [Section 5](#) of the Act. The steps for the certification are as follows:

Application for certification of standing order

Rule 4 of the standing order Rules, states that application for certification of standing orders shall be made in [Form I](#). Such an application for certification of draft standing order shall be addressed to the certifying officer, and it shall include the following particulars-

- Date and place of employer;
- Postal address of the employer along with his signature at the end of application;
- A declaration by employer that he has enclosed five copies of the draft Standing Orders proposed by me for adoption in his industrial establishment;
- Address of industrial establishment to that proposed standing order, it to be made applicable; and
- A declaration that required [particulars of workmen](#) is also attached with application.

Opportunity of raising objection

[Section 5\(1\)](#) of Industrial Employment (Standing Order) Act, 1946 contains provisions for raising objections. Until this stage, the draft standing order was a proposal by an employer for adoption in his industrial establishment. For a balanced set of terms and conditions of employment, employees, or workmen should also have a say in formulating provisions of the standing order. Therefore, the employees are given an opportunity for raising objections, when a draft standing order is submitted for certification before the certifying officer. They may raise objections to any of the arbitrary terms and conditions incorporated in the draft standing order, which might act against their interest. Along with objections to existing clauses of the draft standing order, they may also propose to add some clauses in the draft.

- The draft standing order and the notice will be provided to the trade union or to the workmen (in case there is no such trade union) for them to raise objections in any of the terms and conditions incorporated by the industrial establishment against their interest.
- At this stage, the employees may raise objections for incorporation of certain clauses or even for removal or amendment of the existing proposed clauses in the draft.
- The objections are to be given to the certifying officer within 15 days from the date of notice receipt.

Evaluation of the raised objection

After receiving the objections and giving the opportunity of being heard, the certifying officer shall evaluate the objections as per [Section 5\(2\)](#) of the Industrial Employment (Standing Order) Act, 1946.

- Upon receiving any objections, the certifying officer may decide whether to approve the objections or deny the objections raised by workmen.
- The certifying officer will also decide if any further modification of or addition to the draft standing order is necessary to render the draft standing orders certifiable under this Act.
- If in case the certifying officer finds the same necessary, he may order in writing regarding the modifications to be made.

Certification of the draft standing order

[Section 5\(3\)](#) of the Industrial Employment (Standing Order) Act, 1946 specifies the matter regarding certification of the draft standing order. After modifying the draft standing orders, the certifying officer shall within seven days certify the standing orders. Then after shall send the authenticated certified copies to the concerned parties. This is the process of certification of standing order in accordance with the Industrial Employment (Standing Orders) Act, 1946.

As per the Rule 7 of the Industrial Employment (Standing Orders) Central Rules, 1946 the certified copies of standing order must be officially stamped and sealed by the office seal of the Certifying Officer. If the terms of the standing order are [appealed before appellate authority](#) and appellate authority modifies the standing order, then in such case the standing order would bear the stamp and seal of appellate authority. The stamped and sealed standing order shall be sent to the employer, employees or authorized representative of workmen and to the trade union by the certifying officer within a week of the certification of the Standing orders. They shall be sent by the registered post.

Implementation of standing orders in Labour Law

The mode of implementation of the certified standing order as per Industrial Employment (Standing Order) Act, 1946 is as follows:

Date of operation

The date of operation of standing order depends on whether any appeal is done or not. Under [Section 7](#) of the Act, the provisions for the date of operation of standing order is given as under:

- If the appeal is made, the standing orders shall come into operation on expiry of 30 days from the date on which certified/ authenticated copies are sent to the parties.

- When [appeal](#) is made against the order of the certifying officer, the standing order shall come into operation upon expiry of 7 days from the date on which the [appellate authority](#) sent copies of the order passed while adjudicating the appeal.

Register of standing order

The certifying officer shall register the final certified copy of all standing orders in a register in the prescribed form. Under [Section 8](#) of the Act, a certifying officer shall furnish a copy to any person applying and paying the prescribed fees for the same. As per Rule 8 of the Standing Order Rules, the fee payable for a copy of the standing order shall be calculated at the following rates-

- 75 paisa, for the 200 words or less;
- 77 paisa, for every additional 100 words or fractions of words; and
- When a standing order exceeds 5 pages, then the approximate number of words per page shall be taken as the basis for calculating the total number of words to the nearest hundred

Language in which standing order will be posted

The language of standing order holds utmost value, as standing orders must be in such language in which the workman does not only read it but can also interpret it for own benefit. This makes the communication of standing order, convenient, and the chances are less that a workman is misguided by the trade union or others.

Under [Section 9](#) of the Act, before posting the standing order these matter must be taken into consideration:

- Standing orders shall be posted in English and the language understood by the workmen.
- It shall be posted on special boards which are at or near the entrance through which the workmen enter.

Temporary application of model standing order

The model standing order shall be applicable to the industrial establishment from the day on which the Act became applicable to the industrial establishment till the establishment gets its certified standing order. As per [Section 12A](#) of the Act, the model standing order which is prescribed for that industrial establishment shall be applicable to the establishment until they get their certified standing order. However, prescribed model standing order shall not be applicable to the industrial establishment to which appropriate government is Gujarat or Maharashtra state government.

In the case [M.C. Raju v. Executive Director \(1984\)](#) the Karnataka High Court held that the language of Section 12A makes it clear that until the industrial establishment gets their own certified standing order, model standing order will be applicable. If the industrial

establishment makes any changes in the Model Standing Order, then the changes will not automatically get applied. They must be in accordance with the procedure for amendments.

Note- Where there are two categories of workmen- (i) the daily wages workers; and (ii) monthly wages workers. If there are certified standing orders in respect of the daily rated workers only, the prescribed model standing orders should be deemed to have been adopted for those who are employed on the monthly basis until such categories have their own certified standing orders

Modification of standing order in Labour Law

The modification of standing order can be done in case of any challenges faced during the application or interpretation of the certified standing order. Section 10 of the standing order Act states the procedure for modification of a standing order after it has been approved. It states that standing order shall be modified:

- After 6 months from the date on which the standing orders or the last modifications thereof came in to operation; or
- Before 6 months, if there has been an express agreement between following persons for such proposed modification.
 - Between the employer and the workmen, or
 - Between the employer and other representative body of the workmen, or
 - Between the employer and trade union.

Application for modification of standing order

Once an employer or workman or a trade union or other representative body of the workmen fulfils the conditions mentioned for modification of a standing order, then they may apply before the certifying officer for such modification. The application for modification of standing order shall be accompanied by five copies of the modifications proposed to be made. It should be noted that if the modification in standing order is proposed with a common agreement between employer or workman or his representative then, a copy of such agreement shall also be attached with the application for modification.

Whatever provisions of the Act were applicable in the process of certification of draft standing order, shall also be applicable in process of modification of certified standing order.

This procedure of application for modification in certified standing order shall not be applicable to industrial establishments where the appropriate government is the Government of Gujarat or Maharashtra.

Interpretation of standing order in Labour Law

Under [Section 13A](#) of the Act, the employer, workmen, or trade union may refer questions related to interpretation or application of standing order to the labour court, which is

constituted under the [Industrial Dispute Act, 1947](#). The labour court, upon hearing both the parties, shall decide the question and the decision of the court would be final and binding on both the parties.

In the case of [Kishore Jaikishandas Icchaporla vs M.R. Bhope, Presiding Officer \(1987\)](#), the Bombay High Court held that Section 13A gives a right to the employer or workmen, authorized representative of workmen or trade union to approach labour court and raise any question regarding the application or interpretation of the standing order, model standing order or amendment in certified order as per the standing order Act. In this case, the appeal was filed against the order of the labour court which rejected the application filed by the employee to interpret the conflict in model standing order and certified standing order. The application for interpretation was rejected on the ground that the labour court has no jurisdiction to decide such conflict, however, the High Court by allowing the appeal under [Article 226](#) of the Indian Constitution held otherwise.

Admissibility of oral evidence contradictory to standing orders

If any case arises wherein the oral evidence contradicts standing orders, then such oral evidence, which has the effect of adding to or contradicting certified standing orders, shall not be admissible in any courts. [Section 12](#) of the Act clearly provides that such oral evidence would not be admitted by any court which is in contradiction with the standing orders.

Appeals under the Industrial Employment (Standing Orders) Act, 1946

The draft standing order, which is sent for certification under Section 5 of the Act, may be approved or rejected by the certifying officer. In case of such approval or rejection, the aggrieved party has the chance to challenge the decision of the certifying officer and appeal that in appellate authority. The provision for appeals against the approval or rejection of the objections to the draft standing order is given under [Section 6](#) of this Act. The procedure for appeal is as follows:

Who may appeal

Under Section 6, it is provided that any employer, workmen, trade union or other prescribed representatives of the workmen may appeal against the order of the certifying officer to grant or reject the certification to standing order. However, such employers, workmen, representatives of the workmen or trade union, must be aggrieved by the order or approval or rejection for certification of standing order.

Employer- Employer may appeal if the certifying officer rejected the draft standing order on seemingly unreasonable grounds. He may also appeal if the certifying officer approved the standing order but with certain modification which is unreasonable and not in the interest of the employer.

Workman, representative of workman or trade union- Workman, representative of workman or trade union may appeal if they are aggrieved by non-acceptance of the objection raised by them on the draft submitted by the employer.

When to appeal

An appeal by the employer, trade union or workmen shall lie against the order of the certifying officer if they are aggrieved by such order. The appeal to the appellate authority shall be made within 30 days from the date on which the five authenticated copies were sent for certification under Section 5(3) of the Act.

Procedure for appeal

Rule 7A of the standing order Rules, 1946 states the process of appeal against certifying officer's order to approve/reject the standing order. It states that any person desiring to prefer an appeal shall draw up a memorandum of appeal setting out the grounds of appeal. Five copies of such a memorandum shall be forwarded to the appellate authority accompanied by a certified copy of the standing orders, amendments or modifications, as the case may be. It should be noted that it is mandatory to serve a memorandum of appeal to each respondent.

The appellate authority shall give the appellant an opportunity of being heard, after which it may pass the following orders-

- confirm the standing orders, amendments, or modifications as certified by the Certifying Officer; or
- shall amend the standing order by making modifications whatsoever it may think necessary. While doing so, it will give the respondent an opportunity of hearing (if it appears reasonable) before a final decision is made in the appeal. In this case, the authority shall fix a date for the hearing of the appeal and direct notice thereof to be given—
 - ★ To trade union, if the appeal is filed by the employer or a workman; or
 - ★ To the employer, where there is no trade union or representative of workmen
 - ★ To the employer, if the appeal is extended by the trade union. In this case, along with employer, notice shall also be given to all other trade unions of the workmen of the industrial establishment
 - ★ Again, to the employer, if the appeal is filed by the representatives of the workmen. In this case, notice shall also be given to workmen whom the appellate authority joins as a party to the appeal.

The appellate authority may call for any evidence at any stage of hearing. The evidence so called must be considered necessary for the disposal of the appeal.

Order of the appellate authority

After following all procedures, the appellate authority shall make an order which can either confirm the standing order certified by the certifying officer or it may modify the standing order. It shall be noted that the appellate authorities' decision shall be final. Within seven days of its order, the copies of the standing order shall be sent to-

- the certifying officer;
- the employer;
- trade union; or
- other prescribed representatives of the workmen.

In case the authority agrees upon the decision of the certifying officer, no other documents must be accompanied by it. However, if the amendments are made in the certified standing order then in such a case, the amended certified standing order and its authenticated copies in the prescribed manner must be accompanied.

Powers of the certifying officer and appellate authority

The certifying officer and the appellate authority have been vested with power on deciding on the matters arising in course of certification and afterwards. Under [Section 11](#) of the Act, the certifying officer and appellate authority shall have all powers of the civil court within the meaning of [Section 345](#) and [Section 346](#) of the [Code of Criminal Procedure, 1973](#) ("CrPC"). While exercising powers of civil court, appellate authority may-

- receive evidences;
- administer oaths;
- enforce the attendance of witnesses; and
- Compel the discovery and production of documents.

If the order of appellate authority or certifying officer has some clerical or arithmetical mistakes, then it can be corrected by respective officers or their offices. Further, errors arising from any accidental slip or omission in the slip may also be corrected.

When can any order be challenged under Article 226 of the Indian Constitution?

[Article 226](#) of the Constitution of India empowers the High Courts for issuing writs. However, under certain circumstances, the appeal against the order of the certifying authority or the appellant authority may be entertained under the Article 226 of the Constitution of India.

In the case of [Narendra Pal Gahlot v. State of Uttar Pradesh. \(1994\) LLR 21 \(All\)](#) the employees were terminated from service which was challenged in this case. The employee's claim that a specific clause of Certified Standing Order of the establishment was violative of [Article 14](#) and [Article 16](#) of the Indian Constitution, as orders are interpreted to terminate

employees without serving any chargesheet, without enquiry and without giving any opportunity of hearing.

The way of termination of their employment violated the principles of natural justice. The Allahabad High Court held that in such cases where the orders are violative of the principles of natural justice and their rights, then such orders can be questioned under Article 226 of the Constitution of India.

Judicial pronouncements

Bharatiya Kamgar Karmachari Mahasangh v. Jet Airways Ltd. (2023)

Facts of the case

In this [case](#), the respondent owned and operated aviation companies. He entered into a contract with 169 temporary workmen. In the model standing orders under the [Bombay Industrial Employment \(Standing Orders\) Rules, 1959](#), it was specified that the employees upon completion of 240 days of their employment must be considered as permanent employees. Despite this, the employees upon completion of 240 days of employment were still treated as temporary.

The trade union decided to take action against the practices of the employer. On 2nd May 2002, the employer and the trade union entered into settlement to resolve the dispute. As per this settlement, the employees were given numerous benefits as an award if the employees give up their demand of getting permanent employment. On this basis, the employer didn't grant permanent employment to the employees.

The Industrial Tribunal and Bombay High Court held that mere completion of 240 days does not give the employees the right to claim permanency. The model standing order is not a statutory provision. Thereafter, it was the after was appealed to the Supreme Court.

Issues raised

- Which is the Appropriate Authority empowered to issue the Standing Order(s) under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as 'The Act')?
- Whether private agreement/settlement between the parties would override the Standing Order?

Judgment of the Court

The Supreme Court held that since the company was not under the Central government's control, the "Appropriate Authority" in this matter would be the state government. The Supreme Court held that any such contract cannot take place which overrides the statutorily provided Certified Standing Order. The Supreme Court quashed the orders from the lower courts and gave a decision in favour of the trade union.

R.P. Sawant And Ors. v. Bajaj Auto Ltd. And Anr (2001)

Facts of the case

In [this case](#), the Company had a factory in Pune dealing with the manufacturing of two-wheelers and three-wheelers. Initially, the company used to hire employees on probation and then were made permanent employees after some time. In the year 1981, about 8000 were permanent workmen in the Akurdi Plant of the Company. From 1984, the company changed its practice and started hiring employees on a temporary basis for a term of seven months with a break of different time periods. Due to these breaks, no employees could complete 240 days in twelve months. This practice continued for several years.

They were not made permanent as according to the Model Standing Orders, non-completion of 240 days of service in a year does not make workmen permanent. There was a record of recruiting the employees and then discontinuing the services. Against this unfair and unjust labour practises, the workmen had filed a complaint.

Following this, many workmen had filed a complaint in different batches. The employer, out of these employees, had fired 301 employees from the service. Regardless of many complaints and the court's stay in the matter, the employer continued with his practices. He continued hiring more employees and replaced many.

The final status before the court was that 401 temporary workmen were continuing the services and 301 were out of the service. They claimed that the employer is engaged in unfair labour practices and their termination is also not valid.

Issue raised

- Whether the employer has engaged himself in unfair labour law practices?
- Whether the company proves the claims are maintainable?
- Whether relief should be granted?

Judgment of the case

All these matter was heard by the Bombay High Court, wherein the court held that:

- The Industrial court was justified in holding the unfair practices of the employer. However, the court did not have jurisdiction to grant relief to the terminated employees.
- The petition filed by the workmen was allowed, and the employer's petition was dismissed.
- Further, the employer was liable to pay Rupees 50,000 as cost and shall carry out the directions of the Industrial court within three months from the judgment.

Standing orders under Industrial Relations Code, 2020

The [Industrial Relations Code, 2020](#) amends and consolidates various current laws in relation to industrial disputes, trade unions, employment terms, etc. It is considered to be a huge reform with respect to the labour laws. The Industrial Relations Code, 2020 have revised and introduced definitions and concepts. The Industrial Relations Code, 2020 have made changes in the following:

- Trade unions
- Strikes and lockouts
- Standing orders
- Layout and retrenchment
- Re-skilling Funds
- Power of government and dispute mechanism

Major provisions with respect to the standing orders are as follows:

- The new laws bring change in the applicability of the Act, which says that standing orders shall be applicable to such establishments, which shall have 300 hundred or more employees on a day preceding twelve months.
- These establishments have to prepare the draft standing orders in accordance with the model standing order within 6 months of commencement of the Code with consultation of the [negotiating unions](#) and its members.
- Majority of the provisions in relation to standing orders in the Code have taken reference from the old statute itself.

Conclusion

The labour sector in India is one of those sectors which are mostly exploited. The malpractices of the employers bring the labourers to workless or foodless days. The establishment of proper procedure of the standing order ensures a protective sphere in between the workmen and the unfair, malpractices of the employers.

This labour law empowers the workmen with their rights to work with dignity and freedom. This Act makes the employer answerable and under pressure to abide by the given laws. However, its strict implementation is also essential for safeguarding the rights of the workmen.

Frequently Asked Questions (FAQs)

What is the Model Standing Order?

These are the set of rules, regulations, and obligations drafted by the Central Government. This model standing order covers various terms of employment including the working hours, holidays, terminations, etc. It is even applied to the industries until they receive their certified

standing order. Mostly, the certified standing orders must be in accordance with the model standing order prescribed by the government.

When can the CSO be modified?

The CSO can be modified as per Section 10 of the Industrial Employment (Standing Orders) Act, 1946. The standing order can be modified only when there is an agreement between the employer and the workmen or trade unions, etc. before the expiry period of six months from the last modification came into operation.

Terms and conditions of the contract of employees differ from the CSO. Which would prevail?

There are various judicial pronouncements over this manner, the certified standing orders are like statutory contracts and hence the contracts of employment must not be inconsistent with it. However, some courts have given such pronouncements that any inconsistency until and unless is by mutual consent of the employer and employee can be held valid.

References

- [Industrial Employment \(Standing Orders\) Act - IndiaFilings](#)
- [Bharatiya Kamgar Karmachari Mahasangh v. Jet Airways Ltd. - Supreme Court Cases](#)
- [36820_2018_11_1502_45463_Judgement_25-Jul-2023.pdf \(sci.gov.in\)](#)
- [https://indiankanoon.org/doc/149275/](#)
- [https://www.simpliance.in/blog/standing-orders-under-the-industrial-relations-code/](#)
- [https://www.deskera.com/blog/industrial-employment-standing-orders-act-1946/#purpose-and-significance-of-the-industrial-employment-standing-orders-act-1946](#)
- [https://blog.iPLEaders.in/the-industrial-employment-standing-orders-act-1946/#Conclusion](#)
- [https://www.casemine.com/search/in/certifying%20officer%20of%20labour%20laws](#)
- [https://indiankanoon.org/doc/1870278/](#)
- [https://www.teamleaseregtech.com/resources/acts/article/25/industrial-employment-standing-orders-act-1946/](#)
- [Nature of standing orders under the Industrial Employment \(Standing Order\) Act, 1946 - iPLEaders](#)
- [https://indiankanoon.org/doc/1446711/](#)