

AZAD GOVT. OF THE STATE OF JAMMU AND KASHMIR,
LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.

Dated the December 24, 1975.

No. 3930/ SL/ 75. The following Act of the Legislative Assembly received the assent of the President on the 16th day of December, 1975, and is hereby published for general information:-

(ACT XV OF 1975)

AN ACT to Provide for the law relating to industrial and commercial employment in the Azad Jammu and Kashmir.

Preamble:

WHEREAS it is expedient to provide for the law relating to industrial employment in the Azad Jammu and Kashmir; it is hereby enacted as follows:-

1. Short title extent and Commencement: (1) This Act may be called the Azad Jammu and Kashmir Industrial and commercial employment (Standing Orders) Act, 1975.

(2) It shall extent to the whole of Azad Jammu and Kashmir.

(3) It shall come into force at once.

(4) It applies to-

(a) Every industrial establishment or commercial establishment where in twenty or more workman are employed, directly or through any other person whether on behalf of himself or any other person, or where so employed on any day during the preceding twelve months; and

(b) Such classes of other industrial and commercial establishments as Government may, from time to time, by notification in the official Gazette, specify in this behalf;

Provided that noting in this Act shall apply to industrial and commercial establishment carried on by or under the authority of the Government where statutory rules of service conduct or discipline are applicable to the workman employed therein;

Provided further that the provisions of standing orders 1911 and 13 clauses (6) and (8) of standing order 15 and standing orders, 19 shall not apply, in the first instance, to any industrial establishment where in not more than forty nine persons were employed on any day during the preceding twelve months but Government may, by notification in the official Gazette extend all or any of the said provisions to any such industrial establishment or any class of such establishment.

Definitions: In this Act, unless there is anything repugnant in the subject of context-

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“Collective agreement” means an agreement in writing, intended to specify the conditions of employment, and entered into between one or more employers on the one hand and one or more trade unions or, where there is no trade union, the duly authorized representatives of workmen, on the other;

“Commercial establishment” means an establishment in which the business of advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment, employs workman, a unit of a joint stock company, an insurance company a banking company or a bank, a broker’s office of stock exchange, club a hotel a restaurant or an eating house, a cinema or theater, and such other establishment or class thereof, as government may, by notification in the official Gazette, declare to be a commercial establishment for the purposes of this Act;

“Construction industry” means an industry engaged in the construction, reconstruction, maintenance, repair, alteration or demolition of any building pier, canal, inland waterway, road, tunnel, bridge, dame viaduct, sewer, drain, water work, well, telegraphic or telephonic installation, electrical undertaking, gas work, or other work of construction as well as the preparation for, or laying the foundations of, any such work or structure;

“Employer? means the owner of an industrial or

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commercial establishment to which this Act, for the time being applies, and includes.

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In a factory, any person named under clause (e) of sub-section (1) of section 9 of the Factories Act, 1934 (XXV of 1934) as manager of the factory;

In any industrial establishment under the control of any department of the Government, the authority appointed by such Government, in this behalf, or where no such authority is so appointed, the head of the department;

In any other industrial or commercial establishment, any person responsible to the owner for the supervision and control of such establishment;

“Go-slow” means an organized, deliberate and purposeful slowing down of normal output of work by a body of workers in a concerted manner and which is not due to any mechanical defect, break-down of machinery failure or defect in power supply, or in the supply of normal materials and spare parts of machinery;

“Government” means the Azad Government of the State of Jammu and Kashmir;

“Industrial establishment” means:-

An industrial establishment as defined in clause (ii) of section 2 of the payment of wages Act 1936 (iv of 1936), or

A factory as defined in clause (1) of section 2 of the factories Act, 1934 (XXV of 1934); or

The establishment of a person who, for the purposes of fulfilling a contract with the owner of any industrial or commercial establishment, employs workmen; or

The establishment of a person who, directly or indirectly employs workman in connection with any construction industry;

(h) "Standing Orders" means the order contained in the schedule, read with such modifications, if any, as may be made in pursuance of the provisions of section 4;

(i) "Trade union" means a trade union for the time being registered under the Azad Jammu and Kashmir Industrial Relations Ordinance, 1974;

G) "Workman" means any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward.

Enforcement of Standing Orders: In every industrial or commercial establishment, conditions of the employment of workman and other incidental matters shall, subject to the other provisions of this Act, be regulated in accordance with the Standing Orders.

Modification of Standing Orders: The standing order may be modified by means of a collective agreement and not otherwise;

Provided that no such agreement shall have the effect of taking away or diminishing any right or benefit available to the workman under the provisions of the schedule.

Posting of Standing Orders: The text of the Standing orders shall be prominently posted and kept in a legible condition by the employer in Urdu, on special boards to be maintained for the purpose at or near the entrance through which the majority of the Workman Enter the industrial or commercial establishment and in all department thereof where the work-men are employed.

Inspector: (1) The Inspector appointed under section 10 of the factories Act, 1934 (XXV of 1934), and such other persons, not being conciliators appointed under the Azad Jammu and Kashmir industrial relation Ordinance, 1974, as Government may, by notification in the official Gazette, appoint, shall be the inspectors for the purposes of this Act within the local limits signed to each.

(2) An Inspector may at all reasonable hours enter on any premises and makes such examination of any register or document relating to the maintenance or enforcement of the standing orders 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.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the penal Code (XLV of 1860)

Penalties and procedure: (1) An employer who modifies the Standing orders as applicable to his industrial or commercial establishment, otherwise than in accordance with section 4, shall be punishable with fine which may extend to five thousand, rupees, and in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first day during which the offence continues.

(2) An employer who does any act in contravention of the Standing Orders as applicable to his industrial or commercial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence, with a further fine which may extend to twenty-five rupees for every day after the first day during which the offence continues.

(3) Whoever contravenes any of the provisions of this Act, shall if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

(4) Whoever, having been convicted of any offence punishable under sub-section (1),(2) or (3) again commits such offence shall, on conviction, be liable to double the punishment prescribed for such offence under the aforesaid sub-section.

(5) No prosecution for an offence punishable under this Act shall be instituted except by, or with the previous permission in writing of, the Inspector.

(6) No Court inferior to that of a Magisterial of the first class shall try offence under this Act.

Power to Exempt: Government may, subject to such conditions as it thinks fit to imposes, by notification in the official Gazette, exempt any industrial or commercial establishment or class of such establishment from all or any of the provisions of this Act.

Protection of Existing Conditions of Employment:- Nothing in this Act shall affect any law, custom, usage, award or agreement in force immediately before the enforcement of this Act in so far as such law, custom, usage, award or agreement ensures conditions of employment more favourable to workman than those provided in the Standing Orders.

SCHEDULE

STANDING ORDERS

Section 2 (h)

1. Classification of workman:

(a) Workman shall be classified as:-

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qd) Permanent,

(2) Probationers,

(3) Badlis,

(4) Temporary,

(5) Apprentices,

A permanent workman is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment including breaks due to sickness, accident, leave lockout, (not being ill legal lock out or strike) or involuntary closure of the establishment and includes a "badli" who has been employed for a continuous period of three months who has been employed and eighty-three days during any period of twelve consecutive months.

A 'Probationer' is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a higher post he may, at any time during the probationary period of three months, be reverted to his old permanent post.

"Badli" is a workman who is appointed in the post of permanent workman or probationer who is temporarily absent.

A temporary workman is a workman who has been engaged for work, which is of an essentially temporary nature likely to be finished within a period not exceeding nine months.

An "apprentice" is a learner who is paid an allowance

during the period of his training.

Tickets:- (1) Every workman employed in an industrial establishment shall be given a Permanent ticket unless he is a probationer, a 'badli' a temporary workman or an apprentice.

(2) Every permanent workman shall be provided with a departmental ticket, showing his number, and shall on being required to do so, show it to any person authorized by the employer to inspect it.

(3) Every "Badli" shall be provided with a "badli" card on which shall be entered the days on which he has worked in the establishment, and which he shall be surrendered if he obtains permanent employment.

(4) Every temporary workman shall be provided with a temporary ticket, which he shall surrender on his discharge.

(5) Every apprentice shall be provided with an apprentice card, which shall be surrendered if he obtains permanent employment.

(6) Every workman at the time of his appointment, transfer or promotion shall be provided with an order in writing showing the terms and conditions of his service.

Publication of working time:- For period and hours of work for all classes of workman in each shift shall be exhibited in Urdu for the workman employed in the industrial or commercial boards establishment on notice maintained at or near the main entrance of the establishment and at the time keepers office if any.

Publication of holidays and pay days: Notice specifying (a) the days observed by the industrial or commercial establishment as holidays and (b) pay days shall be posted on the said notice boards.

Publication of Wages Rates:- Notices specifying the rates of wages payable to all classes of workman and for all classes of work shall be displayed on the said notice boards.

Shift Working:- More than one shift may be worked in a department or any section of a department of the industrial or commercial establishment at the discretion of the employer.

If more than one shifts is worked, the workman shall be liable to be transferred from one shift to another, no shift working shall be discontinued without one months, notice being given prior to such discontinuance, provided that no such notice shall be necessary, if, as a result of the discontinuance of the shift, no permanent employee will be discharged. If as a result of discontinuance of shift working, any permanent workman are to be discharged they shall be discharged having regard to length of their service in the establishment, those with the shortest term of service being discharged first. If shift working is restarted a week's notice thereof shall be given by posting a notice at the main entrance of the establishment and the time keepers office, if any, and the workman discharged as a result of the discountenance of the shift, shall, if they present themselves at the time of the restarting of the shift, have preconceive in being re-employed having regarded to the length of their previous service under the establishment those with the longest rest term of service being re-employed first.

Attendance and late coming:- All workman shall be at work at the establishment at the time fixed and notified under standing orders. Workman attending late shall be liable to the deductions provided for in the payment of wages Act 1936 (IV of 1936)

Leave: (1) Holiday and leave with pay shall be allowed as hereinafter specified;

(a) Annual holiday and festival holidays, casual leave and sick leave as provided for in Chapter IV A of the factories Act, 1934 (XXV of 1934) and;

(b) Other holidays in accordance with the law, contract, custom and usage.

(2) A workman who desires to obtain leave of absence shall apply to the employer, who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the workman. If the leave is refused or postponed, the last of such postponement, leave is refused and the reasons there for shall be recorded in writing in a register to be maintained for the purpose, and if the workman so desires, a copy of the entry in the register shall be supplied to him. If the

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workman after proceeding on leave desire an extension thereof he shall apply to the employer who shall send a written reply either granting or refusing extension of leave to the workman if his address is available, and if such reply is likely to reach him before the expiry of the leave originally granted to him.

Payment of Wages:- (1) Any wages, due to the workman but not paid on the usual pay day on account of their being unclaimed shall be paid by the employer on an unclaimed wage pay day in each week, which shall be notified on the notice boards as aforesaid.

(2) All workman shall be paid wages on a working day before the expiry of the 7th to 10th day after the last day of the wages period, in respect of which the wages are payable if the total number of workman employed in the establishment is 1.000 or less exceeds 1.000 respectively.

Group Incentive Scheme:- (1) In every industrial establishment which is a factory and in which fifty or more workman are employed there shall be introduced from such date as may be specified by the Government by notification in the official Gazette, a group incentive scheme to provide incentive for greater production to groups of workman employed in the factory. The Scheme shall provide the manner in which the performance of different groups of workman, whether in the same section, Shop, department or shift or in different sections, shops, department or shift, shall be evaluated.

(2) The incentive shall be in the form of additional wages or additional leave with wages or in both such forms to the members of the groups of workman whose production exceeds that of the other groups to be average of all the groups, the incentive shall be according to such scales as may be prescribed and shall be related to the extent of the excess production achieved by the group with the best performance.

Compulsory Groups Insurance:- (1) The employer shall have all the permanent workmen employed by him insured against death and injury arising out of contingencies not covered by the workman's compensation Act, 1923 (VIII of 1923).

(2) The employer shall in all cases be responsible for the payment of the amount of premium and for all administrative arrangements whether carried out by himself or through an insurance company.

(3) The amount for which cash workman shall be insured shall not be less than the amount of compensation specified in schedule IV of the workman's compensation Act, 1923 (VIII of 1923)

Payment of Bonus: (1) Every employer making profit in any year shall pay in for that year within three months of the closing of that year to the Workman who have been in his employment in the year for a continuous period of not less than ninety days a bonus in addition to the wages payable to such workman.

(2) The amount of the bonus payable shall--

(a) If the amount of the profit is not less than the aggregated of one months' wages of the workman employed, be not less than the amount of such aggregate, subject to the maximum of thirty percent of such profit;

Illustration:

qd) If the profit is Rs. 1,20,000/- and the aggregate of one month's wages of the workman is Rs, 30,000/- the amount of bonus payable shall be not less than aggregate of one month's wages, that is to say Rs, 30,000/-

(2) If the profit is Rs. 30,000/- and the aggregate of one months wages of the workman is also Rs, 30,000/- the amount of bonus payable shall be not less than thirty percent of the profit, that is to say Rs, 9,000/-

(b) If the amount of the profit is less than the aggregate referred to in paragraph (a), be not less than fifteen percent of such profit.

(3) The bonus payable to workman entitled thereto under clause (1) shall bear to his monthly wages the same proportion as the total bonus payable by the employer bears to the aggregate of the wages referred to in paragraph (a) of clause (2) and shall be paid in cash;

(4) Nothing in this section shall be deemed to affect the right of any workman to receive any bonus other than that payable under clause (1) to which he may be entitled in accordance with the terms of his employment or any usage or any settlement or an award of a Labour Court established under that Azad Jammu and Kashmir Industrial Relations Ordinance, 1974.

Explanation:-

For the Purposes of this Section:

Profit means the net profit as defined in section 87C of the Companies Act, 1913 (VII of 1913), and "Wages" does not for the purposes of calculating the bonus payable to a person under clause (1) include the bonus referred to in clause (iv) of section 2 of the Payment of Wages Act, 1936 (IV of 1936).

Stoppage of work: (1) The employer may, at any time, in the event of fire, catastrophe, break-down of machinery or stoppage of Power supply, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the establishment, wholly or partially for any period or periods without notice.

(2) In the event of such stoppage during working hours, the workman affected shall be notified by notice put up the notice board in the departments concerned or of the office of the employers, as soon as practicable when work will be resumed and whether they are to remain leave their place of work. The workman shall not ordinarily be required to remain for more than two hours after the commencement of the stoppage. If the period of detention does not exceed one hour, the workman so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workman so detained shall be entitled to receive wages for the whole of the time, during which they are detained as a result of the stoppage. In the case of piece rate workers, the average daily earning for the previous months shall be taken to be the daily wages. Wherever practicable reasonable notice shall be given of resumption of normal work.

(3) In cases where workmen are laid off on account of failure of plant, a temporary curtailment of production or any stoppage of work for reasons mentioned in clause (1), they shall be paid by the employer an amount equal to one half of their daily wages during the first fourteen days of lay off as compensation when, however, the workmen have to be laid off for an indefinite period beyond the above mentioned fourteen days, their services may be terminated after giving them, due notice or pay in lieu thereof.

(4) The employer may in the event of a strike affecting either wholly or partially any section or department to the

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establishment close down, either wholly or partially, such section or department and any other section or department affected by such closing down. The fact of such closure shall be notified by notice put on the notice board in the section or department concerned and in the time Keepers office, if any, as soon as practicable. The workman concerned shall also be notified by a general notice prior to resumption of work, as to when work will be resumed.

Closure of Establishment: Notwithstanding anything contained in Standing Order 13 no employer shall close down the whole of the establishment prior permission of the Labour Court in this behalf, except in the event of fire, catastrophe, Stoppage, of powers supply, epidemics or civil commotion.

Explanation: "Close down" in this Standing Orders includes lay-off of workman beyond fourteen days where such lay-off results in closure of an establishment but does not includes lock-out declared commenced or contained in accordance with the provisions of the Azad Jammu and Kashmir Industrial Relation Ordinance, 1974.

Termination of Employment: (1) For terminating employment of a permanent workman, for any reason other than misconduct, one month's notice shall be given either by the employer or the workman, one month's wages calculated on the basis of average wages earned by the workman during the last three months shall be paid in lieu of notice.

(2) No temporarily workman, whether monthly rated, weekly rated daily rated or piece rated and no probationer or badli, shall be entitled to any notice if his service are terminated by the employer, nor shall any such workman be required to give any notice or pay any wages in lieu thereof to the employer if he leaves employment of his own accord.

(3) The service of a workman shall not be terminated, nor shall a workman be remove, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken, in case a workman is aggrieved by the termination of his service or removal, retrenchment, discharge or dismissal he may take action in accordance with the provisions of section 30 of the Azad Kashmir Industrial Relations Ordinance 1974 and there upon the provision of the said section shall apply as they apply to the redress of an individual grievance.

(4) Where the services of any workman are terminated, the wages warned by him and other dues, including payment of run availed leaver as defined in clause (1) of Standing Orders shall be paid. Before the expiry of the second working day from the day on which this service are terminated;

(5) The service of a permanent or temporary workman shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in standing order 19.

(6) Where a workman resign form service or his services are terminated by the employer, for any reason other than misconduct he shall in addition to any other benefit to which he may be entitled under this Act or in accordance with the terms of his employment or any custom, usage any settlement or an award of a Labour Court under the Azad Jammu and Kashmir Industrial Relations Ordinance 1947, be paid gratuity equivalent to twenty days wages calculated on the basis of the wages admissible to him in the last months of service if he is fixed rated workman or the highest pay drawn by him during the last twelve months if he is a piece rated workman, for every completed year of service or any part thereof in excess of six months.

Provided that, where the employer has established a provident fund to which the workman is a contributor and the contribution of the employer which is not less than the contribution made by the workman, no such gratuity shall be payable for the period during which such provident fund has been in existence

(7) A workman shall be entitled to receive the amount standing to his credit in the provident Fund, including the contributions of the employer to such fund, even if he resigned or is dismissed form service.

(8) Where a workman dies while in service of the employer, his dependents shall be paid gratuity in accordance with the provisions of clause (6);

Provided that no payment of gratuity in such cases shall be made otherwise than by a deposit with the commissioner, who shall proceed with the allocation of the deposit to the dependent of the deceased in accordance with the provisions of section 8 of the workman's compensation Act, 1923 (VIII of 1923).

(9) If the employer fails to deposit to amount of the gratuity under clause (8) the dependent of the deceased may make an

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application to the Commissioner for the recovery of the amount thereof.

Explanation: "Commissioner and "dependent" in this standing Order shall have the same meanings as are respectively assigning to them in the workman's Compensation Act, 1923 (VIII of 1923).

Procedure for Retrenchment: Where as workman is to be retrenched and he belongs to a particular category of workman, the employer shall retrench the workman who is the last person employed in that category.

Re-Employment of Retrenched Workman: Where any number of workman are retrenched and the employer proposes to take into his employ any person within a period of one year from the date of such retrenchment, he shall give an opportunity to the retrenched workmen belonging to the category concerned, by sending a notice by registered post to their last known address to offer themselves for reemployment and they shall have preference over other persons, each having priority according to the length of his service under the employer's

Provided that in the case of seasonal factory within the meaning of section 4 of the Factories Act 1934 (XXV of 1934) a workman who was retrenched in one season and reports for duty within ten days of the resumption of work in the factory in the immediately following season shall be given preference for employment by the employer.

Special Provision for Construction Workers: Where any workman is retrenched or discharged by a contractor or any employer engaged in the construction industrial due to completion, Cessation or discontinuance of work, he shall be given preference for employment in any other similar work undertaken by the contractor or employer within a period of one year from the date of such retrenchment or discharge;

Provided that where a workman is re-employed within one month of his retrenchment or discharge, he shall be deemed to have been in continuance service of the contractor or employer notwithstanding the interruption caused by his retrenchment or discharge but no wages shall be paid to him for the period of interruption.

Punishment: (1) A workman may be reprimanded or fined up to three paisa in the rupee of the wages payable to him in a month,

for any of the following acts or omissions, namely;

(2) In case where the payment of wages Act, 1936 (IV of 1936) is applicable, the list of acts and omissions for which fine may be levied shall be same as approved by the Chief Inspector of Factories or any other officer concerned;

(ii) In other case, the following shall be the list of acts and omissions;

(a) Disregard or disobedience of rules or orders;

(b) Improper behavior, such as drunkenness;

(c) Making false or misleading statements, inefficient,

dilatory, careless or wasteful working;

(d) Inefficient, dilatory, careless or wasteful working;

(e) Malingering.

(2) A workman found guilty of misconduct shall be liable to any of the following punishments:-

(i) Withholding of increment or promotion for a specified period not exceeding one year;

(ii) Dismissal without payment of any compensation in lieu of notice.

(iii) Reduction to a lower post, or

(3) The following acts and omissions shall be treated as misconduct:-

(a) Willful insubordination or disobedience,

whether alone or in combination with others, or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

(b) Theft, fraud, or dishonesty in connection with the employer's business or property;

(c) Willful damage to or loss of Employers goods or property;

(d) Taking or giving bribes or any illegal

gratification.

(e) Habitual absence without leave or absence without leave for more than ten days.

(f) Habitual late attendance;

(g) Habitual breach of any law applicable to the establishment.

(h) Riotous or disorderly behavior during working hours at the establishment or any act subversive

of discipline;

(i) Habitual negligence or neglect of work;

G) Frequent reputation of any act or omission

referred to in clause (1);

(k) Striking work or inciting others to strike in contravention of the provision of any law, or rules having the force of law;

re) Go-slow.

(4) No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the employer shall be required in every case of dismissal and, (the employer shall) institute independent inquiries before dealing with charge against a workman;

Provided that the workman proceeded against may, if he so desires for this assistance in the enquiry, nominate any workman employed in that establishment and the employer shall allow the workman so nominated to be present in the enquiry to assist the workman proceeded against and shall not deduct his wages if the enquiry is held during his duty hours.

(5) Where, for the purposes of conducting an inquiry in to the alleged misconduct of a workman, the employer considers it necessary, he may suspend the workman concerned for a period not exceeding four days at a time. The orders of suspension shall be in writing may take effect immediately on delivery to the workman concerned shall be paid by the employer subsistence allowance of not less than fifty percent of the wages, If the workman is found not guilty, he shall be deemed to have been on

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duty during the period of suspension and shall be entitled to the same wages as he would have received if he has not been suspended.

Certificate of Termination of Service: Every permanent workman shall be entitled to a Service certificate at the time of his dismissal, discharge, retirement or retrenchment from service.

Liability of Employer: The employer of the industrial and commercial establishment shall personally be held responsible for the proper and faithful observance of the standing order, whether or not the workman or such Establishment are employed through contractors.

Repeal: The Azad Jammu and Kashmir Industrial and Commercial employment (Standing Orders) Ordinance, 1975 (Ordinance XX'V of 1975) is hereby repealed;

SD/- (Mohammad Akram Shah)
Deputy Secretary

Law & Parliamentary Affairs
Azad Government of the State of
Jammu and Kashmir