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Code on Wages

What is the issue?

- In the monsoon session of Parliament, three new labour codes were bulldozed into passing and now await the President's assent.
- Labour Minister told that four new labour codes, including the Code on Wages, will become operational before the year ends.

What is the Code on Wages, 2019?

- The Code on Wages, 2019 seeks to consolidate and simplify four pieces of legislation into a single code. The legislations are,
 - a. Payment of Wages Act, 1936,
 - b. Minimum Wages Act, 1948,
 - c. Payment of Bonus Act, 1965 and
 - d. Equal Remuneration Act, 1976.
- Its object and reasons stated that the 2nd National Commission on Labour, 2002 suggested consolidating all labour laws into four codes.

Why rules will be framed?

- While the previous four pieces of legislation had a total of 119 sections, the new Code has 69 sections.
- Considering that the repealed legislations each had a definition section, inspectors, penalties, etc, any consolidation will impact their length.
- All requirements for enforcing the Act have been relegated to the Rules.
- Section 67 had authorised the framing of rules relating to as many as 38 provisions of the Act.
- As a result, the delegated rules will be bigger than the Code.
- This is no way to condense prior pieces of legislation.

What problems will arise?

- Combining the four repealed pieces of legislation into a single code will create new set of problems.
- Barring a few new concepts, the new Code retains almost all provisions.

- **Worker** - The Code will have the same definition of the term “worker”.
- But, a person employed in a supervisory capacity drawing up to ₹15,000 will also be considered a worker.
- **Wage fixing** - In the Minimum Wages Act, to fix minimum wage in an employment which has more than 1,000 workers to be first included in the Schedule, and then, minimum wages will be fixed as per law.
- The Code has dispensed with the necessity of having a minimum number of workers and the inclusion of such employment into the schedule.
- **Floor wage** - The central government will fix a “floor wage”.
- Once it is fixed, State governments cannot fix any minimum wage less than the “floor wage”.
- It is unwarranted since many States always fix minimum wages higher than the existing rates.
- The concept should be for a binding minimum wage and not have dual wage rates — a binding floor wage and a non-binding minimum wage.

What is the conflict?

- There was a conflict between the minimum wages fixed by the State governments for agriculture workers.
- There were cases as to whether the Minimum Wages Act would have an over-riding effect over the provisions of the MGNREGA, 2005.
- [MGNREGA - Mahatma Gandhi National Rural Employment Guarantee Act]
- That has been set to rest by excluding MGNREGA from the purview of the Code on Wages.

Who is an inspector-cum-facilitator?

- The Code has created an omnibus inspector-cum-facilitator who will act as per the inspection scheme framed by the government.
- He will advise employers and workers to comply with the provisions of the code.
- As per Section 51, he may carry out inspections as may be assigned by the government.

What are the provisions regarding claim mechanism?

- Section 45 stipulates that the claims will be heard by an authority who is not below the rank of a “Gazetted Officer”.
- A government official without legal and administrative background can hear such claims.
- However, any dispute regarding bonus will continue to go before the Industrial Tribunal.

- One can appeal to an appellate authority who must be one rank higher than the competent authority (Section 49).
- Neither the Code nor the Rules prescribe the qualifications and experience required for appointment of competent authority.

What are the provisions on penalty?

- The penal provisions found hitherto in any pieces of labour legislation never had an impact on employers.
- In Asiad case, 1982, the Supreme Court observed that if violations of labour laws are going to be punished only by meagre fines, the labour laws would be reduced to nullity.
- But, Section 52 has been introduced where an officer (not below the rank of an undersecretary to the government) will impose a penalty in the place of a judicial magistrate.
- A similar provision of the Bonded Labour System (Abolition) Act, 1976 was struck down by the Division Bench of the Madras High Court (2014).
- The Bench had observed that the Executive Magistrate has no role to play in conducting judicial trial and recording judicial decisions.

What are the exemptions made?

- The Code exempts employers from penal provisions if they prove that they had used due diligence in enforcing the execution of the code.
- They should also prove that it was the other person who had committed the offence without his knowledge, consent or connivance.

Will there be an impact?

- There is nothing particular in this Code that will expand the coverage of workers in all industries in the unorganised sector.
- While there were 10,000 slabs of minimum wages that existed, they would now be reduced to 200 slabs.
- The 200-slab categorisation may not have much of an impact.
- The Code on Wages has not succeeded in a consolidation of laws.

Source: The Hindu



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