

**Minutes of the 2<sup>nd</sup> meeting of the Central Advisory Board held under the Chairmanship of Hon'ble MOS(IC) L&E on 07.07.2008 in Committee Room, 'C' Wing, 1<sup>st</sup> Floor, Shram Shakti Bhawan, New Delhi.**

The second meeting of the Central Advisory Board, which was reconstituted vide Notification S.O. 1996(E) dated 28<sup>th</sup> November, 2007 was held on 07.07.2008 under the Chairmanship of Shri. Oscar Fernandes, Hon'ble Minister of State for Labour & Employment (IC). The agenda was to discuss the remaining Amendment Proposals to the Minimum Wages Act, 1948. The list of participants is annexed.

Mrs. Sudha Pillai, Secretary, Ministry of Labour & Employment in her inaugural speech welcomed the Hon'ble Minister of State for Labour & Employment (IC) and Chairman of Central Advisory Board (CAB), members of the CAB and other officers of the Ministry. She appraised that a few amendment proposals to the Minimum Wages Act, 1948 were discussed in CAB meeting held on 22<sup>nd</sup> February, 2008 and it was decided that the decision on the remaining proposals will be taken in its next meeting. She emphasized the need for urgently moving ahead with long pending amendment proposals to the Minimum Wages Act, 1948. Further, she asked Dr. Harcharan Singh, DDG to make the presentation as prepared for the meeting on the amendments to the Minimum Wages Act, 1948.

Dr. Harcharan Singh, DDG stated that in the First meeting of the CAB, held on 22.02.2008, there were 8 amendment proposals to Minimum Wages Act, 1948, which were discussed and decisions taken. The major one amongst these 8 proposed amendments was the inclusion of "Other Employments not covered in the Schedule" under Section 3(1) (a) of Minimum Wages Act, 1948. So as to avoid legal implications, it was decided to have one category mentioned as "The Employment not mentioned above" in the Schedule itself so as to provide

protection to all the working class population under the Minimum Wages Act, 1948.

He also briefed the remaining amendments to be discussed and explained the addition of three new provisions in the Minimum Wages Act, 1948 like (i) if minimum wages notified by State Government are higher for similar employment, then these would be applicable in Central sphere as well, (ii) the minimum wage in respect of Scheduled Employment, which has been notified by State Government but not covered in Central sphere, shall be applicable in Central Sphere as well and (iii) both the contractor and the principal employer should be made equally responsible for ensuring wages not less than minimum wages to its workers employed in scheduled employments that have to be discussed and to arrive at a consensus. After the presentation, the floor was open for discussion to the Members of the Central Advisory Board so that we can move ahead for carrying out long pending amendments to the Act at the earliest.

Shri. Shankar Saha of United Trade Union Centre (L.S) emphasised on the fixation on the minimum wages on the basis of the ILC norms and adjusted with the Hon'ble Supreme Court Judgment in the case of Reptakos Brett and Co. Vs its Workmen and agreed for payment in cash as well as kind to be followed and desired to increase the period of limitation from 6 months to 1 year at least for staking claims for wages pending. He expressed the view that the scheduled industry should pay equal wages to contract workers as available to regular employees.

Shri. Sukhdev Prasad Mishra of Bharatiya Mazdoor Sangh stated that he is fully agreed with the amendment in Section 3(1) (a) of the Minimum Wages Act, 1948 so as to provide protection to the workers in all the employments. He also emphasised to delete the word 'Child' from the Minimum Wages Act, 1948. He mentioned that the pay should be revised in every two years and to issue the payslip which contain name of the worker, ESIC Account No, Date of Birth, Date

of Joining, Address etc. He emphasised that every worker should have his bank account and the salary should be paid through cheque or credited into his account. He also insisted to enhance the claim, from a maximum of Rs.100/- as decided by earlier CAB to Rs. 1500/- under Section 20(3) (ii). On a query relating to inclusion of the employment of Watch and Ward in the Central sphere, he was informed that the same has been included and preliminary notification for fixing the minimum rates of wages has been issued for inviting comments/suggestions.

Shri. K. Srinivas Rao of All India Trade Union Congress apprised with the facts that this is just 19<sup>th</sup> meeting in a long period of 60 years since when Minimum Wages Act, 1948 became applicable and thanked the Hon'ble LEM for convening the CAB meetings twice in 2008 itself. He also stressed that CAB should meet more frequently. Further, he emphasized that stress should be given to the enforcement of Minimum Wages Act, 1948. It is worthwhile to discuss in detail in a meeting of CAB besides strengthening the enforcement machinery as well. If possible, Self Help Group should also be associated in enforcement so as to ensure payment of minimum wages to workers.

Shri. Kashinath Mishra of Bharatiya Kisan Sangh stated that he does not agree with insertion of new provision under Section 20(8) "to empower the Claims Authority to direct an employer to deposit with the authority an amount not exceeding 50% of the claim during the pendency of claim case" without any hearing . This provision will lead to misinterpretation in view of the fact that some workers may put bogus claims. As regard amendment to Section 20 (1) of the Minimum Wages Act, 1948, he expressed that the claim should be decided by the presiding officer of the court.

Shri. Ashok Ghosh of United Trade Union Congress stated that the Minimum Wages Act, 1948 should be incorporated in the 9<sup>th</sup> Schedule of the Constitution so that employers do not dare to deny the minimum wages to the employees with the court intervention. The National Minimum Wages should also

be fixed statutorily so as to force the States not to fix minimum wages less than the National Minimum Wages. There should be procedure to fix the minimum wages, which should be linked with the Consumer Price Index number.

Shri. Michael Dias, CIE/AIOE put in opposition to the idea of placing the Minimum Wages Act, 1948 in the 9<sup>th</sup> Schedule. He stated that and there should be different wages for different employment. No minimum wages should be fixed for learners, trainees, apprentice etc. As regard the implementation of Minimum Wages Act, 1948, he stated that there should be distinction for procedure lapses and deliberate omission for non-payment of wages while penalizing the defaulting employers.

Shri. Uma Shankar Mishra of Hind Mazdoor Sabha agreed for inclusion of 'employment other than the above' in the schedule and stated that at the time of fixing/revising the minimum wages, 25 per cent increase in wage is needed as per Judgment of Hon'ble Supreme Court. As it is generally mentioned that there is increase in prices of commodities due to globalization, then the wages should also be fixed accordingly. If the minimum wages has been linked with the Consumer Price Index, then it should be revised within 3 to 5 years but not more than 5 years, otherwise revision in wages will be needed every year. The issue of identity cards besides employment card should be made mandatory. Thus, it should be included in the amendment.

Shri. Aditya Sahu of Bharatiya Mazdoor Sangh stated that those employees, who are working as contract labourers in registered establishments, are not getting the adequate compensation. The employees engaged in work of an establishment by the contractors are not considered as employees of the establishment. It would, therefore, be appropriate that all employees of the establishment including those engaged through contractors should be paid equal and also be issued the Identity Card to protect them from exploitation.

Shri. Jibon Roy of Centre of Indian Trade Unions stated that the minimum wages must be paid to workers and they should not be cheated as the situation will arise very soon that there will be no permanent workers in India. All the organised workers are going to be unorganised workers. The employers are rushing to the court, where the decisions are delayed and as a result, the workmen suffer. He also pointed out that the rate of inflation now-a-days is 11.5 percent and so the revision of minimum wage should be done every two years or for every 25 percent increase in Consumer Price Index. He also suggested not to bring voluntary organisations for implementation of minimum wages because they will come as another middle man for collecting money from workers.

Intervening in the discussion, the Hon'ble LEM pointed out that now the workers are organising against non-payment of minimum wages. He drew the attention of the members that Kerala Government has fixed higher wage rate for beedi workers and resultantly the manufacturers shifted to Karnataka. After some time the Karnataka Government also fixed the higher wage rate, which compelled the manufacturers, to shift to Tamil Nadu. In this case, ultimately, it is the workers who are affected. So we have to take into consideration all these factors while fixing the minimum wages. Moreover, the minimum wages notified by the Central Government is implemented in Central sphere only and the State Governments are empowered to fix minimum wages in their State.

Further, Hon'ble LEM appraised that the State Government of Rajasthan has increased the minimum wage level for unskilled workers to Rs.100/- per day recently and other States like Haryana, Himachal Pradesh etc. has followed suit. This has lead to enhancement of minimum wages payable to workers under the National Rural Employment Guarantee Scheme. This would have salutary effect as ensuring payment of wage above minimum wage level to workers, as engaged by other employers.

Shri. Jitendra Gupta of Laghu Udyog Bharati stated that he does not agree with the provision of imprisonment as proposed for enforcement of Minimum Wages Act, 1948. He was of the view that the amount of compensation should be increased to not more than Rs.1500/- instead of ten times as proposed. He also expressed his desire to have the agenda papers issued in Hindi, as a good gesture like issuing the minutes of CAB meeting in Hindi.

Shri. Rajendra Kumar Sharma of Bharatiya Mazdoor Sangh stated that he was fully agreed with the provision of imprisonment in view of the implementation of the Minimum Wages Act, 1948.

Chief Labour Commissioner (Central) expressed the view that the Banking and other Financial Institutions should be brought in Central Sphere under the provisions of the Minimum Wages Act, 1948.

Shri. Raminder Singh, Labour Commissioner, Punjab; Shri. A.M. Kadri, Deputy Secretary, Labour & Employment Department, Gujarat; Shri. Vyas Ji, Principal Secretary, Labour Resources Department, Bihar and Shri. C.R. Chikkamath, Secretary, Labour Department, Karnataka supported all the amendment proposals to the Minimum Wages Act, 1948.

Shri. E.V. Gangadharan, Chairman, Minimum Wage Advisory Board, Kerala expressed his agreement with the amendment proposals. He, however, stated that the penal provision should be increased from Rs. 100/- as agreed earlier under Section 20 (3) (ii) to Rs.1000/- and to enhance the period of limitation for submission of claim applications to 2 years from the day it becomes due.

Shri. Suresh Chandra, Legal Adviser while responding to the suggestion inclusion of the Minimum Wages Act, 1948 in the 9<sup>th</sup> Schedule stated that normally the objective of placing an Act of Parliament in the 9<sup>th</sup> Schedule is to save the said Act from vulnerability of challenge on the ground of the same being

in contravention of the provisions of Part III of the Constitution. The Minimum Wages Act, 1948 has already been upheld by the Supreme Court so the possibilities of challenging the Minimum Wages Act, 1948 are ruled out. As regards to orders issued under the Minimum Wages Act, 1948 are concerned, the same cannot be placed in the 9<sup>th</sup> Schedule and hence cannot be saved. Hence, he advised that no purpose would be served by placing the aforementioned Act in the 9<sup>th</sup> Schedule of the Constitution.

Dr. Harcharan Singh, DDG summarised the discussion relating to the amendment proposals other than those decided earlier in CAB meeting held on 22.02.2008 as below:

- (i) to enhance the period of limitation for wage claims from six months to one year (not 2 years as proposed) under Section 20(2) as agreed by CAB in its meeting held on 03.06.2005 and 40<sup>th</sup> ILC held on 9-10 December, 2005;
- (ii) the increase in compensation from a maximum of Rs. 10/- to the level as decided in consultation with CLC(C) and not 10 times under Section 20(3) (ii);
- (iii) to recover the amount as arrears of land revenue by District Collector is cumbersome procedure and this proposed amendment may not be carried out as there was no consensus in the ILC as well;
- (iv) the amendment to replace the words “Chapter XXXV” of the Code of Criminal Procedure, 1898 by “Chapter XXVI” of the Code of Criminal Procedure, 1973 (2 of 1974) under Section 20 (7) as being of a technical nature be agreed;
- (v) the maximum compensation not exceeding ten times the aggregate amount (or Rs.100/- in place of Rs.10/- per head as the case may be) under Section (21)(1) be provided;

- (vi) making provision in the official gazette not less than 3 months notice to add or alter or delete or modify to either part of any employment in the Schedule under Section 27;
- (vii) addition of a new Section – 28 “Delegation of powers by the Central Government to the State Governments”.

Further, the amendments proposal relating to deposit of an amount not exceeding 50% of the claim; disposal of claim cases within 6 months and compounding of offences with addition of new Section 20(8), 21(3) and 22(AA) respectively, as not being feasible, were decided to be dropped.

The aforesaid amendment proposals as stated above, were approved by CAB.

The CAB authorised that the enhancement in fines and conviction so as to ensure payment of minimum wages under Section 22 and non-maintenance of register, notices etc. under Section 22A be decided in consultation with CLC(C). It was also agreed by CAB to include these new Provisions as stated below:

- (i) Minimum wages would be applicable for Central sphere, if minimum wages notified by State are higher for similar employment.
- (ii) The minimum wage in respect of Scheduled Employment which has been notified by State Government but not covered in Central sphere, shall be applicable in Central sphere as well and
- (iii) Both the contractor and the principal employer should be made equally responsible for ensuing wages not less than minimum wages to its workers employed in scheduled employments.

Finally, Hon’ble MOS(IC) stated that the next meeting of the CAB will be convened after a period of three months.

The meeting ended with the note of thanks to the Chair.

## Annexure

### List of Participants who attended the meeting of the Central Advisory Board held on 07.07.2008

1. Shri. Oscar Fernandes, Minister of Labour and Employment	<b>Chairman</b>
2. Shri. K.Srinivas Rao	Member
3. Shri. Ashok Ghosh	Member
4. Shri. Jai Prakash Chajjad	Member
5. Shri. Sukhdev Prasad Mishra	Member
6. Shri. Uma Shankar Mishra	Member
7. Shri. Aditya Sahu	Member
8. Shri. Rajendra Kumar Sharma	Member
9. Shri. Jibon Roy	Member
10. Shri. Sankar Saha	Member
11. Shri. Kashinath Mishra	Member
12. Shri. Jitendra Gupta	Member
13. Shri. Amit Kumar Sen	Member
14. Dr. Devendra Kumar	Member
15. Shri. Michael Dias	Member
16. Shri. A. Jayaprakash	Member
17. Shri. Chhote Lal	Member
18. Shri. E.V. Gangadharan	Member
19. Shri. A.M. Kadri	Member
20. Shri. C.P. Mishra	Member
21. Shri. Raminder Singh	Member
22. Shri. Vyas Ji	Member
23. Shri. C.R. Chikkamath	Member

### **Special Invitee from Ministry of Labour and Employment**

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| 1. Smt. Sudha Pillai       | Secretary (L&E)                        |
| 2. Dr. Ashok Sahu          | Labour and Employment Adviser          |
| 3. Shri. S. Krishnan       | Additional Secretary                   |
| 4. Dr. Harcharan Singh     | Deputy Director General                |
| 5. Shri. S.K. Mukhopadhyay | Chief Labour Commissioner<br>(Central) |
| 6. Smt. Amarjith Kaur      | Deputy Director General (DGE & T)      |
| 7. Shri. Suresh Chandra    | Legal Adviser                          |
| 8. Shri. S.R. Joshi        | Director                               |
| 9. Shri. Kishori Lal       | Assistant Director                     |
| 10. Smt. Kamini Verma      | Economic Officer                       |