

Govt. of {1891} Madras.

JUDICIAL.

Issued

Recd.

Encl.

G.O., 7th July 1891, No. 1339.

JULY.

Indian Factories Act, 1881.

Communicating to officers and departments concerned, letter from the Government of India on the subject of amendments made in the — by Act XI of 1891, in view to obtaining an early expression of opinion with regard to the rules to be framed under revised section 18 of the Indian Factories Act; and referring paragraphs 7 and 8 of the letter regarding fees to Medical officers to the Surgeon-General for remarks.

No. 2232 W of 17 Augt 1891

Communicated
to the Supdy. Engrs I, II,
& V circles for early
expression of opinion
in the regard to the
rules to be framed
under revised Section
18 of the Indian Factories
Act.

(2d) J. P.

S.E. I circle } With copy of
" II " } Act No. XI of
" V " } 1891.

(iv) Section 6, sub-section (4), authorizes the Governor-General in Council, by notification in the *Gazette of India*, to declare that the provisions of the section relating to the employment of women shall not apply to factories of a particular class or to women employed in a particular process.

4. With reference to these provisions of the Act, I am directed to explain that it is not the intention of the Governor-General in Council to exercise the powers conferred on him by any of the sections mentioned above except in cases in which the parties interested make, through the Local Government, a formal application for exemption and bring forward convincing reasons in justification of their proposals. It will be for each Local Government to determine, upon the representations of those interested in the industries concerned and upon a review of the circumstances of each case, what industries are entitled to exemption under the powers which the Act enables it to exercise. It is the intention of the Government of India that the provision of clause (d) of section 5 B, sub-section (2), shall be used only in rare and exceptional cases, which do not fall under any of the three heads mentioned in clause (c). Clause (c) will therefore govern all ordinary cases. It will be for the Local Government to decide whether the work performed satisfies the conditions of any one of the three heads specified, but if it does, the exemption should be granted as a matter of course.

5. The power of Local Governments to make rules under sub-section (1) of section 18 is now declared to be subject to the control of the Governor-General in Council. I am to explain that the object of this addition to the clause is merely to remove all doubt as to the power of the Government of India to revise any rule which they may consider to be objectionable; the rules will, however, continue to be made by Local Governments, and need not be submitted to the Government of India before publication. The same sub-section also confers additional power to make rules in respect of the following matters:—

(1) the water-supply to be maintained for the use of persons employed in factories, clause (b);

(2) the ventilation of factories and their cleanliness (including lime-washing, painting, varnishing and washing), and freedom from effluvia arising from any drain, privy or other nuisance, clause (c); and

(3) the prevention of such overcrowding of factories, while work is carried on therein, as is likely to be injurious to the health of the persons employed therein, clause (d).

Sub-section (2) of the section empowers the Governor-General in Council to make rules requiring occupiers of factories to furnish such returns, occasional or periodical, as may be necessary for the effectual carrying out of the Act.

I am to invite the Government of Madras to consider the question of revising the rules now in force under section 18 of the Act of 1881 so as to include the requisite provisions on points on which rules have not hitherto been made and to meet the altered conditions under which labour in factories will now be carried on. You will observe that rules under clauses (b), (c) and (d) must be published in draft, and a period of at least two months from date of publication must be allowed before the draft is taken into consideration. In this connection I am to invite attention to section 4 of the General Clauses Act, I of 1887, and to request that early steps may be taken for the preparation and publication of draft rules under the abovementioned clauses. I am also to ask that a copy of each draft may be sent to the Government of India as soon as the draft has been preliminarily settled.

I am at the same time to say that the Governor-General in Council will be glad to be furnished with the advice of the Governor in Council as to the rules to be made by the Government of India for the purpose of giving effect to sub-section (2) of the section in question in regard to the supply of returns by occupiers of factories.

6. I am further to communicate the views of the Government of India regarding the question of the establishment necessary for working the Act. Her Majesty's Secretary of State has asked the Government of India to consider whether with the new factory law it will not be necessary to appoint whole-time Inspectors of Factories

at industrial centres like Bombay and Calcutta. The Governor-General in Council has, in paragraph 2 of Home Department Circular of the 7th January last, insisted on the importance of securing a strict observance of the provisions of the law regarding factories, and, after carefully considering the replies to that Circular, he has arrived at the conclusion that it would be advantageous to appoint two special Inspectors in the first instance, one for the Bombay Presidency who might be utilized in the Central Provinces, and one for Bengal who might also be made available for the more important centres in the North-Western Provinces and Oudh. Their jurisdiction should, in the opinion of the Government of India, be limited for the present to the provinces just mentioned, but it can be extended hereafter should this be found feasible and expedient.

It is observed that a salary of Rs. 600 a month was fixed in 1882 for the appointment of a whole-time Inspector at Bombay (since abolished), and the services of an Inspector were obtained from England for the term of five years with no pensionary rights. Although it might be possible to procure again from the United Kingdom competent officers on these terms, the Governor-General in Council is of opinion that it would be preferable to appoint to the posts now to be created properly qualified persons with some knowledge of the habits and language of the Native population, if the services of such persons can be procured in India. Before further considering the matter, His Excellency in Council will be glad to learn whether the ^{Bombay} ^{Bengal} Government will be able to secure locally the services of a competent Inspector, and what terms ^{the Governor in Council} ^{His Honour the Lieutenant-Governor} would propose for the appointment. I am further to suggest, for the consideration of ^{His Excellency in Council} ^{His Honour}, that the pay of the Inspector to be appointed for ^{the Bombay Presidency and the Central Provinces} ^{Bengal and the North-Western Provinces and Oudh} should be charged to the Provincial Revenues of ^{Bombay} ^{Bengal}, although his duties will not be confined to ^{Bombay} ^{Bengal}, due allowance being made for the expenditure in the contracts to come into force from 1st April next.

When the special Inspectors are appointed it will be necessary for each of the Local Governments, within whose territories they have to perform inspections, to issue a notification of appointment under section 3 of the Act.

7. The next question for decision in connection with the inspection of factories is whether Medical officers in the service of Government, who may be appointed to be Inspectors under the Act, should receive any extra allowance for the additional work which will thus devolve upon them. Having considered the views expressed on this subject in the replies of Local Governments and Administrations to Home Department Circular of the 7th January last, the Governor-General in Council is of opinion that in cases in which a Local Government considers it necessary to appoint Medical officers to be joint Inspectors of factories, they should be paid for the work; and that a reasonable scale of remuneration would be Rs. 10 a month for each factory to be inspected in which over 200 hands are employed, subject to a minimum of Rs. 30 and a maximum of Rs 100 a month. In the event of this scale being accepted by Local Governments, the Government of India will recommend it for the sanction of Her Majesty's Secretary of State.

8. Lastly, I am to invite the opinion of the Government of Madras as to the amount of fee which should be prescribed under section 5 of the Act for payment to certifying Surgeons. It was formerly the practice in the Lower Provinces of Bengal for the Government to pay to certifying Surgeons who were Medical officers in the service of Government a fee of 4 annas for each certificate granted by them. The practice was, however, discontinued in accordance with the orders marginally noted, on the grounds (a) that the payment of such fees by Government to Medical officers would require the sanction of the Secretary of State in cases in which it would have the effect of raising a Medical officer's salary above Rs. 5,000 per annum, and (b) that the grant of special remuneration to Government servants for

Home Department Nos. 1242 to 1247, dated 28th July 1888.

duties imposed by the law is open to objection on principle. I am to inquire whether the Governor in Council considers 4 annas to be a suitable fee for each certificate, or would recommend any other rate. I am also to request that His Excellency in Council may be moved to favour the Government of India with his opinion whether certifying Surgeons who are Government Medical officers should be allowed to retain the fee, or whether it should be credited to Government.

ORDER—dated 7th July 1891, No. 1339, Judicial.

The foregoing letter from the Government of India will be communicated to all District Magistrates, the Public and Public Works Departments, the Consulting Engineer for Railways and the Commissioner of Police, Madras, in view to obtaining an early expression of opinion with regard to the rules to be framed under revised section 18 of the Indian Factories Act.

2. Paragraphs 7 and 8 will be referred to the Surgeon-General for remarks.

(True Extract.)

J. F. PRICE,
Chief Secretary.

To all District Magistrates.
„ the Public Department.
„ the Public Works Department.
„ the Consulting Engineer for Railways.
„ the Commissioner of Police, Madras.
„ the Surgeon-General with the Government of Madras.

Exd. P. L. Pereira.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From C. J. LYALL, Esq., c.i.e., Secretary to the Government of India, Home Department (Judicial), to the Chief Secretary to the Government of Madras, dated Simla, the 18th June 1891, No. 858.

With reference to the correspondence ending with your letter, No. 152 (Judicial), dated the 23rd January last, I am directed to invite attention to the principal amendments made in the Indian Factories Act, 1881, by Act XI of 1891, which will come into force on the 1st January 1892.

2. In section 2, clause (b), which relates to the definition of the word "factory," the limit as to the number of workmen necessary to bring a factory within the scope of the Act has been reduced from 100 to 50, and power has also been reserved by section 20 to a Local Government to apply the provisions of the Act to other premises on which a number of hands less than 50, but not less than 20, are employed, provided that they fulfil the other conditions of the definition as laid down in section 2. The minimum and maximum limits of age for children to be employed in factories have been raised from 7 and 12 to 9 and 14, respectively. Under section 3 of the Act, as now amended, Inspectors can be appointed either by name or in virtue of office, and the District Magistrate is *ex-officio* an Inspector of every factory in his district, although such factory may also lie within the local limits assigned by the Local Government to an Inspector appointed under a notification. Section 5 provides for the payment to certifying Surgeons by any person employed or desirous of being employed in a factory of such fee, if any, as may from time to time be prescribed by the Governor-General in Council by notification in the *Gazette of India*; and the fraudulent use of certificates has by section 15 (2) been made an offence punishable with fine.

3. The following sections of the Act deal with the powers of the Governor-General in Council and of Local Governments to exempt factories from certain of the provisions of the Act:—

(i) Section 5 A, sub-section (2), empowers the Governor-General in Council to declare, by notification in the *Gazette of India*, that the provisions of sub-section (1) of the same section, requiring a stoppage of work for a full half-hour between noon and two o'clock in the afternoon, shall not apply to factories of a particular class. This exemption is, however, not required in the case of factories in which a system of employment in shifts or sets, specially approved by the local Inspector, is in force.

(ii) Section 5 B, sub-section (2), clause (c), empowers a Local Government to declare, by notification in the *Official Gazette*, that the prohibition contained in section 5 B, sub-section (1), against Sunday labour shall not apply to any factory or class of factories in which the work performed—

- (1) necessitates continuous production for technical reasons, or
- (2) supplies the public with articles of prime necessity which must be made every day, or
- (3) by its nature cannot be carried on except at stated seasons or at times dependent on the irregular action of natural forces.

(iii) Section 5 B, sub-section (2), clause (d), empowers the Governor-General in Council, by notification in the *Gazette of India*, to exempt factories of any class from the prohibition as to Sunday labour.