

MR. SPEAKER : In future, you must be sure of everything.

SHRI RAJ BAHADUR : I will make double enquiries in future.

MR. SPEAKER : Be sure about other Bills also.

SHRI JYOTIRMOY BOSU : I have written another letter to you, Sir, about the Malhotra business in the State Bank. 1 year and 3 months have passed. Rs. 60 lakhs was given out by this public sector bank and we do not know anything. Government does not say anything. They are drawing a curtain. We want to cooperate with you in running the House, but it is becoming difficult. Let the Finance Minister make a statement as to what has happened to the enquiry that was instituted by the State Bank against Mr. Malhotra. Otherwise we shall be obliged to take recourse to other measures to extract the information from Government. There is a front page news item about this in today's papers. It is a very serious matter. We have been lowered in the eyes of the people. When we go back to our constituences, people ask, "Did you get a share of the Rs. 60 lakhs?"

MR. SPEAKER : Please resume your seat.

SHRI JYOTIRMOY BOSU : Kindly give us an assurance that you will ask the Finance Minister to make a statement..

MR. SPEAKER : I am saying "Please, Please" and you are going on.

SHRI JYOTIRMOY BOSU : You have a very hard task and I have a hard task too.

MR. SPEAKER : When I say "Please, Please" ten times, you do not listen.

SHRI JYOTIRMOY BOSU : What is your ruling ?

MR. SPEAKER : We discussed it for so many hours in the last session.

SHRI SHYAMANANDAN MISHRA : The desire of the House should be conveyed to the government so that they can make a statement on a matter which is causing some anxiety to hon. Members. There should be some response from the hon. Speaker.

SHRI S. M. BANERJEE : It has appeared in the *Hindustan Times* today Will you kindly read it ?

MR. SPEAKER : This was discussed a month earlier. So, why should it come up again so early ?

SHRI JYOTIRMOY BOSU : The departmental enquiry of the State Bank against Shri Malhotra is within the purview of the Finance Minister. Would he kindly explain the position to the House?

SHRI ATAL BIHARI VAJPAYEE : According to the press report, Shri Malhotra is going to be promoted. We would like to know what is happening.

MR. SPEAKER : So long as you are alive and so long as Shri Malhotra is alive, this subject will not die.

SHRI SHYAMANANDAN MISHRA : Rather, so long as this government is there.

12.46 hrs.

PAYMENT OF GRATUITY BILL
—contd.

MR. SPEAKER : We will now take up further consideration of the Payment of Gratuity Bill.

SHRI N. SREEKANTAN NAIR (Quilon) : Sir, let me at the outset point out that the bureaucrats entrenched in the Labour Ministry and the weak-kneed policies of the Labour Minister, who never in his life understood the feelings of the working class of this country, they have watered down the provisions of this Bill. They have taken away some of the beneficial clauses which all sections of both Houses wanted to be incorporated in this Gratuity Bill.

Firstly, I do not understand why the Minister is opposed to the transport workers being included in this Bill when he knows fairly well that the transport workers are organised and they are getting many other benefits. They cannot be denied this benefit, especially when in many States they are enjoying this. If he is only anxious about the contractors of transport of goods in North India, let the country decide for itself in future.

The second aspect is the rate of gratuity should be 21 days instead of 15 days. Since many of the allowances and privileges which the workers are getting are

[Shri N. Sreekantan Nair]

not included for the purpose of calculation of gratuity, it was suggested that the rate may be enhanced. But that suggestion has been turned down.

The third point is that the workmen should not be denied the payment of gratuity for their past service for any acts which may be interpreted by the employers as misconduct in future. Sir, as you know very well, the Supreme Court has declared in 1961 that gratuity is a remuneration for past services and it should not be touched. Of course, there are decisions also. But the question is whether a government which is wedded to socialism and a Minister who has pledged himself to be a friend of the working class should deny to the workers the right of remuneration in the form of gratuity for services rendered in the past. This benefit should not be crucified or curtailed. But this suggestion also has not been accepted by the Minister.

Last but not the least, the most important harmful thing done by the government is that they have not allowed the worker or his nominee to go to the court to get redress of their grievances. They have to approach the State or Central Government, as the case may be. But for an employer it is very easy. He can file a writ in the High Court or Supreme Court. But a poor worker, or his dependents have to move the authorities to file a complaint if he wants the gratuity. This provision is making it impossible for an ordinary worker, or his wife and dependents, to get the gratuity in time. It will take three generations to get gratuity if at all they get it. These are the four points which were unanimously placed before the Select Committee and we were told that they would place them before the Cabinet. But nothing has come out of it. The Bill in the present form provides ample avenues for employers to avoid payment of gratuity.

The employer can, first of all, refuse to give 240 days work in 12 months to workers to escape the payment of gratuity because then they do not come under the provision of one year's continuous service. Then, the employer can discharge the worker after 4 years service on some ground or the other and then re-employ him after a gap. There is so much of unemployment in the country that he can also replace the worker by another.

The enforcement of labour laws has never been very serious. The labour department of the Government of India or of the State Government has been subservient to the cause of employers and not to the cause of workers. So, the workers are not able to get their dues or to go to a court of law to establish their rights and get their dues.

Further, the employer can dismiss a worker even after putting in 30 years of service by bringing an allegation of misconduct against him. What is misconduct has never been defined. An employer with the present machinery of expertise and lawyers can do anything. The lawyers in his own employ can conduct an inquiry and dismiss hundreds of workers at a stretch. I have myself seen the harshness of the provisions of the Industrial Disputes Act and other labour enactments. I have seen hundreds and hundreds of workers in plantations being dismissed in one single inquiry and it is very difficult to get it rectified by going to the High Court or the Supreme Court.

I have myself filed a case in the Kerala High Court. Nothing has happened even after 7 years. Hundreds of workers were dismissed in plantations. Till now, nothing has been decided. Therefore, to get justice for the workers at the hands of judiciary in the present set-up is something impossible. It is very easy for the management to dismiss a worker on account of misconduct or any other reason. There is every facility for the employer to dismiss a worker. It is very difficult for the worker to go and approach the court straightway and get justice.

This is a very important Bill for which the people of this country have been yearning for many years. Though the Bill confers new benefits to the workmen in the rest of India, it takes away some benefits which the workers in Kerala and West Bengal are now enjoying under State labour laws. This Bill limits the rights which they are already enjoying. The Government should adopt a little more progressive view and allow benefits to as many workers as possible and give them the right of freedom to go straightway to the court.

Not only that, The penal clauses are so framed that they are absolutely meaningless. Any employer can find a stooge to stand for him and go to jail or pay fine. Any employer, by cajoling the

court, can escape without any punishment at all. These provisions make a travesty of it.

So, I would request the hon. Minister to accept at least these three amendments even at this late hour. The first one is to enhance the scope of the Bill to include at least the Transport workers and the employees of Construction companies and local bodies. The Construction companies handle works worth several crores of rupees every year in connection with hydro-electric projects. He himself promised 10 per cent bonus to the H. C. C. workers. But he could not do it. They refused to abide by his decision. Now, he wants the employers to escape from the payment of gratuity to workers. The Construction companies handle work to the tune of Rs. 50-60 crores every year. Then here are the transport workers. For transport workers, as has been said earlier, most of the State Governments have got some pension or gratuity scheme. So, this amendment only concerns big contractors who are engaged for inter-State transport. Why should the hon. Minister be solicitous about those people? Then, employees in the local bodies. Many of the State Governments have already got some schemes in this regard. So, some protection must be given to those employees who are not covered. There should not be any difficulty in allowing it to those people who do not enjoy this benefit.

These are my humble submissions. Let the hon. Minister realise that the working class in this country cannot be fooled into accepting this without any criticism. Let him feel that public opinion will be against him if he does not act upto the concept of socialism and does not make the necessary changes in this Bill.

SHRI K. NARAYANA RAO (Bobbili) : This is a much-awaited Bill which the labour in this country has been looking for. In bringing forward this Bill, I think, Government has redeemed its pledge to an extent. But it is my submission that it has to go a long way. In this context Mr. Speaker, I will refer to a few points to which, I hope, the Ministry will give serious consideration.

First, as many of the speakers have already suggested, gratuity is not a bounty. The theory about gratuity has completely changed in the present poli-

tical, social and economic set-up. It is to be construed more as the right of the labour rather than as a dole given by the employer. Once we accept that concept, then we have to judge to what extent the present Bill has coverage.

To begin with, this Bill includes in its purview a few classes of people: first, those who are working in factory, mine, oil-fields, plantation, port and railway company—this is one category; secondly, shops and establishments; and there is a third category according to which the Central Government may, by notification in future, bring within the purview of this Bill any other establishment. I am not in a position to understand the scope of the third category. Shops and establishments have been defined. Therefore, there is not much that is left for the Government to bring, in future, within the purview of this any other establishments.

My material point is this. On what basis, on what rationality, this distinction has been brought about between those which have been enumerated here and those which have been left out. This is an important matter because it is very likely that this matter may go to the Supreme Court as contravening article 14 of the Constitution. For instance, take the question of railways. They have not included 'railways' in its totality; they have said, 'railway company as defined by the Indian Railways Act, 1890'. My submission is this. Once you concede this to 'railways', why not give the benefit to all the employees of railways in its totality? By the definition given in the Bill, you are covering railway employees only marginally because most of the companies are liquidated; there are only a few private companies as defined in the Indian Railways Act, 1890, which will come within the purview of this Bill. Why not include the employees of the railways under the Government? What justification can Government give when a question like this is asked? If you take the railways...

MR. SPEAKER : How much more time would he take?

SHRI K. NARAYANA RAO : Five or six minutes.

MR. SPEAKER : Then would he like to continue after Lunch?

SHRI K. NARAYANA RAO : Yes, Sir.

MR. SPEAKER: We adjourn for lunch to re-assemble at 2.00 p.m.

13 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

The Lok Sabha re-assembled after lunch at Three minutes past Fourteen of the Clock.

[MR. DEPUTY-SPEAKER in the Chair.]

PAYMENT OF GRATUITY BILL—
Contd.

MR. DEPUTY-SPEAKER: Mr Narayana Rao.

SHRI K. NARAYANA RAO (Bobbili): Before the lunch break, I was mentioning that the Bill has not made a proper distinction regarding those people who have been covered by this particular Bill and those who have been excluded. In that context, I have mentioned the railway companies. The private railway companies now are almost a vanishing species because most of the railway companies had been taken over by the State. Such being the case, how can you drive a distinction between those employees who are now covered by the term 'railway companies' and those employees who are in the regular railways?

Similarly, when we include the employees of the railway companies and exclude the employees of transport companies who are more or less doing the same job, what kind of criteria is involved? Therefore, my humble submission is that there are a large number of employees who must be covered and we should adopt a particular principle. Now I will ask the Ministry what principle they have adopted in including a few people and excluding others. As I understand, the basic principle is this: that those employees who have not been provided with a pension should be provided with an amount of gratuity after retirement.

If that principle is accepted, I submit, we have to expand this particular ambit of this Act to a very wide area.

You take the case of many States, which have got transport organisations working; if they are to be excluded from the benefit of these things in what way can we say that the Government is a model employer? We say, 'the Private

sector should behave'. Government should prove itself that it is a model employer. Otherwise they can't say this to the private sector. That is my submission. I suppose this will receive the attention of the Government.

Then I come to the definition of 'family'. In the female employee's case they have included the parents and dependent parents of the husband. In the case of male employee a similar thing is not there. I do not know whether it is deliberate. I hope the hon. Minister will take note of this and reply

So far as adoption is concerned, the male employee is provided with the right of adoption, but so far as the female employee is concerned, similar type of facility is not provided. I do not know whether it is deliberate. I hope he will tell us what it is, and whether there is any particular significance for this.

Then I come to wages. The wages are defined as follows:

"All emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

The last expression is a very wide expression. If all these are excluded, Sir, what else remains?

May I know whether the City Compensatory Allowance is included in the concept of emoluments? I hope the hon. Minister will reply to this.

Now I come to the problem of the forfeiture of gratuity. Gratuity will be forfeited under certain conditions. The gratuity payable to an employee shall be wholly forfeited if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or if the services have been terminated for any act which constitutes an offence involving moral turpitude. This is the position. If you take the concept of gratuity, you find, there is a certain in-built relief involved. He has to choose the nominee. They have a

right to claim that amount. The heirs and the nominees are the persons who get the benefit. For misconduct his service is terminated, he suffers. What you do by this is, you give him double punishment. His family and his nominees are put to difficulties. For the same offence why should you punish him twice? The employee's children, the employee's dependents are also there. Why should they be again punished by this provision? That is what I am unable to understand. One punishment will be good enough. You have no right to remove this provision giving some gratuity to them; it vests in them. This is for his legal heirs, his dependents. What is misconduct? It is not defined. Here it says: 'Moral turpitude, in the course of his employment'. These are things which are difficult to be properly understood. Even in the ordinary course, one would find it difficult to arrive at a conclusion as to what is meant by moral turpitude. And you add the word 'in the course of employment'. So, what I would suggest is, you may totally delete this provision. Under no circumstances, except the first one, gratuity should not be forfeited.

Then I come to the problem of claims. You and I know, Sir, about violations of some of these provisions. The House is aware how pensioners find it difficult to get their hard-earned money. Our experience with the L.I.C. is also like that. If it comes to a question of complaint, you cannot expect a Government authority to come forward and make a complaint against itself. Therefore, I feel that Government have to find out some method by which even when there is a complaint against the Government, there could be a quick and safe remedy.

There may be also instances where a company or a factory may collapse after some time, and in such cases, the employees cannot get any gratuity at all. Therefore, my submission is that gratuity should also be put in some fund like the ordinary provident fund. Every year, gratuity should be paid into that fund, and if any situation arises where a factory is wound up, the workers could draw from this fund the gratuity due to them and not suffer in any manner.

With these few words, I welcome this Bill.

श्री हुकूम चन्द कल्लवाय (धुरना) :
उपाध्यक्ष महोदय, मैं इस बिल का समर्थन करता हूँ। यह बिल बहुत पहले आना चाहिये था, सरकार इसे बहुत विलम्ब से लाई है, परन्तु जिस रूप में आना चाहिये था, इस का रूप बहुत व्यापक होना चाहिये, वह नहीं है। बहुत सी बातें इस में छूट गई हैं। उदाहरण के लिये परिवहन, शिक्षा, हास्पिटल, गोदी, सरकारी दफ्तर तथा देश के विभिन्न राज्यों में काम करनेवाले वे कर्मचारी, जो जान को बाजी लगा कर प्रदेश और नगर की स्थिति को ठीक बनाये रखते हैं, ऐसे हपार। पुलिस जवान इस से छूट गये हैं। बेतन पानेवाले सभी श्रमिकियों पर लागू होना चाहिये था; मैं सरकार से ऐसी मांग करता हूँ। समिति ने बहुत सी अच्छी बातें कही हैं, कुछ बातों पर तो काफी झगडा भी हुआ था, परन्तु सरकार ने उन बातों को ब्यो स्वीकार नहीं किया, मेरी समझ में नहीं आता है।

इस बिल के अन्दर एक बात ऐसी कही गई है कि यदि कोई कर्मचारी अपराध करता है, उद्योग को नुकसान पहुंचाना है, उसे उसका योगदान नहीं दिया जायगा और उस ने जो हानि की है, उस क्षति को पूरा करने के लिये उस के पैसे का उपयोग किया जायेगा। उपाध्यक्ष महोदय, मैं इस का विरोध करता हूँ। यदि वह दोषी है और यह बात सिद्ध हो जाने के बाद जब उसे निकाला जाता है, नौकरी से निकाला जाता ही उस के लिये पर्याप्त सजा है। उस के पैसे से उस का नुकसान को पूरति करता कहाँ तक ठीक होगा— मैं इस से सहमत नहीं हूँ। मैंने अब तक इस बिल पर अनेको बक्तियों को सुना है, कल भी बहुत से सदस्यों ने इस का विरोध किया है और मैं भी इस का विरोध करता हूँ, उस दोष के लिये उस का पैसा नहीं काटा जाना चाहिये।

इस में कहा गया था कि एक साल में 21 दिन का पैसा दिया जावा चाहिये, कमेटी ने भी इस बात की सिफारिश की थी, परन्तु

[श्री कुकमबन्द कछवाय]

पता नहीं सरकार ने उस कड़ा गायब कर दिया। मेरा कहना है कि जब वह बाल शर काम करता है तो उसे 21 दिन का पैसा अवश्य मिलना चाहिये। मैं तो इस से भी आगे जा कर कहना चाहता हूँ कि जितने साल की उस की सविस हो, उतने साल का पैसा उसे मिलना चाहिये। माननीय मंत्री जी ने अपने वक्तव्य में कहा है कि उसे २० महीने का वेतन मिलेगा। चाहे उस की सविस २५ साल की हो, ३० साल की हो या ५० साल की हो मैं इस से सहमत नहीं हूँ। जितने साल वह सविस करता है, 21 रोज प्रति साल के हिसाब से यह ग्रेच्युटी उसे अवश्य मिलनी चाहिये।

माननीय मंत्री जी ने अपने वक्तव्य में कहा है कि हम कुछ क्षेत्रों में इसे लागू करेंगे लेकिन मैं उन से निवदन करना चाहता हूँ कि आप के बहुत से सरकारी क्षेत्र ऐसे हैं जिन में यह लागू नहीं होता तथा आपने बहुत से ऐसे क्षेत्र अपने हाथ में लिये हुए हैं, जो आप के द्वारा चल रहे हैं, वहाँ भी यह लागू नहीं होता— मैं चाहता हूँ कि इसे आप वहाँ भी लागू कीजिये।

बहुत से ऐसे लोग हैं जो केजुअल लेबर के रूप में काम करते हैं। रेलवे में तो बहुत बड़ी के संख्या में केजुअल लेबर के रूप में काम करते हैं और जिन की सविस 10-10 और 15-15 साल की हो गई है, लेकिन अभी तक भी उन की नौकरी को कोई गारन्टी नहीं है। मैं चाहता हूँ कि केजुअल लेबर को भी इसे प्राप्त करने का हक मिलना चाहिये मैं चाहता हूँ कि सरकार इस बात की घोषणा करे कि ऐसे कर्मचारी, चाहे वे केन्द्रीय सरकारी के हों या राज्य सरकारी के हों, राज्य सरकार में पी० डब्ल्यू० डी०, बिजली ऐसे, अनेक विभाग हैं, जिन के अन्दर केजुअल लेबर काम करते हैं उन सब पर यह कानून लागू होगा। राज्य सरकारों के सबंध में कहा गया है, कि वहाँ पहले ही बहुत से मजदूर हितैषी कानून बने हुए हैं, मैं चाहता हूँ कि

अगर इस में कोई विषय आता है, आप सब जगह लागू नहीं कर सकते तो कम से कम जहाँ प्रायिक्ट फण्ड स्कीम लागू है, वहाँ तो इसे अवश्य लागू कर दें। कल मंत्री जी ने अपने वक्तव्य में कहा था कि यह बड़ा लागू होगा जहाँ कम से कम 10 कर्मचारी काम करते हैं। मेरा अपना अनुभव यह है कि ऐसे बहुत से उद्योगपति हैं जहाँ 100 मजदूर काम करते हैं, लेकिन वे दिखाते हैं कि सिर्फ 10 कर्मचारी काम करते हैं, बाकिमो को टेम्पररि बताते हैं, ठेके पर काम करनेवाला बतलाते हैं, जब कि वे वहाँ पर वर्षों से काम कर रहे हैं। मैं चाहता हूँ कि इस के बारे में खोज की जाय, छानबीन की जाय कि क्या वे वास्तव में ठेके पर काम करते हैं और ठेके पर वह काम कितने वर्षों से चल रहा है। जो लोग टेम्पररी काम कर रहे हैं, वे कितने वर्षों से टेम्पररी हैं। अगर कोई वास्तव में टेम्पररी चला आ रहा है और दस साल वहाँ पर काम करते हुए हो गये हैं, तो उन जगहों पर भी काम करनेवाला मजदूरों का हक बन जाता है। मैं चाहता हूँ कि मंत्री महोदय इस बात को नोट करें और जांच कराये, ऐसे बहुत से उद्योगपति हैं जो जानबुझ कर इस बात को छुपाते हैं और दस से ज्यादा आधे भी नहीं करते।

इस में कहा गया है कि यदि कोई जगह की बात हो, कोई कर्मचारी कोई मशीन तोड़ेंगे तो उसे नुकसान की पूर्ति उस के जैसे से की जायेगी। मैं जानना चाहता हूँ कि इस बात का फंसला काम करेगा कि किष्ट ने अपराध किया है। उपाध्यक्ष महोदय, कर्मचारी इतना गरीब है, उस के पास इतना पैसा नहीं है कि वह न्यायालय में जाकर न्यायकी माँग कर सके। न्यायालय में न्याय सरल नहीं है और बहुत लम्बा चलता है। आप स्वयं इस के भुक्तभोगी नहीं हैं और न मंत्री जी ही इस के भुक्तभोगी हैं, लेकिन मैं स्वयं इस का भुक्तभोगी हूँ, मुझसे कितने लम्बे चलते हैं, तारीख पर जा जाकर, बकीसों को पैसा दे देकर

गरीब मजदूर परेशान हो जाता है। इस लिये मेरा सुझाव है कि आप कोई कमीशन या कमेटी बनाइये, जो इस बात को तय कर सके कि कहां नुकसान हुआ है और उस के लिये कौन जिम्मेदार है, मैं तो कहता हूँ कि मालिक स्वयं इस के जिम्मेदार होते हैं। आखिर, लीडफोड क्यों होती है, किन कारणों से हुई है, उस को किस ने उकसाया है, उस बात के लिये किस ने प्रेरित किया है और उस के पीछे कौन दौबी है? क्या उस की मांग बाजिव है, अगर उस की हड़ताल आपस है तो फिर वह दौबी नहीं है, उस नुकसान के लिये उस को जिम्मेदार नहीं ठहराया जा सकता।

माननीय मंत्री जो ने यह भी आश्वासन दिया है कि ऐसे सत्कारों क्षेत्रों में जहाँ इस को लागू किया जा सकता है, लागू किया जायगा। मेरा निवेदन है कि इस के बारे में बतकाल फंसना करें और 21 दिन की जो बात मैंने कहा है, उस को अवश्य स्वीकार कर लें। यह जो कहा गया है कि जो पैसा जमा है, इस के लिये कार्यवाही चालू कर दो है, इस का बोर्ड बनेगा। फंड के लिए बोर्ड बनने वाला है, पैसा वहां पर जमा होगा लेकिन मुझे इसमें सन्देह है, मैं चाहता हूँ जैसे इनकम टैक्स का पैसा जमा होता है उसी तरह से तत्काल पैसा जमा करवायें। अगर वे पैसा जमा नहीं करते हैं तो जो उनको मिलने वाला कोटा है, जो कच्चा माल उनको मिलता है या उनका जो माल बिकता है उसपर रोक लगायें। उनसे आप कहें कि जब आप पैसा जमा करेंगे तभी आपके उद्योग का माल उठेगा। यदि आप इस तरह की रोक लगायेंगे तभी सफल हो सकेंगे अन्यथा आपको सफलता मिलने वाली नहीं है। आज प्राविडेन्ड फंड का 20 करोड़ सप्ला वसूला करना है लेकिन सरकार ने आज तक इस प्रकार का कोई कानून नहीं बनाया है और हमें संदेह है कि आगे भी

ऐसा कोई कानून बनायेगी क्योंकि उनस सरकार की मांग प्रकार की साठ-गांठ रहती है। सरकार कहती है कि हमने मजदूरों के हित के लिए कानून बनाए हैं लेकिन देखना यह होता है कि उनपर अमल कितना होता है। इस साठ-गांठ के कारण ही उन कानूनों को रही टोकरी में डाल दिया जाता है। ऐसी हालत में मेरा आपसे यह कहना है कि आप जल्दी से जल्दी उस पैसे को वसूल करवाये।

श्री रामसिंह जाई (इन्दौर) : माननीय उपाध्यक्ष महोदय, इस बिल के बारे में और सैलेक्ट कमेटी के रिपोर्ट के संबंध में मैं सबसे पहले श्रम मंत्री जी को तथा सैलेक्ट कमेटी के सदस्यों को मुबारकवाद देना चाहता हूँ। इन्होंने मेहनत बहुत काफी की लेकिन इनकी मेहनत जितनी सफल होनी चाहिए वो वह नहीं हो पाई। जितनी ही इन्होंने मेहनत की वार जितना ही विभाग लगाया उतना ही यह बिल उलझन भरा बन गया। इस में इतनी उलझने पैदा हो गई है कि मैं ऐसा मानता हूँ कि गवर्नमेंट का इरादा श्रमिकों को शेम्पूटी देने का है लेकिन उसका मिलना बड़ा कठिन होगा। मैं 16 वर्ष की उम्र से श्रमिकों में काम कर रहा हूँ इससे इस पूंजीपतियों की मनोवृत्ति क्या होती है बाल की खाल निकालने की वह मैं अच्छी तरह से जानता हूँ। गवर्नमेंट ने जितने भी श्रम कानून बनाए हैं उनमें उन्होंने कुछ ऐसी उलझने पैदा कर दी है कि जब कानून नहीं थे उस समय श्रमिक जो प्राप्त कर सकते थे, कानून बन जाने के बाद प्राप्त नहीं हो रहा है बल्कि उसको खो रहे हैं। मैं एक निवेदन करना चाहता हूँ कि यह जो कानून है, अच्छी मंशा से बनाया गया है, जिनके ऊपर अन्याय होता है उन्हें न्याय मिलना चाहिए लेकिन जिन लोगों ने अपने परिश्रम से, अपने त्याग से जो न्याय प्राप्त किया है वह इस कानून के कारण जाना नहीं चाहिए। यह बहुत गौर करने की चीज

[श्री रामसिंह वर्मा]

है। जैसे कि ग्रेच्युटी के संबंध में इस बिल में बताया गया है कि साल को हाथिरी के पीछे 15 दिन का बोनस बात साल तक मिलने में अपना निजो बात कह रहा हूँ कि मैं जिन संगठनों को भला रहा हूँ वहा साल के पीछे एक महाने का बोनस महगाई भत्ता सहित बात साल का दे रहे हैं तो कहीं ऐसा न हो कि यह कानून बन जाने के कारण जिनकी साल के पीछे एक महाने का बोनस महगाई भत्ता सहित ग्रेच्युटी में मिल रहा है उनके लिए भी ये कहने लग जाये कि अब तो कानून बन गया है इसलिए एक साल के पीछे 15 दिन का बोनस ही मिलेगा इसलिए मैं मंत्री महोदय से गारन्टी चाहना हूँ कि जिन मजदूरों ने लडकर अपने त्याग से, अपने परिश्रम से कुछ प्राप्त किया है वह इस कानून के बनने के बाद छाना नहीं जायेगा।

मैं एक निवेदन और करना चाहता हूँ। एक हूँ। इन्डस्ट्री में एक ही उद्योग में और एक हूँ। यूनित के अन्दर एकसाँ काम कुछ तो अमुक लोग डाइरेक्ट कम्पनी के मातहत कर रहे हैं और कुछ ठेकेदारों को सौंप दिया गया है। मान लाजिए फोर्लिन डिपार्टमेंट में साल रखा है, उन गठों को उठाकर ट्रको में लाद दते हैं, वह कम्पनी के नौकर हैं लेकिन उन्होंने कुछ काम का ठेका दे दिया है, ठेकेदार उस काम को कर रहे हैं तो इनके बोनस, महगाई भत्ते और दूसरी महत्त्वियतों में बहुत फर्क है। मेरा निवेदन यह है कि इस कानून के अन्दर अगर ठेकेदार के श्रमिकों को भी ले लिया जाता तो मैं मानता कि एक समानता की बात हो जाती है। सीमेंट इन्डस्ट्री में उनमें मजदूर डाइरेक्ट कम्पनी के मातहत काम नहीं करते हैं जितने कि ठेकेदार के मातहत करते हैं। इसी प्रकार से पैपर मिल है। वहा पर भी उतने श्रमिक यूनित के अन्दर मशीनों पर डाइरेक्ट काम नहीं करते हैं जितने कि ठेकेदारों के अन्तर्गत करते हैं। टैकस्टाइल इन्डस्ट्री में भी इसी तरह की बात है। खजानों में भी राजस्थान में ठेके से काम चलता है।

एक दूसरी बात यह है कि इस बिल में जितनी बारी लगी हो गई है उनसे सारी ग्रेच्युटी की बात खत्म हो गई है। जैसे कि इस्वीगल स्ट्राइक है। इस्वीगल स्ट्राइक किसकी कहा जायेगा यह भी निर्णय करने वाले मिल मालिक होते हैं। अभी पिछले महाने नगदाह में 42 दिन की हड़ताल चली। इसमें श्रमिकों को कोई डिमान्ड नहीं थी। मिल में एक श्रमिक मर गया। मर जाने के बाद उसका अग्नि संस्कार हुआ जिसमें काम करने बात मजदूर काम बन्द करके चले गए। उसके बाद मिल ने नोटिस लगाई कि श्रमिकों ने गैर कानूनी हड़ताल कर दी है उनको दंडित किया जायेगा। उसके बाद मजदूर मिल में नहीं गए। मजदूरों का कहना था कि आपने कैसे डिक्लयर किया कि यह इस्वीगल स्ट्राइक है। इन ससद का भी अगर कोई सदस्य गुजर गया है तो ससद पूरे दिन के लिए बन्द रही है। यहा पर यह तो नहीं कहा जा सकता कि ससद गैर कानूनी तौर से बन्द रही। इसी प्रकार विधान सभा का कोई सदस्य गुजर जाता है तो विधान सभा भी बन्द रहता है। या बाजार में कोई व्यापारी गुजर जाता है तो वह भी बन्द रहता है। इसी प्रकार यदि कारखाने का कोई श्रमिक गुजर गया और उनके अग्नि संस्कार में दूसरे मजदूर यदि शरीर होते हैं तो गैर कानूनी क्या है। (व्यवधान)...

सरकार ने मिमकाइक्ट के लिए स्ट्रेडिंग आर्डर्स बनाए हैं। यदि कोई मजदूर कारखाने में काम करते हुए कोई गलत काम करता है तो स्ट्रेडिंग आर्डर के अनुसार उसे मन्थेड किया जाता है, स्ट्रेडिंग आर्डर के अनुसार फाइन किया जाता है या डिमिचार्ज किया जाता है। जब कोई डिमिचार्ज किया जाता है तो ग्रेच्युटी महित सारी रकम जिसे मिलता है। यह आपसो एग्रीमेंट से हुआ जबकि कानून नहीं था और जिसकी कि श्रमिक प्राप्त कर रहा है, जिसमिस होने वाले श्रमिक को 48 घंटे में सारी रकम ग्रेच्युटी सहित देनी पड़ती है। लेकिन यहा पर डिमिचार्ज करने पर

या डिफरेंस करने पर ग्रेज्युटी वर्गरेड की सारी रकम चली जाती है। यह बात मेरी समझ में नहीं आ रही है।

इस बिल में क्लॉज 6(बी) में ऊधम का जिक्र किया गया है। इन दिनों उपद्रव को ऊधम बताया जाता है। कोई आदमी कारखाने में उपद्रव करता है। मैं निवेदन करना चाहता हूँ कि एक कारखाना है वहाँ मजदूर के वेतन के अनुसार प्रोविडेंट फंड काटा जाता है। कानून के अन्तर्गत यह बात है कि प्रोविडेंट फंड की रकम जो काटी गई वह जिन रोज वेतन चुकाया गया हो उसके दम गोज बाह खजाने में जमा हो जाना चाहिए। लेकिन कारखाना वाले सालों उस रकम को जमा न करे, एक कारखाना लगभग 66 लाख रुपये प्रोविडेंट फंड की रकम को सरकारी खजाने में जमा न करे, और अपने पास रखे तो यह कितना अनुचित काम है। और फिर प्रोविडेंट फंड कानून के अन्तर्गत यह बात है कि लड़की की शादी के लिये मजदूर को लोन मिल सकता है। वह उस के लिये एप्लाई करता है प्रोविडेंट फंड कमिश्नर को, कम्पनी ने वह रुपया जमा नहीं कराया है इस लिये उसे नहीं मिला वह मजदूर मैनेजर के पास जाता है और कहता है कि मेरी लड़की मंडप के नीचे बैठी है मुझे पैसा चाहिये। उस को मैनेजर नोटिस देता है कि यह उपद्रव करता है जिस के कारण उस को कारखाने से निकाला जाता है यह कहां का न्याय है? जब कि उस का उस में कोई दोष नहीं है। दोष कम्पनी का है जिस ने रुपया जमा ही नहीं किया।

इसी तरह से ग्रेज्युटी के नाम पर जो बातें होती हैं, मैं मानता हूँ आप ने ग्रेज्युटी के लिये यह कानून बनाया है। लेकिन बसूल करने के क्या तरीका है? उस की हजूरत जैसी अम्बो पूछ लया भी है कि कला जगह जाइय। सीधा सा सवाल है कि ग्रेज्युटी को वेतन का हिस्सा करार देना चाहिये। और पेमेंट आफ बैलेंस

एक्ट के अनुसार जिस तरह से वेतन बसूल किया जाता है उसी प्रकार से ग्रेज्युटी की रकम जब आदमी काम छोड़ता है उस के 48 घंटे के अन्दर वेतन के साथ मिल जानी चाहिये। एक सुझाव और देना चाहता हूँ कि ग्रेज्युटी की रकम प्रति मास या प्रति वर्ष काट कर अलग सरकारी खजाने में जमा करानी चाहिये। उस का हाल प्रोविडेंट फंड जैसा न ही, जैसे कि करोड़ों रुपये के रकम सरकारी खजाने में नहीं जमा की गयी। अगर यह रकम किसी ट्रस्ट के मातहत इस तरह से जमा करायी जाती है तो मैं मानता हूँ कि विकास कार्यों के अन्तर्गत भी उस का लाभ पहुंचेगा।

मेरे सामने एक बँलेस शीट है, इस के अन्दर भारत कोमर्स कम्पनी ने एक साल की ग्रेज्युटी की रकम 26 लाख 74 हजार २० बताया है। अगर एक कम्पनी एक साल की इतनी ग्रेज्युटी देती है तो यह मिसमेनेजमेंट का एक नमूना है। जब कम्पनी का कानून आयेगा और मुझे बोलने का मौका मिलेगा तब आप के सामने इस बात को रखूंगा।

एक बात और साफ नहीं हुई है और वह है ग्रेज्युटी और रिट्रेन्वमेंट कम्पेनसेशन की। एक आदमी नई मशीन लाता है और सारे कारखाने का रिनोवेशन करता है, उस वक्त मेरे जैसे बूढ़े लोग रिट्रेन्व होते हैं और नीजवान लोगों को डबल काम दिया जाता है। तो बूढ़े लोगों के जाने पर वह जिस के ऊपर काम बढ़ता है उस समय रिट्रेन्व आदमी को रिट्रेन्वमेंट कम्पेनसेशन दिया जाता है। जब ग्रेज्युटी रिट्रेन्वमेंट कम्पेनसेशन के साथ मिलेगी या नहीं इस का इस बिल के अन्दर कोई समावेश नहीं है। मैं मानता हूँ कि रिट्रेन्वमेंट कम्पेनसेशन और ग्रेज्युटी अलग अलग चीज है और बहुत से कारखानों के अन्दर रिट्रेन्वमेंट कम्पेनसेशन और ग्रेज्युटी दोनों मिला कर थ्रियों को दी जा रही है। जब आप ग्रेज्युटी का प्रावधान कर रहे हैं उस वक्त रिट्रेन्वमेंट कम्पेनसेशन का क्या हीमा इस ब्यवस्था के साथ जो ब्यवस्था आपने वेतन की की है ग्रेज्युटी के अन्दर क्या

[श्री रामसिंह भार्गवर्मा]

क्या गिना जायगा इस को स्पष्ट किया जाय। समय कम है और घंटी बज गयी इसलिये मैं अपना भाषण समाप्त करता हूँ।

MR. DEPUTY SPEAKER: It has been requested that business... (*interruption*) Order, order. When the Chair wants to say something, members do not allow.

It has been requested that the business in connection with the Bill should be completed by 4 P.M. On the other hand Government keeps on sending me the names of many members. There are three more members from the Government side. I would give all of them an opportunity. But I would request them to confine their remarks to 10 minutes each and not more. Then I shall call the Minister. There are a large number of amendments and it will take some time.

THE MINISTER OF LABOUR AND REHABILITATION (SHRI R. K. KHADILKAR): Will it be before 4 P.M.?

MR. DEPUTY SPEAKER: If possible.

SHRI VASANT SATHE (Akola): Sir, let me at the outset congratulate the Minister on this excellent piece of legislation in the labour field. I know there are some lacunae, but all the same this is one of the best pieces of legislation he has brought and it will go down in history. But may I point out certain defects, which if removed, will make the Bill more perfect?

First is the provision extending it only to certain limited factories, oilfields, plantations, etc. I should have thought that this Act will be made applicable to all those establishments to which the Industrial Disputes Act and Bonus Act are applicable. Bonus has some correlation to fill the gap between the present wage and the living wage, but the concept of gratuity is that it is a deferred wage paid to the employee for services rendered. I would have been very happy if we had a legislation giving protection to the least protected employee in the country, i.e. the agriculture labour. But that cannot be done under this Act. I would say that this Act should be made applicable to all establishments to which the Industrial Disputes Act and Bonus Act are applicable.

Secondly, we have curtailed the definitions of "employee" and "wage" in this Bill. In the Bonus Act you say "Rs. 1600". Why make it "Rs. 1000" here? It was said yesterday that those who get more than Rs. 1000 can take care of themselves. But that is not the question. This is something which a man must get as of right by virtue of his long service. So, this difference should go.

The definition of "continuous service" in this Bill has great scope for mischief. Those of us who have been practising on the labour side for 20 years and more know the difficulty in interpreting this definition. You say "...leave, strike which is not illegal..." I would have been happier if you had not brought in this question of legality and illegality at all. If you insist on doing so, you should move an amendment to the effect "which is not declared illegal by a competent authority under the Industrial Disputes Act". If you leave it as it is, there is lay off which is not illegal. Who is to decide whether it is legal or illegal? Are you going to leave it to the mercy of the employer? Because "illegal" under the standing orders is quite different from "illegal" under the Industrial Disputes Act. Therefore, unless the strike is declared illegal by a competent authority under the Industrial Disputes Act, it should not be included.

Then, coming to the definition of "retirement" it says that it is termination of the services of an employee otherwise than by superannuation. The normal way for retirement is superannuation. But here you say "otherwise than by superannuation". You have done that because you have come across a difficulty in clause 4, where you say that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years "on superannuation or on his retirement or resignation". Here the word "retirement" comes and so you want to define it in a new way. Why don't you do it in an honest and straight way without complication? You can say that if any person has put in five years of service, if his services are terminated for any reason whatsoever, he should get gratuity, which is a deferred wage. Suppose a government servant has committed some misconduct. Can his pension be touched after retirement? The

concept of gratuity is also like that of pension. Even the Supreme Court has said that it is not gratuitous payment even though it is called gratuity. It is some sort of payment for service rendered throughout the life in the service of the employer. When that is the concept, for God's sake do not bring in a new concept or open a loophole for mischief. You should say that gratuity should be payable for termination of service for whatever reason after continuous service of five years.

Then, why do you say that pension should not be included for calculation of gratuity? I can understand some allowances not being included. But bonus is a mandatory statutory payment. So it should be included.

Then, in clause 3, why do you limit it to 20 years? Does he not render service after that? You say that it is for services rendered and you say that it is 15 days for each year of services. Why do you put a maximum of 20 months?

Why do you limit it to 15 days wages?

SHRI R. K. KHADILKAR: 20 months benefit; that means, 40 years service.

SHRI VASANT SATHE: Because of 15 days wages. That should be raised. It should be raised to 1 month's wages.

Another point that I would submit is this. In clause 4(6)(a), you have provided that "gratuity of an employee whose services have been terminated for any act, wilful omission or negligence." You say, "any act" which causes loss and you deduct his gratuity. To err is human. Who is a human being or an employee who throughout his course of service will not commit some act by which some damage may not be caused? you want it to be deducted from gratuity. This will be too harsh. It should be limited to only wilful act with the deliberate object of causing loss or damage. That we can understand. But not that you say, "any act".

Then, coming to this penal clause, you never see any case under any law where earned wages are deprived. Pension is earned; it is only deferred. A person may have committed a crime, he may have committed a murder, under

the law, will you say, his pension will be deprived? Does it happen? No. When even for the worst crime, under the law, that does not happen, why do you want to bring in this element of "misconduct" committed by him for which his services are terminated and his gratuity is being touched? The gratuity is for the benefit of his family. A man commits some misconduct and you terminate his services. But then you are also going to take away the share of his family's bread. Why do you bring in this concept? I do not understand. Why do you want to introduce such a thing? I know your anxiety to discourage strikes and other things. But don't use such a penal provision of depriving him of earned wages. Never introduce such a thing. It is not understood to any industrial legislation; it is not understood to an entire era of contracts and agreements entered into as my hon. friend, Shri Ram Singh Bhai just now pointed.

Lastly, I would submit one thing more, about this whole machinery, as to how we find ourselves in difficulty. We say that gratuity must be paid. But then we know the employer does not pay easily. Our experience is that he will have a lay-off and all that. I say, it must be paid monthly. There is not a single in which an employer pays retrenchment compensation. You have to go to court to fight it out for 5-10 years. He invests that money somewhere else because he thinks, "By the time I pay, I would have earned that much."

What is he doing with provident fund? Crores of rupees are lying. We can easily find out some method. We know how many persons retire. Certain percentage of his total wage bill per month or per year should be kept as gratuity and paid to Government authorities. You should make a provision like that. If that is done, you will avoid the entire mechanism of providing punishment.

Then, your clause 10 is completely redundant. What have you said in clause 10? It should be of interest to you.

An employer will be punished with three months' imprisonment, as prescribed in Clause 9 of this Bill, if he is responsible for non-payment of gratuity. But then in Clause 10 they say that that employer can put forward another

[Shri Vasant Sathar]

man and say, "he is the person; punish him". These are strange things. We know what a big employer who gives aid, help and everything will do if he is responsible for non-payment of gratuity. In view of the definition of 'employer' that has been given—it has been said that the person who is actually in charge of management will be the employer—why do you need Clause 10? Why do you want to create confusion here? By having this Clause you are going to make confusion worse founded. Kindly, therefore, make some of these changes in the Bill and make it better and more useful.

श्री नाबूराम अहिरवार (ठीकमगढ़) :
उपाध्यक्ष महोदय, इस विधेयक का समर्थन करते हुए मैं मंत्री महोदय का कुछ बातों की ओर ध्यान आकषिप्त करना चाहता हूँ। अधिकतर देखा गया है कि जो मनेजमेंट होता है या उसके जो बड़े अधिकारी होते हैं वे छोटे कर्मचारियों को बहुत ज्यादा परेशान करते हैं। बूँक प्रबन्ध उनके हाथ में होता है। इस बास्ते मालिकों के सहारे वे कुछ भी कर सकते हैं। इस तरह की स्थिति पैदा कर सकते हैं जिस में मजदूर हड़ताल करने पर मजबूर हो जाएँ या काम को बन्द करने पर मजबूर हो जाएँ इस तरह से कुछ न कुछ वे नुकसान दिला कर मजदूरों के खिलाफ एक्शन लेने की स्थिति में हो जाएँगे। जब मजदूरों के खिलाफ इस तरह से एक्शन हो जाएगा तो उनकी ग्रेचुइटी मारी जाएगी। इस बास्ते मैं कहना चाहता हूँ कि कम से कम जो आपने कंट्रोल्ड आथोरिटी एम्प्लॉयर्स की है जब तक वह कंट्रोल्ड आथोरिटी इस के बारे में फीसला न दे दे या उसकी स्वीकृति प्राप्त न कर ली जाए तब तक मजदूरों का ग्रेचुइटी फंड मारा नहीं जाना चाहिये। कंट्रोल्ड आथोरिटी ही बास्त्व में इसका फीसला करे कि मजदूरों ने जानबूझकर मनेजमेंट को या कैंटरी को नुकसान पहुंचाया है अथवा नहीं।

आपने यह प्रावधान किया है कि जिस कैंटरी में या जिस कारखाने में दस

से अधिक मजदूर काम करते हैं वहाँ पर वह लागू होगा। आजकल पूँजीपति लोग, कारखाने समाने में बहुत होखिबार हो गए हैं। अपने एक ही कारखाने को वे कई हिस्सों में बाँट देते हैं और उसका नतीजा यह होता है कि किसी भी एक हिस्से में दस से ज्यादा आदमी काम नहीं करते हैं। किसी कारखाने में अगर नब्बे आदमी काम करते हैं तो उस कारखाने को वे दस हिस्सों में बाँट कर प्रत्येक हिस्से में नौ नौ आदमी काम करते हुए दिखा देते हैं और आपका जो कानून है वह उन पर लागू नहीं होता है। कम्पनी एक है, कारखाना एक है लेकिन आपके कानून की परिधि से बचने के लिए वे ऐसा कर देते हैं। मैं चाहता हूँ कि इस तरह की जो चीजे होती हैं, इनकी और भी आपका ध्यान जाए ताकि मजदूरों को जो सुविधाएँ मिलनी चाहिये, उन से वंचित न हों सकें। ऐसा हो रहा है। इसको रोका जाना चाहिये।

आपने कहा है कि जिन की पांच साल की या इससे ज्यादा साल की सविस होती उनको ग्रेचुइटी मिलेगी, इससे कम सालों की सविस जिन की होगी उनको नहीं मिलेगी। यह देखा गया है कि पब्लिक सेक्टर में भी टेम्पोररी या केज्युअल नेबर को एनगेज किया जाता है। इसी तरह से प्राइवेट सेक्टर में भी उसको एनगेज किया जाता है। मनेजमेंट का यह रुत है कि अगर किसी ने नौ महीने की लगातार सविस कर ली हो ली उसको क्वैसी परमानेंट माना जाएगा और आगे चल कर वह पक्की नौकरी पाने का हकदार हो जाएगा अब आजकल इन कारखानों में या फैंक्टरीज में हो वह रहा है कि जो नौकर रखने वाले अधिकारी हैं, वे इन टेम्पोररी लोगों की सविस में छः आठ महीने के बाद ब्रेक कर देते हैं और दो चार दिन बतल कर देने के बाद उनको फिर नौकर रख लेते हैं। इस तरह से उनकी सविस कटिन्ग नहीं रह पायी है और वे जो उनको सुविधाएँ मिलनी चाहिये उन सुविधाओं के अधिकारी

नहीं रह करती है। आठ आठ और दस दस साल तक बेंचारे इसी तरह से टेम्पोरेरी के टेम्पोरेरी रहते हैं। मैं समझता हूँ कि कानून बनना चाहिये कि कोई भी आदमी तीन साल की सविन अगर कर लेता है और इस दौरान में उसकी सविन में चार चार छः छः दिन का ब्रेक पैदा कर दिया जाता है और उसको इस ब्रेक के बाद फिर नौकर रख लिया जाता है, उसकी सविन को कंटिन्यूअस सविन माना जाएगा। यह जो ब्रेक होता है यह कर्मचारी की गलती की वजह से नहीं होता है, यह उनकी वजह से होता है जे, नौकर रखने वाले लोग हैं, जे, एम्प्लॉयर हैं, जे, मैनेजमेंट है। उनको आगे चल कर प्रेचुइटी, बोनस आदि न देना परे इस वास्ते वे उनकी सविन में ब्रेक डाल देते हैं। मैं चाहता हूँ कि आपकी इस तरह का प्राविजन रखना चाहिये कि जे इस तरह के लोग हैं, इनकी सविन को कंटिन्यूअस माना जाएगा और तीन साल के बाद इनको परमानेंट समझा जाएगा। इनको प्रेचुइटी आदि बराबर मिलनी चाहिये।

इस में आपने उन कारखानों को भी शामिल किया है जिन का सोचनल काम होता है या टेम्पोरेरी काम होता है, जहाँ पूरे साल काम नहीं चलता है। इस में कृषर के कारखाने आते हैं। वे पूरे साल नहीं चलते हैं, सीजन के वकत चलते हैं। वहाँ आपने प्रेचुइटी का प्राविजन किया है। लेकिन वह प्राविजन बहुत कम है। आपने पंद्रह दिन की प्रेचुइटी की बात कही है। यह बहुत कम है। मैं चाहता हूँ कि इसको एक महीना कर दिया जाए।

मैं अधिक समय लेना नहीं चाहता हूँ। इस बिल को खाने के लिए मैं सरकार को बन्धुवाद देता हूँ।

THE MINISTER OF LABOUR AND REHABILITATION (SHRI R. K. KHADILKAR): I am glad that the report of the Select Committee and the

Bill, as amended by the Select Committee, have been welcomed by all sections of the House.

In the Select Committee, I must say, every Member devoted his time to study all aspects and except on two points which I will refer to later on, there was almost unanimous support to the Bill, as amended and as it has emerged, from the deliberations of the Select Committee.

As I said in my opening remarks, this is a retirement benefit in addition to provident fund and the recently introduced family pension benefits and other things. While I do recognise the desire of the members who are interested in the welfare of the organised sector of the working class, they should also remember as one hon. DMK member again and again emphasized, 'Do we represent only the workers who are employed in the factories? Are we not concerned about others who are hardly employed except in seasons, that is to say, intermittently and their earnings are very low?' We should bear in mind that when we talk of working class in this country, we should not limit our vision, while making demands, only to those who are fortunate enough to get employment in a factory or in an establishment. We must have a clear perspective of the Indian situation. Therefore, while I do understand their anxiety—they want to provide for better conditions, they should ask themselves, 'All right, we show a great concern for the rights of the working class—they are legitimate rights, I don't blame them—should we not, at the same time, bear in mind that we have got one worker who has got a secured employment? In the categories that have been mentioned, there are hundreds and thousands who have no secured employment and if at all he is fortunate enough to get employment, he gets a meagre pittance compared to these people . . . (Interruptions). If you bear this in mind.—I know full well that you would like these benefits extended further. I don't deny certain things are there in the Bill to which objections were taken, namely, whether an illegal strike should constitute a break. (Interruptions) Mr. Srikanth Nair, I still feel I am on a firm ground. When you speak—and you have every right to speak for those who are fortunate in getting an employment somewhere, whatever be the capacity, in

[Shri R. K. Khadilkar]

shops, factories, local bodies and transport, you should bear in mind others who are not so fortunate. When you talk that you represent the entire working class of the country, are you going to completely ignore the vast majority of people who are either not fortunate to get employment or when they get it, they are not getting enough? Therefore, while making these claims, we should also bear in mind that we have a responsibility for those who are hardly getting any wage, even to sustain themselves. I hope Mr. Sreekantan Nair will bear this in mind when he comes to me for benefits being given to rural labour.

15 hrs.

Certain points were made about extending this legislation to certain other categories. There is an enabling section by which we can extend the application of this legislation to other categories. They, who made such suggestions, should remember why we have excluded them. Mr. Sreekantan Nair and certain others were feeling so much for the transport workers. This is being covered by the States. Without consulting the States, and for that matter, the Local Bodies, it would not be proper for us to impose additional burden. That cannot be done without their concurrence. But I would consider the suggestion very seriously. Transport workers are getting organised; transport is being extended to the rural areas; I do recognise this. There are also other categories of labour; there are also teachers, there are also hospital servants etc. There are categories covered by the I.D. Act. . . .

DR. RANEN SEN (Barasat): Construction workers.

SHRI R. K. KHADILKAR: Construction workers also; they are covered by the I.D. Act. Therefore, all these suggestions will be borne in mind. This is only the beginning of a scheme and so let us have some experience. If there are shortfalls, we can rectify them later on. That is possible.

Certain other points were made and I will briefly refer to them, because there were certain misunderstandings.

One point related to 'retrenchment compensation'. Mr. Chatterjee referred to that. Retrenchment compensation is

in addition to gratuity. Gratuity is payable on the termination of service for any person whereas retrenchment compensation is not payable in all circumstances. He should bear that in mind. He made that point and created a little confusion on this matter.

Within the coverage of the Bill, as I have made it clear, it is very difficult for me to widen the scope of the Bill. Certain suggestions were made yesterday regarding salt pan workers. I will bear all these suggestions in mind and consider what should be done when there is some opportune time for extending the scope of the Bill.

Regarding the definition of wages, some Members wanted to include other items like House-rent allowance, etc. Mr. Sathe, the last but one Member who spoke, wanted to include bonus also. As I said, you have to see what we can do at the present juncture. You must consider also the present state of various sectors of our economy, and consider whether it would be proper to burden it further in this manner. I do not think at this juncture I would like to include anything else except 'basic wage' and 'dearness allowance' as it is at present provided in the Bill.

Regarding the worker's right to prosecute, hon. Members who were Members of the Select Committee would realise that we had gone thoroughly into this aspect, and the clause that has finally emerged from the Select Committee has emerged after full debate and concurrence and consultation with the law authorities of the Government. If hon. Members require, I can give just a short explanation for this purpose. Although it was considered not desirable to empower the worker to take the matter to court without the sanction of the appropriate Government, the proviso to clause 11(1) of the Bill makes it obligatory on the Government to direct the controlling authority to file a prosecution if the gratuity has not been paid within the prescribed time-limit. This is the protection given in this regard.

SHRI N. SREEKANTAN NAIK (Quilon): How will a worker enforce this? He will have to go and file a writ? That is the only method open to him to compel the Government.

SHRI R. K. KHADILKAR : If he studies this with the other provisions of the Bill, he will realise that a worker who is likely to benefit under the scheme has not been left to the tender mercies of the employer. He must apply his mind and keep before his eyes the entire scheme of the Bill and then he will realise that there is no lacuna here.

Regarding the question of illegal strike and the provision made in clause 4(6) (b), a point was made whether we should include indiscipline, riotous behaviour and violent conduct. Can those of us who have been working in this field, with a little self-introspection, say that there has been no indiscipline of this nature and no destruction of property has taken place? Riotous behaviour is almost a daily phenomenon in some places. So, they will have to consider this very carefully. When does this type of thing happen? It happens because of the weakness of the trade union movement and the trade union authority in each plant. If trade union unity had been there, which we are attempting to have now by having a representative union in every plant and industry, which attempt I hope will succeed, and if inter-union rivalry could be eliminated thereby, then all these things which are unsocial or anti-social and which come in the way of production would stop.

Now, let me give an instance. In the public sector undertaking at Avadi, namely the Avadi factory, where I had to intervene and settle a dispute, could my hon. friends justify the type of violence that had taken place, certain cases in regard to which I have to decide? I have got photographic evidence in that regard. So, could we not have some deterrent provision in the Bill so that at least to some extent indiscipline could be eliminated and discipline could be restored in the organised sector, which is the primary task, according to me?

SHRI S. B. GIRI (Warangal) : The hon. Minister has said that all this happens because of multi-unions. I would like to ask him why he should not bring forward legislation for having only one union in one industry? He may accept the principle of secret ballot for that purpose.

Again, I would like to ask why a worker should get double punishment?

If he has damaged any plant or damaged any machinery, he is dismissed for the purpose. Why should gratuity be denied to him, and why should there be double punishment?

SHRI R. K. KHADILKAR : I shall reply to his points. As the hon. Member knows very well, we are also working for that...

PROF. MADHU DANDAVATE (Rajapur) : He is first hanging him and then sending him to imprisonment.

SHRI R. K. KHADILKAR : That is not the case. It is not a question of hanging him before committing him for some offence. That is not the position at all.

One thing is that for bringing about some sort of discipline and healthy growth of the trade union movement, we are bringing forward a piece of comprehensive legislation and I hope there will be co-operation forthcoming from all quarters in that regard. In fact, the attempt to establish a sort of National council of trade unions has succeeded in creating one centre in this whole jangle of trade union activity and I hope Shri Dinen Bhattacharyya, Shri Dandavate and others will not attack it from a different angle altogether.

PROF. MADHU DANDAVATE : CITU must also be brought into it.

SHRI R. K. KHADILKAR : The doors are open. If they accept the discipline, they are welcome. Three national trade unions are already there.

If he has committed violence, it is not a question of hanging him. The matter will be decided by the tribunal. The nature of the offence, the punishment merited, all these things will be considered and a final decision taken, and in the light of that decision by the controlling authority. So he has not been left just to the whims of the employer. If violence is alleged, he will have to prove it. Then other things will follow. This is the position.

One judgment was quoted. But there is another judgment of the Supreme Court on this point.

DR. RANEN SEN : Both judgments have been quoted. He said that there is anomaly in the judgments.

SHRI R. K. KHADILKAR : I must say that the Supreme Court has also from time to time been taking a different view. It depends on the outlook and approach of the Supreme Court Judge and of the Chief Justice, how he looks at these social problems. The legal profession, though they are supposed to guide them, do not act as a corrective in their general approach to these problems. I must say this is unfortunate. It should have been done.

SHRI R. D. BHANDARE (Bombay Central) : Let him not reflect on the legal profession.

SHRI R. K. KHADILKAR : To some extent, I have to bring them in. I will read from a part of the judgment

"A distinction should be made between technical misconduct which leaves no trace of indiscipline and misconduct resulting in damage to the employer's property which may be compensated by forfeiture of gratuity or part thereof. A serious misconduct which, though not directly causing damage such as acts of violence against the management or other . . . or riotous or disorderly behaviour in or near the place of employment is conducive to grave indiscipline.

"The first should involve no forfeiture; the second may impose forfeiture of an amount equal to the loss directly suffered by the employer in consequence of the misconduct; and the third may entail forfeiture of the gratuity due to the worker".

In one of the minutes of dissent, I think by Shri N. S. Nair, he has accepted part forfeiture as a compromise. But this will also be decided by the controlling authority whether the offence is so grave as to justify full forfeiture. Here also I would like to reassure the House that the scheme is such that the employer normally would not get that latitude to behave in a manner against the letter and spirit of the law.

Then I come to the last point, cl. 2(c), strike which is not illegal. I was requested unanimously by the Select Committee to request Government to reconsider these two clauses regarding forfeiture and illegal strikes. After giving due consideration to the unanimous

desire expressed by the Committee, I am prepared to accept an amendment to this clause, and I would suggest, at the same time. . . .

SHRI DINEN BHATTACHARYYA (Serampore) : Bring your own amendment.

SHRI R. K. KHADILKAR : I will accept one amendment by Shri Sarjoo Pandey. His amendment is there. I am accepting only that amendment. In order to save time,—because my colleague is waiting here for long and he wants to have some time today—I would request all the hon. Members that if they accept this compromise and the unanimous report of the Bill as has emerged,—we will save the time,—they may ask Shri Sarjoo Pandey to move his amendment. I request him to move it.

I once again thank all the hon. Members for extending their full co-operation, and henceforward, when we bring forward a scheme relating to socialistic measures like this, I expect a similar co-operation from all sides.

DR. RANEN SEN : The Minister has mentioned one amendment. But there is another amendment in the name of the same Member on a similar thing. I wanted to know his reaction to that amendment.

MR. DEPUTY-SPEAKER : Procedurally, the amendments have not been moved until we come to the clauses.

DR. RANEN SEN : Before they are moved, I wanted to know his reaction to the amendment in the name of Shri Sarjoo Pandey. Amendment No. 15 is there. The hon. Minister has pointed out amendment No. 13. What is his reaction to amendment No. 15?

SHRI R. K. KHADILKAR : I am not accepting it, except amendment No. 13, which says :

Page 2, line 22, *omit* "which is not illegal."

MR. DEPUTY-SPEAKER : Order, please. We are putting the cart before the horse. The question is :

"That the Bill to provide for a scheme for the payment of gratuity to employees engaged in factories,

mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

Clause 2— (Definitions)

MR. DEPUTY-SPEAKER : We take up clause-by-clause consideration. Clause 2. There are a number of amendments. I am repeating the request of the hon. Minister. In order to save time, if you accept the compromise, the Members in whose names the amendments stand, need not move these amendments.

AN HON. MEMBER : That is not possible.

MR. DEPUTY-SPEAKER : That is all right then. Clause 2. Mr. Jyotirmoy Bosu—he is not here. Shri Sarjoo Pandey.

SHRI SARJOO PANDEY (Ghazi-pur) : I move :

Page 2, line 22, *omit*

"which is not illegal" (13)

SHRI DINEN BHATTACHARYYA (Serampore) : I move :

Page 4, lines 32 to 34, *omit*

"but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance" (25)

MR. DEPUTY-SPEAKER : The amendment moved by Shri Sarjoo Pandey and Shri Dinen Bhattacharyya are there. Shall I put them to the House ?

SHRI DINEN BHATTACHARYYA : Put 25 separately.

MR. DEPUTY-SPEAKER : I will put them separately. Now, I shall put amendment No. 13 to the House.

I think the 'Ayes' have it.

SOME HON. MEMBERS : The 'Noes' have it.

MR. DEPUTY-SPEAKER : Let the Lobbies be cleared.

The Lobbies have been cleared.

SHRI N. SREEKANTAN NAIR : The amendment has not been read out.

MR. DEPUTY-SPEAKER : All these amendments have been circulated to the Members; they are supposed to read them.

SHRI N. SREEKANTAN NAIR : In the House also they are supposed to be read.

MR. DEPUTY-SPEAKER : The convention is not to read the text of the amendment. You have these amendments with you.

SHRI R. D. BHANDARE : I want to seek a clarification. When you were putting the amendment to vote the Minister got up twice to say that he accepted it.

MR. DEPUTY-SPEAKER : The Minister might accept it but the hon. Members of this side say : No.

SHRI N. SREEKANTAN NAIR : That is why I wanted you to read it.

PROF. MADHU DANDAVATE : In this House fortunately or unfortunately Members on this side are under the impression that whatever amendment comes from the Opposition it should be opposed, even though the Minister accept it... (*Interruptions.*)

MR. DEPUTY-SPEAKER : If the Minister cannot convey what he has in mind to his colleagues on the same side, I cannot help it. I will put it to the House.

The question is :

"Page 2, line 22,—

omit "which is not illegal" (13)

The motion was adopted.

MR. DEPUTY-SPEAKER : I shall put amendment No. 25 moved by Shri Dinen Bhattacharyya to vote.

Amendment No. 25 was put and negatived.

MR. DEPUTY-SPEAKER : The question is :

"That Clause 2, as amended, stand part of the Bill".

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3, was added to the Bill.

Clause 4—(Payment of Gratuity).

SHRI N SREEKANTAN NAIR: I beg to move:

Page 6,—

omit lines 1 to 9 (16)

SHRI DINEN BHATTACHARYYA: I beg to move:

Page 4, line 41,—

for "five years" substitute "one year" (26)

Page 4, line 43,—

add at the end—

"discharge, dismissal and retrenchment, or" (27)

Page 5, line 15,—

for "fifteen" substitute "thuty" (28)

Page 5, line 24,—

for "seven" substitute "fifteen" (29)

Page 5,—

omit lines 25 and 26 (30)

Pages 5 and 6,—

omit lines 36 to 41 and 1 to 9 respectively. (31)

MR. DEPUTY-SPEAKER: I will put these amendments to the House.

Amendments Nos. 16, and 26 to 31 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 4 stand part of the Bill".

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 to 8 were added to the Bill.

Clause 9—(Penalties)

SHRI DINEN BHATTACHARYYA: I beg to move:

Page 8, lines 25 and 26,—

omit " , or with fine which may extend to one thousand rupees, or with both" (32)

Page 8, lines 30 and 31,—

omit " , or with fine which may extend to one thousand rupees, or with both" (33)

Page 8,—

omit lines 32 to 37 (34)

MR. DEPUTY-SPEAKER: I shall put amendments 32, 33 and 34 to vote.

Amendments Nos. 32 to 34 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"Clause 9 stand part of the Bill."

The motion was adopted

Clause 9 was added to the Bill.

Clause 10 was added to the Bill.

Clause 11—(Cognizance of offences)

SHRI DINEN BHATTACHARYYA: I beg to move:

Page 9,—

omit lines 15 to 23 (35)

MR. DEPUTY-SPEAKER: I shall put amendment No. 35 to vote.

Amendment No. 35 was put and negatived.

MR. DEPUTY-SPEAKER: The question is.

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Clauses 12 to 15 were added to the Bill.

Clause 1—(Short title, extent, application and Commencement.)

MR. DEPUTY-SPEAKER: There are some amendments to clause 1.

SHRI N. SREEKANTAN NAIR: I beg to move:

Page 1, line 8,—

after "port" insert—

"transport company, construction company, local body" (11)

SHRI SARJOO PANDEY: I beg to move:

Page 2,—

after line 4, insert—

“(d) workers of hospitals, educational institutions, universities, local bodies, construction workers, clubs, cooperative societies and transport workers.” (12)

SHRI DINEN BHATTACHARYYA: I beg to move:

Page 1, line 9,—

add at the end—

“workers of any local body, any transport, any contract labour, any construction industry, any educational institution including college, school, technical institution or university, any hospital and clinic, any club, canteen or cooperative society and of any solicitors firms”. (23).

MR. DEPUTY-SPEAKER: I shall now put these amendments Nos. 11, 12 and 23 to the House.

Amendment Nos. 11, 12 and 23 were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

“That clause 1 stand part of the Bill.”

The motion was adopted.

Clause 1 was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

SHRI R. K. KHADILKAR: I beg to move:

“That the Bill, as amended be passed.”

MR. DEPUTY-SPEAKER: Motion moved:

“That the Bill, as amended, be passed.”

SHRI DINEN BHATTACHARYYA: Sir, I congratulate the Labour Minister on accepting one amendment in respect of continuity of service, but there are still some lacunae left. He has said that he cannot extend this Act to those cases which are under the purview of

a State. I do not find any logic in this argument, because it is a concurrent subject. He could have easily included the transport workers and construction workers serving in the public sector at least. He has not done so.

Secondly, he has left the workers to the tender mercies of the employers and the controlling authority about payment of gratuity. In the case of provident fund, Mr. Khadilkar himself tried his best to see that all the arrears are immediately deposited with Government and some penal measures should be adopted to force the defaulting employers. But up till now he has not succeeded. In the same way, if the employer does not pay the gratuity, the employee cannot go to the court. He has to go through all this bureaucratic machinery. In many cases, the Labour Ministry will not side with the employees even if they are satisfied that the gratuity has not been paid. So even at this stage, I request the minister to reconsider this issue. Dr. Ranen Sen and other members in the Select Committee pleaded that the defaulting employers must be prosecuted and imprisoned. Here the Bill provides that the trying magistrate may convict him to three months imprisonment or fine or both. In actual practice you will find that there will be no imprisonment and the employers do not mind paying whatever fine is imposed. So, the Labour Minister should think over it.

Then, in the case of dismissal or retrenchment also the employee should get his gratuity because it is due to him. If it is not specifically mentioned, the employing authority will deny this gratuity to him. I know that Shri Khadilkar is a very good man. When we discussed this amendment in the Select Committee, he was in favour of accepting it. But the policy of the government did not allow that. I am very sorry for the poor Minister who had the intention of accepting these amendments but could not do so because of the policy of the government.

श्री सरजू पांडे (गार्जीपुर) : जपाप्रमख महोदय, मैं माननीय मंत्री जी को इस बात के लिए धन्यवाद देना चाहता हूँ कि उन्होंने मेरे 13 वें संशोधन का स्वीकार किया। यों तो इस कानून में बहुत सारी खामिया हैं। पेज 2 पर जो एम्पाईड की डिफिनीशन

[श्री सरजू पांडे]

की गई है उसमें मनेजीरियल स्टाफ को शामिल नहीं किया गया है। उनको भी इसमें शामिल करना चाहिए। जो एडमिनिस्ट्रेटिव काम करने वाले हैं उनको भी उसमें शरीक करना चाहिए। मैंने अमेन्डमेंट भी दिया था। मंत्री जी ने कहा है कि इस पर विचार करेंगे। जे. बूसरे वर्कर्स है जैसे बस्पतालों के, म्युनिसिपल बोर्ड्स के उनको भी इसमें शरीक करना चाहिए।

15 में ग्रेज्युइटी का जो मामला है वह बड़ा संगीन है। इस उद्यम के तमाम मेम्बर्स ने, क्लिंग पार्टी की तरफ से भी और इस तरफ से भी यह मांग की है कि सिन्डिकेटी कार्पोरेशन करने का जो प्रावधान किया गया है यह संविधान के विरुद्ध है और हमारी मान्यताओं के विरुद्ध है। एक ही आदमी को पचासो सजावे नहीं दी जा सकती है। आप जानते हैं कि एम्प्लायर्स झूठे कैसे ज तयार करते हैं। ऐसी हालत में किसी एम्प्लायर को ग्रेज्युटी न देना बड़ा अन्यायपूर्ण होगा। मेरा निवेदन है कि मंत्री जी इसको स्विकार कर लें। इस मामले में सारे मेम्बर्स का एक राय रही है। मेरा विश्वास है कि मंत्री जी कम से कम इसको जरूर मान लेंगे ताकि एक ही एम्प्लायर को कई प्रकार की सजावे न दी जा सके।

इन शर्तों के साथ मैं इस बिल को सपोर्ट करता हूँ।

SHRI R. K. KHADILKAR: I want to clarify only one point. The hon. Member referred to punishment. I will draw his attention to clause 9(2) where it is mentioned that for non-payment of gratuity the minimum imprisonment is for a period of three months.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

15.40 hrs.

COKING COAL MINES (NATIONALISATION) BILL—Contd.

Clause 2

MR. DEPUTY-SPEAKER: We will now take up the clause-by-clause consideration of the Coking Coal Mines (Nationalisation) Bill. There are no amendments to clause 2. The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

MR. DEPUTY-SPEAKER: There are no amendments to clauses 4 and 5. The question is:

"Clauses 4 and 5 stand part of the Bill."

The motion was adopted.

Clauses 4 and 5 were added to the Bill.

Clauses 6, 7 and 8 were added to the Bill.

Clause 9—(Central Government not to be liable for prior liabilities)

SHRI SOMNATH CHATTERJEE (Burdwan): I beg to move:

Page 5, line 29,—

after "(1)" insert—

"Subject to the provision of Section 9A," (3)

Page 5, line 36,—

(i) omit "wages, bonus,"

(ii) omit "provident fund, pension, gratuity" (4)

SHRI R. V. BADE (Khargone): I beg to move:

Page 5,—

after line 33, insert—

"Provided that if the liability of the owner, agent, manager or managing contractor of a coking coal mine or coke oven plant in relation to any period prior to the appointed day cannot be discharged then the liability may be discharged by the Central Government or the Government company out of the amount which is due to the company or owner as the compensation." (18)