

## Chapter 2

### Compliance of Contract Labour (Regulation & Abolition) Act, 1970, Contract Labour (Regulation & Abolition) Central Rules, 1971, Minimum Wages Act, 1948 and Minimum Wages Rules, 1950

The Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The Act applies

- (a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;
- (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen, provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

The Act shall not apply to establishments in which work only of an intermittent<sup>4</sup> or casual nature is performed.

The Contract Labour (Regulation and Abolition) Rules, (CLRR), 1971 was framed by Central Government in exercise of the powers conferred by Section 35 of the CLRA, 1970 for carrying out the purposes of this Act. Such rules may provide for various matters, some of which are enumerated below:

- The manner in which establishments may be registered under Section 7, the levy of a fee therefor and the form of certificate of registration;
- The form of application of the grant or renewal of a license under Section 13 and the particulars it may contain;
- The manner in which an investigation is to be made in respect of an application for the grant of a license and the matters to be taken into account in granting or refusing a license;
- The form of a license which may be granted or renewed under Section 12 and the conditions subject to which the license may be granted or renewed, the fees to be levied for the grant or renewal of a license and the deposit of any sum as security for the performance of such conditions;
- The circumstances under which licenses may be varied or amended under Section 14;

<sup>4</sup> The work performed in an establishment shall not be deemed to be of an intermittent nature-- (i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or (ii) if it is of a seasonal character and is performed for more than sixty days in a year.

- The time within which facilities required by this Act to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the Principal Employer;
- The number and types of canteens, rest-rooms, latrines and urinals that should be provided and maintained;
- The type of equipment that should be provided in the first-aid boxes;
- The period within which wages payable to contract labour should be paid by the contractor under sub-section (1) of Section 21;
- The form of registers and records to be maintained by Principal Employers and contractors;
- The submission of returns, forms in which, and the authorities to which, such returns may be submitted;
- The collection of any information or statistics in relation to contract labour; and
- Any other matter which has to be, or may be, prescribed under this Act.

The Chief Labour Commissioner and its sub-ordinate formations have been entrusted with the responsibility of ensuring compliance to the provisions of CLRA, 1970 and CLRR, 1971. Railway Board have issued instructions to its field formations from time to time. In their letter<sup>5</sup>, Railway Board issued directions to all General Managers in Indian Railways to consult their respective Personnel Department before contracting out activities so that there is no violation of CLRA, 1970 and CLRR, 1971. The instructions stated that Principal Employers should get their establishment registered under the Act and Rules, contractors must obtain licenses from the organisation of Labour Commissioner, Principal Employers should ensure compliance to obligations relating to provision of prescribed amenities, payment of wages to workers, maintenance of prescribed registers and records and submission of returns to Licensing Officers.

Audit reviewed the compliance of statutory provisions regarding registration and obtaining license by the Principal Employer and contractors, deriving assurance about the applicability of the relevant provisions of the Act by the designated<sup>6</sup> Principal Employers, submission of returns by them to the respective Offices of Labour Commissioner, display of notices at work place, amenities provided to the contract labour, manner of payment to contract labour and maintenance and

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<sup>5</sup> Letter no. E(LL) 2005 AT CNR/16 dated 29.8.2006

<sup>6</sup> Railway Board's letter no. E/LL/70AT/CNR/1-3 dated 15.10.1971 specified the category of Principal Employer as Divisional officers in Divisions, Senior Mechanical Engineer, Deputy Chief Mechanical Engineer or Works Manager in respect of Workshops, Controller of Stores in respect of Stores depot, Executive Engineer in respect of Construction and Heads of Departments in respect of contracts directly controlled by the Headquarters in respect of contracts.

preservation of prescribed registers and reports. Audit findings on the extent of compliance to the above mentioned provisions are discussed below:

## 2.1 Registration of the Principal Employer under the Act

As per provisions<sup>7</sup> of CLRA, 1970, every Principal Employer of an establishment to which this Act applies (establishment where the number of workmen engaged directly as well as through all contractors on any one day in last twelve months exceeded 20) shall, make an application to the registering officer (Organisation of Chief Labour Commissioner) in the prescribed manner for registration of the establishment.

Audit observed that out of 463 contracts reviewed, Railway Administration was registered in 140 contracts and in balance 323 contracts Railway Administration was not registered.

*Thus, there was no mechanism in place in the Railways to ensure that the respective designated Principal Employers who award contracts for getting the work/activities done in their premises, would necessarily register themselves with the Office of the Labour Commissioners.*

### Annexure 2.1

#### 2.1.1 Intimation about commencement of work to Labour Commissioner by the Principal Employer

Every Principal Employer shall, within fifteen days of the commencement or completion of each contract work under each contractor, submit a return to the Inspector (under concerned Labour Commissioner) appointed under Section 28 of the Act intimating the actual dates of the commencement and completion, of the contracts in the prescribed format<sup>8</sup> (Appendix III).

Out of 463 contracts reviewed in audit,

- In respect of 17<sup>9</sup> contracts, Principal Employer submitted returns intimating commencement of works,
- In respect of 168<sup>10</sup> contracts, Principal Employers did not submit returns towards commencement and/or completion of contracts; and
- In respect of the remaining 278 contracts, records relating thereto were not made available to Audit.

<sup>7</sup> Section 7 of CLRA, 1970

<sup>8</sup>Form VIB as per Rule 81 (3) of the CLRR, 1971

<sup>9</sup> NCR (2), CR (6), ER (1), NR (6), SWR (1), RPU/Metro (1)

<sup>10</sup> CR (97), ER (8), NR (1), NWR (30), SWR (23), DLW (3), CLW(6)

***Thus, Principal Employer gave the intimation to the organisation of Labour Commissioner about commencement of contract in only four per cent (17 of 463) contracts reviewed in Audit.***

### **2.1.2 Submission of Annual Returns by the Principal Employer to Labour Commissioner**

Rules<sup>11</sup> require that every Principal Employer of a registered establishment shall send annually a return in duplicate so as to reach the Registering Officer concerned not later than the 15 February following the end of the year to which it relates. This information in annual return in Form XXV (**Appendix IV**) relates to the details of contractors engaged by the Principal Employer as well as information about engagement of contract labour directly as well as through contractors for purpose of determining status of coverage of Principal Employer under CLRA as well as obtaining information about the contractors who are to be regulated and monitored by the organisation of Labour Commissioner.

Out of 463 contracts reviewed in audit,

- Northern and Central Railway as Principal Employer submitted these returns involving information of 12 (six each) of these contracts,
- In 380 contracts, Railway Administration as Principal Employer had not submitted returns; and
- In balance 71 contracts, the information/records were not made available to Audit.

***As such, in only three per cent (12 out of 463) of the contracts reviewed in Audit, the Principal Employers had submitted returns to the offices of the Labour Commissioners giving intimation about the details of contractors engaged by them.***

***Annexure 2.1***

## **2.2 Obtaining license by the contractor**

As per provisions<sup>12</sup>, no contractor, to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing officer<sup>13</sup>.

Out of 463 contracts reviewed in audit,

- In 34 contracts, the contractors obtained requisite license before commencement of work from the respective licensing officers of the concerned Regional Office of the Labour Commissioner.

<sup>11</sup> Rule 81 (3) and 82 (2) of CLRR 1971, Form XXV

<sup>12</sup> Section 12 of CLRA, 1970 read with Rule 21 of CLRR, 1971

<sup>13</sup>Licensing Officer is an officer of the concerned Regional Office of the Labour Commissioner

- In 50 contracts, licenses were obtained after commencement of works. In these contracts, the delay in obtaining the licenses ranged up to 750 days.
- In 172 contracts, licenses were not obtained; and
- In 207 contracts, records were not made available to Audit.

***Thus, only 18 per cent contracts (i.e. 84<sup>14</sup> out of 463 contracts) were executed/under execution, where license from the licensing officer were obtained by the contractors as per the provision of CLRA, 1970.***

## ***Annexure 2.2***

### **2.2.1 Display of license at work site**

Rules<sup>15</sup> provide that a copy of the license shall be displayed prominently at the premises where the contract work is being carried on. Out of 84 contracts where contract licenses were obtained,

- Only in 37 contracts, the licenses were found displayed prominently at the respective work sites.
- In respect of 47<sup>16</sup> contracts, licenses were not found displayed at work site.

***Thus, license details were found displayed in only eight per cent (37 out of 463) of the contracts.***

### **2.2.2 Number of contract labour employed**

Rules<sup>17</sup> also provide that the number of workmen employed as contract labour in the establishment shall not, on any day, exceed the maximum number specified in the license.

Out of 84 contracts where contract license were obtained, in 14<sup>18</sup> contracts the deployments of workmen was more than the numbers specified in the license obtained from Labour department. The excess ranged up to 200 workmen in these contracts. Compliance to terms and conditions of contract license in terms of workmen employed against the number prescribed was found in only 15 per cent (70 out of 463) contracts.

### **2.2.3 Renewal of License**

Rules<sup>19</sup> further state that every license granted under Rule 25 or renewed under Rule 29 of CLRR, 1971 shall remain in force for 12 months from the date it is granted or renewed.

<sup>14</sup> NCR (13), CR (29), ER (9), NR (13), NWR (12), SWR (5), RPU/Metro (1), CLW (2)

<sup>15</sup> Rule 25 (2)(ix) of the CLRR, 1971

<sup>16</sup> NCR (11), CR (16), ER (2), NR (3), NWR (11), SWR (3), RPU/Metro (1)

<sup>17</sup> Rule 25(2)(ii) of the CLRR, 1971

<sup>18</sup> NCR (7), CR (4), ER (0), NR (1), NWR (1), SWR (0), RPU/Metro (0), CLW (1)

<sup>19</sup> Rule 27 of CLRR, 1971

Out of 84 contracts where contract license were obtained, in 70 contracts, renewal was not required as the validity of the licenses had not expired. However, in 14<sup>20</sup> contracts, licenses were not renewed by the contractors after expiry of its validity.

#### 2.2.4 Returns to be submitted by the contractor to Labour Commissioner

Rules<sup>21</sup> require that every contractor shall send half yearly return in Form XXIV (**Appendix V**) in duplicate to the Office of the Labour Commissioner, so as to reach the licensing officer concerned not later than 30 days from the close of the half year. The information in this return mainly included the name and address of contractor, establishment and Principal Employer along with duration of the contract, number of days during the half year, maximum number of contract labours employed on any day during the half year showing separately men, women and children. The return further requires submission of information with respect to the daily hours of work including weekly holiday, number of man-days worked, amount of wages paid, amount of deduction from wages along with status about the facilities of canteen, Rest Room, Drinking water, Creches and First Aid.

Out of 463 contracts reviewed in audit,

- The contractor submitted returns only in one contract,
- In 285 contracts, the contractors had not submitted any returns to the Labour Commissioners' office; and
- In balance 177 contracts the information/records were not made available.

*Thus, in none of the cases except one, where records were made available to Audit for review, the contractors had submitted returns to the respective offices of the Labour Commissioner. As a result, information regarding the number of contract labour employed by the contractor, the number of days for which they have been employed and other details are not being communicated to the Office of Labour Commissioners.*

**Annexure 2.1**

## 2.3 Amenities to Workers

### 2.3.1 Provision of Rest Rooms

As per the provisions<sup>22</sup> of CLRA, 1970, in every place wherein contract labour is required to halt at night in connection with the work of an establishment, to which this Act applies, a rest room shall be provided and maintained by the contractor

<sup>20</sup> NCR (2), CR (6), ER (2), NR (4)

<sup>21</sup> Rule 82 (1) of CLRR, 1971 (This return has been discontinued w.e.f March 2017)

<sup>22</sup> Section 17 of CLRA, 1970

for the use of the contract labour in such number and such other suitable alternative accommodation within such time as may be prescribed. The rest rooms or the alternative accommodation to be provided shall be sufficiently lighted and ventilated and be maintained in clean and comfortable condition.

Out of 463 contracts reviewed in audit,

- In 14 contracts of Central Railway rest rooms were provided,
- In 7 contracts of Central Railway rest rooms were not provided,
- In 371 contracts, the requirement of rest room has not been noticed particularly due to deployment of contract labour on eight hours shift basis; and
- In balance 71 contracts, records were not available to audit.

***Audit could not derive assurance about provision of rest rooms in 15 per cent (71 out of 463) contracts reviewed.***

***Annexure 2.1***

### **2.3.2 Provisions of drinking water and urinals**

Provisions should also be there for facilities for drinking water, urinals etc. at convenient places either by the contractor or the Principal Employer<sup>23</sup>. Out of 463 contracts reviewed in audit,

- In 31 contracts, the facilities of drinking water, urinals, etc. were provided by the contractors,
- In 332 contracts, the above requirements were met from the facilities provided by the Railways to its employees, as their deployment were within the premises of Railways;
- In remaining 100 contracts, the information/records were not made available to Audit.

***Audit could not derive assurance about provision of drinking water and urinals in 21 per cent (100 out of 463) contracts reviewed.***

***Annexure 2.1***

### **2.3.3 Provisions of First Aid Box**

Rules<sup>24</sup> also provide that the first aid box in required number and list of items as mentioned therein should be made available/provided either by the contractor or Principal Employer. Out of 463 contracts reviewed in audit,

<sup>23</sup> Section 18 and 20 section of CLRA, 1970

<sup>24</sup> Section 19 of the CLRA, 1970 read with Rule 58 & 59 of CLRR, 1971

- In respect of 143<sup>25</sup> contracts, well equipped first aid boxes were found available at the work site,
- In 95<sup>26</sup> contracts first aid boxes were not provided; and
- In 225 contracts the availability of first aid boxes could not be ascertained.

***Assurance about availability of first aid box with medicines and other related components could be derived in only 31 per cent (143 of 463) of the contracts reviewed in Audit.***

## **2.4 Payment of Wages to the Workers**

Rules<sup>27</sup> relating to responsibility for payment of wages states as under:

1. A notice showing the wage period and the place and time of disbursement of wages shall be displayed at the place of work and a copy sent by the contractor to the Principal Employer/nominee of the Principal Employer under acknowledgement.
2. A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
3. Every Principal Employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
4. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the Principal Employer.
5. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the Principal Employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Out of 463 contracts,

- In all 463 contracts, notices regarding payment of wages sent by the contractors to the Principal Employers/nominee of the Principal Employer were not seen or found on record,
- The directive or procedure for ensuring due payment to contract labour and communication to Principal Employers or any other authority/official in case

<sup>25</sup> NCR (9), CR (65), ER (23), NR (34), NWR (4), RPU/Metro (2), DLW (6)

<sup>26</sup> NCR (20), CR (19), NR (27), NWR (29)

<sup>27</sup>Section 21 of CLRA, 1970 and Rule 71 of CLRR, 1971



of short payment with consequential recoveries from contractors were not issued in respect of any of the 463 contracts reviewed in Audit,

- Railway Administration had not nominated its authorised representative to be present at the time of disbursement of wages in respect of all 463 contracts,
- In 58 contracts, payments were made in the presence of representatives of the Railways, though these were not nominated by the railways,
- In 111 contracts, payments were not made in the presence of any representative of Railways,
- In 82 contracts, the presence of representative of Railway official though not required at the time of payment, as these payments were made through bank, these were required to be verified subsequently according to the provisions of the act, which was not done by the railways; and
- In 212 contracts, records relating thereto were not made available.

***Thus, provisions laid down were not complied with and Principal Employers failed to nominate its representative even for contracts where they were registered as Principal Employers.***

#### ***Annexure 2.3***

Railway Board (October 2015) vide its letter<sup>28</sup> directed all Zonal Railways to ensure the payment of wages to the contract labours through Bank/Cheque.

Audit observed that out of 463 contracts reviewed in audit,

- In respect of 82 contracts, payments of wages had been made through banks,
- In respect of 169 contracts, the payments of wages were made in cash; and
- In respect of 212 contracts, related records were not made available to audit.

***The compliance to a simple yet important directive of Railway Board was found in only 18 per cent (82 of 463) contracts.***

#### ***Annexure 2.4***

Further, the contractors are required to clearly communicate the conditions of employment to contract labour for the benefit of all contract labour. As per provisions<sup>29</sup>, the notices showing the rates of wages, hours of work, wage period, dates of payment of wages, names and addresses of the Inspectors having jurisdiction, and date of payment of unpaid wages, shall be displayed in English and in Hindi and in the local language understood by the majority of the contract labour in conspicuous places at the establishment and the worksite by the Principal Employer or the contractor, as the case may be. Further, the notices shall

<sup>28</sup> Railway Board letter no.E (LL) 2015/PNM/AIRF/1 dated 20.10.2015

<sup>29</sup> Section 29 (2) of CLRA 1970 read with Rule 81 (1)(i)of CLRR, 1971

be correctly maintained in a clean and legible condition<sup>30</sup>. A copy of the notice is required to be sent to the Inspector and whenever any changes occur same shall be communicated to him forthwith<sup>31</sup>.

Out of 463 contracts reviewed in audit,

- In respect of 45 contracts, the contractor had displayed notice in compliance of above rules,
- In respect of 225 contracts, the contractor had not displayed notice in compliance of above rules,
- In respect of 94 contracts, the applicability of displaying the notice for compliance of above rules did not arise due to nature of work,
- In respect of 99 contracts, records were not made available.

***Thus, intimation to communicate conditions of employment to contract labour was provided in only 10 per cent (45 out of 463) of the contracts reviewed in Audit.***

**Annexure 2.5**

## 2.5 Maintenance and preservation of prescribed registers and records

### a) Maintenance of records by the Principal Employers

In respect of each registered establishment, Principal Employers are required to maintain a 'Register of Contractors' in Form XII (**Appendix VI**) showing name and address of the Principal Employer, name and address of the establishment, name and address of contractor, nature of work on contract, location of contract work, period of contract and maximum number of contract labour employed by contractor<sup>32</sup>.

Out of 463 contracts reviewed in audit,

- In respect of 30 contracts of Central Railway, records/registers were maintained by Railways as required in Form XII, in compliance to the above Acts and Rules.
- In respect of 313<sup>33</sup> contracts, no records/registers were maintained by Railways as required in Form XII, for compliance of above Acts and Rules.
- In respect of 120 contracts, record//registers as required for compliance of above Acts and Rules were not made available to Audit by the Railways.

<sup>30</sup>Rule 81(1)(ii) of CLRR, 1971

<sup>31</sup>Section 29(2) of CLRA, 1970 read with Rule 81(2) of CLRR, 1971

<sup>32</sup> Section 29(1) of CLRA, 1970 read with Rule 74 of CLRR, 1971

<sup>33</sup> NCR (86), CR (62), ER (11), NR (74), NWR (34), SWR (29), RPU/Metro (11), DLW (4), CLW(2)

**b) Maintenance of records by the contractors**

Every contractor is also required to maintain a number of important records. This includes Muster Roll, Register of Wages, Register of Deductions, Register of Overtime, Register of Fines, Register of Advances, Wages Slips<sup>34</sup> etc.

Audit reviewed the status of maintenance of records and registers as required by the CLRA, 1970 and CLRR, 1971, in respect of 463 contracts and observed the following:

- Attendance Registers
  - In respect of 164 contracts, the contractors maintained Attendance Registers,
  - In respect of 112 contracts, the contractors did not maintain Attendance Registers,
  - In remaining 187 contracts, records were not made available.
- Wage Registers
  - In respect of 122 contracts, the contractors maintained Wages Registers,
  - In respect of 156 contracts, contractors did not maintain Wages Registers,
  - In remaining 185 contracts, records were not made available.
- Register of deductions
  - Only in three contracts, the contractors maintained Register of deductions,
  - In respect of 262 contracts, the contractors did not maintain Register of deductions,
  - In remaining 198 contracts, records were not made available.
- Overtime Registers
  - Only in four contracts contractors maintained overtime Register.
  - In respect of 261 contracts the contractors did not maintain overtime Register.
  - In remaining 198 contracts records were not made available.
- Register of fines
  - Only in two contracts, contractors maintained Register of fines,
  - In respect of 263 contracts, contractors did not maintain Register of fines,
  - In remaining 198 contracts, records were not made available.
- Register of Advances
  - Only in two contracts, contractors maintained Register of Advances,

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<sup>34</sup> Section 29 of CLRA 1970 read with Rule 78 of CLRR, 1971

- In respect of 263 contracts, the contractors did not maintain Register of Advances,
- In remaining 198 contracts, records were not made available.
- Wages slips
  - Only in 18 contracts, contractors maintained Wages slips,
  - In respect of 246 contracts, the contractors did not maintain Wages slips,
  - In remaining 199 contracts, records were not made available.

**Annexure 2.6****c) Preservation of records**

As regards preservation of records maintained by Principal Employers and contractors, rules<sup>35</sup> provide that all the registers and other records shall be preserved in original for period of three calendar years from the date of last entry therein.

Out of 463 contracts reviewed, 108 contracts were found completed as on 31 March 2017. Of these 108 contracts,

- In 2 contracts of Central Railway, records were found preserved for compliance of above rules,
- In 93<sup>36</sup> contracts, records were not found preserved for compliance of above rules and
- In balance 13<sup>37</sup> contracts, no records were made available to Audit.

***Maintenance of these records is vital for any entity to regulate compliance to laws and rules for protection of rights of contract labour. However, the compliance to maintenance of important documents like Wage Register and Overtime Register was seen in 122 (26 per cent) contracts and four (one per cent) contracts respectively. The wages slips were maintained in only 18 (four per cent) contracts reviewed in Audit. Non-maintenance of necessary records makes the monitoring of compliance of the statutory provisions impractical by not only the railways but also by other monitoring agencies.***

**2.6 Compliance to MWA, 1948 and MWR, 1950**

The Minimum Wages Act, 1948 was enacted to provide for fixing minimum rates of wages in certain employments. As per the Section 3 of the MWA, 1948,

(a) The Government shall fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an

<sup>35</sup> Rule 80 (3) of CLRR, 1971

<sup>36</sup> NCR (47; only tender and contract files were preserved), CR (7), ER (12), NR (7), NWR (1), SWR (15), RPU/Metro (2), CLW (2)

<sup>37</sup> CR (2), NR (8), SWR (2), DLW (1)

employment added to either Part by notification under Section 27, provided that the appropriate Government may in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) Review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary, provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

The appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment.

In fixing or revising minimum rates of wages under this section,

(a) different minimum rates of wages may be fixed for

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employment;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities;

(b) minimum rates of wages may be fixed by any one or more of the following wage periods, namely, by the hour, by the day, by the month, or by such other larger wage-period as may be prescribed; and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated.

Provided that where any wage-periods have been fixed under Section 4 of the Payment of Wages Act, 1936 (4 of 1936), minimum wages shall be fixed in accordance therewith.

The Chief Labour Commissioner (CLC) and its sub-ordinate offices are responsible for ensuring compliance to the provisions of MWA, 1948 and MWR, 1950. Railway Board have also circulated from time to time orders of the CLC in respect of revision in the rates of Minimum Wages to all their field units, directing them to ensure adherence to the provisions of the CLRA, 1970 and MWA, 1948 and arranging prescribed minimum wages to the contract labour.

Audit reviewed the compliance of statutory provisions regarding payment of minimum wages to contract labour in selected 463 contracts. The Audit findings are discussed below:

### **2.6.1 Payment of Minimum Wages by the Contractors**

As per provisions<sup>38</sup>, the employer (contractor) shall pay every employee wages at a rate not less than the minimum rate of wages fixed by notification (from the concerned jurisdictional Department of Labour Commissioner) from time to time without any deduction.

Out of 463 contracts reviewed in audit,

- In respect of 105 contracts only, the minimum wages were paid in compliance to the provision of MWA, 1948.
- In respect of 129 contracts, payment of minimum wages to contract labour was not ensured. Audit assessed a sum of ₹ 9.23 crore as short payment to the 3310 contract labour over the contract period towards minimum wage; and
- In respect of 229 contracts, the records relating to payment of wages were not made available to audit.

***Thus, compliance to provisions for payment of minimum wages was found in 23 per cent (105 of 463) of contracts.***

***Annexure 2.7***

### **2.6.2 Payment of wages for rest day (at normal rates) to employees by the contractors**

Rules<sup>39</sup> also provide that employees who have worked under the same employer for a continuous period of not less than six days in a scheduled employment, in respect of which minimum rates of wages have been fixed under the Act, shall be allowed a day of rest every week which shall ordinarily be Sunday, but the employer may fix any other day of the week as the rest day for any employee or class of employees in that scheduled employment.

Out of 463 contracts reviewed in audit,

- In respect of 120 contracts, wages for rest days were paid by the contractors in compliance to the laid down rules,

<sup>38</sup> Section 12 of Minimum Wages Act, 1948

<sup>39</sup> Rule 23 (1) of the Minimum Wages Rules, 1950

- In respect of 62 contracts, wages were not paid by the contractors as per the laid down provisions and audit assessed a sum of ₹ 5.41 crore as a short payment of minimum wages to 2745 contract labour over the contract period for rest days.
- In respect of 42 contracts, payment of wages for the rest day could not be ascertained; and
- In respect of 239 contracts relevant records were not made available to audit.

***Thus, compliance to provision of payment of rest day was found in 26 per cent (120 of 463) of contracts.*** ***Annexure 2.8***

### **2.6.3 Payment of wages for substitute rest day at double the rate of normal wages**

Rules<sup>40</sup> provide that an employee shall be granted wages for rest day, and in contracts he works on the rest day and has been given a substituted rest day, he shall be paid wages for the rest day on which he worked, at the overtime rate and wages for the substituted rest day at the rate applicable to the next preceding day.

Out of 463 contracts reviewed in audit,

- In 146 contracts, payments were made at prescribed rate of wages as per rules.
- In respect of 49 contracts, contractors neither provided any rest to the workers nor paid rest day wages due and payable at double rate of the minimum wages, as required under the rule.
- In 268 contracts, relevant records were not made available to audit.

***In 49 contracts, the contractors did not provide any rest on substitute day to the workers. Even for working on the rest days, wages payable double the rate of minimum wages as required under the rules were not paid. Audit assessed that a short payment of ₹ 4.41 crore was made by the contractor to 1823 contract labour over the contract period in these contracts.***

***Annexure 2.9***

### **2.6.4 Adherence to prescribed hours/days of working and payment of wages thereof**

As per rules<sup>41</sup>, the maximum number of working hours of the contract labour should not exceed 12 hours per day and maximum days should not be more than 10 consecutive working days.

<sup>40</sup> Rule 23 (4) of the Minimum Wages Rules, 1950

<sup>41</sup> Rule 23(1) of the Minimum Wages Rules, 1950

Out of 463 contracts reviewed in audit,

- In 199<sup>42</sup> contracts, the contractors provided rest day to the workers before completion of 10 continuous days of working.
- In 49<sup>43</sup> contracts, the contractors did not provide any rest day to the workers even after continuous working beyond 10 days. In respect of two contracts of NCR, the contract labour were engaged for a period of more than 12 hours in a day violating the laid down provisions<sup>44</sup>.
- In 215 contracts, necessary records were not made available to audit.

***The assurance of workers having worked continually for not more than ten days was derived by Audit in 44 per cent (205 of 463) of contracts.***

Further, rules<sup>45</sup> state that when a worker works in an employment for more than nine hours on any day or for more than 48 hours in any week, he shall in respect of overtime work, be entitled to wages at double the ordinary rate of wages.

Out of 463 contracts reviewed in audit,

- In 30 contracts, the contractors did not pay any amount to the contract labour deployed between 9 and 12 hours a day. Audit assessed an amount of ₹ 1.74 crore short paid to 830 contract labour during the contract period.
- In 193 contracts, the contractor did not deploy the contract labour for more than nine hours; and
- In 240 contracts, the records relating thereto were not made available to audit.

***Annexure 2.10***

## **2.7 Check and monitoring by Labour Commissioner**

The officials of Labour Commissioner may undertake inspection of establishments under their jurisdiction for checking of contract labour records, payment of minimum wages etc. as per laid down provisions<sup>46</sup>. A Unified Shram Suvidha Portal has been developed (October 2014) by the Ministry of Labour & Employment, Government of India to facilitate reporting of Inspections, and submission of Returns. The Portal has been envisaged as a single point of contact between employer, employee and enforcement agencies bringing in transparency in their day-to-day interactions. For integration of data among various enforcement agencies, each inspectable unit under any Labour Law has been assigned one Labour Identification Number (LIN). The objective of Web Portal is to consolidate information of Labour Inspection and its enforcement. It will lead to transparency

<sup>42</sup> NCR (37), CR (67), ER (4), NR (65), NWR (10), SWR (10), RPU/Metro (6)

<sup>43</sup> NCR (21), CR (4), NR (8), NWR (12), SWR (4)

<sup>44</sup> Rule 23 (2) and 24 (2) of the Minimum Wages Rules, 1950

<sup>45</sup> Rule 25 (1)(b) of the Minimum Wages Rules, 1950

<sup>46</sup> Section 22 and 28 of CLRA, 1970



and accountability in inspections. The compliances would be reportable in Single Harmonized Form which will make it simple and easy for those filing such forms. The performance will be monitored using key indicators thus making the evaluation process objective.

Review of records/documents shown to audit by the railway administrations showed no communication/letters from the respective Labour Commissioner Offices to support that they took action to fulfil the above mentioned responsibilities and functions. During the period of audit, no evidence could be found in the records of railway administration to show that inspections were carried out by the officials of the Labour Commissioner to check the compliance to laid down rules and provisions towards fulfilment of statutory obligations under the above mentioned Acts and Rules.

In this regard, Audit observed that a New Inspection Scheme<sup>47</sup> has been introduced in September 2015, which aims to bring greater transparency and accountability through use of IT enables systems and mandatory authorizations, to make inspections more effective and result oriented and to minimise personal interface to remove scope of misuse and arbitrariness. The scheme has laid down guidelines for emergency and mandatory inspections. In addition, the Chief Labour Commissioner would set up a Central Analysis and Intelligence Unit (CAIU) for collecting and analysing field level data and complaints to cause need based inspections towards proper enforcement of labour laws. The CAIU inspections would be initiated on the basis of inputs from field units of CLC organisation and other Central and State Authorities, complaints/grievances received from affected parties and other stakeholders and information generated through Shram Suvidha Portal regarding instances of default and non-compliance. Units not selected in any of the above three types of inspections would fall under the category of Optional inspections, which would be inspected on basis of list generated through computer using pre-decided number tables in the prescribed ratios.

The Principal Employers of the railways as well as the contractors would thus be effectively covered for inspections/enforcement of labour laws by CLC only if they are registered with the Organisation of Labour Commissioner or any complaint/grievance has been received regarding them. The registration of Principal Employer as well as the contractor is thus of paramount importance in order to ensure their monitoring by the Organisation of Labour Commissioner.

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<sup>47</sup> No.01(119)/2015-IT Cell, Government of India, Ministry of Labour and Employment, Office of the Chief Labour Commissioner (C), New Delhi dated 23 September 2015