



GOVERNMENT OF INDIA
MINISTRY OF LABOR & EMPLOYMENT
O/o the Director General (Labour Welfare)

Pursuant to the directions of the Hon'ble Supreme Court contained in the Judgment dated 19th March, 2018 and 7th May, 2018 in Writ Petition (Civil) No. 318 of 2006, the Committee constituted to formulate Action Plan and Model Welfare Scheme deliberated in detail and submitted its recommendations , which are enclosed.

2. It is requested that suggestions/ views/ comments/ inputs, if any, may be submitted at E-mail IDs latest by 10th August 2018: punhanir@nic.in, ajay.kumar67@nic.in, js.sidhu@nic.in, satyendra.chauhan@gov.in

Modified Draft Model Scheme and Action Plan for Building and other Construction workers

The Committee held its meetings under the Chairmanship of DGLW on 10th May 2018 and 16th May, 2018 at DGLW Division, Ministry of Labour & Employment, Jaisalmer House, New Delhi.

2. The Committee deliberated in detail the directions of the Hon'ble Supreme Court contained in the Judgement dated 19th March 2018 and the draft outline of the Model Scheme circulated by the Ministry of Labour and Employment (MOLE) and submits its recommendations as mentioned below.

3. **Machinery for Registration of Establishments** – The Committee observed that regular estimation/survey of establishments is essential in all the states for their registration. It was mentioned that in the Central sphere, authorities for registration of establishments are identified (like Regional Labour Commissioner/Assistant Labour Commissioner) and details are placed on the website. The committee suggested that the States may take following measures to strengthen the machinery for registration of establishments:

A. The authority for registration of establishments may be further delegated to authorities below DLC/ALC so as to decentralize the powers and enhance accessibility at the local level. The name and address of the registering authorities may be given adequate publicity. This could be done by placing it on the State website and keeping a separate desk/window in the office so that registration of all establishments is ensured.

- B. The registration of establishments should be made on line to make the process of registration quicker and to minimize public interface.
- C. Central and State Governments should issue directions to all Ministries/Departments/State undertakings/local bodies in their jurisdiction to timely forward a copy of the allotment of work order in regard to construction activity to be carried out, to the relevant registration, cess collection and cess assessment authorities appointed under the BOCW Act by the State.
- D. The state governments should develop a mechanism for regular monitoring of construction activities going on in the state and make use of GIS technology/mapping etc. for the purpose. Specific care should be taken that the private sector is also covered.
- E. The establishment registration authorities/licensing authorities under various labour laws in the Central Sphere and the State sphere should invariably share a copy of the Registration Certificate/Licence issued by them with the State cess collection, cess assessment and workers registration authorities. Specific attention should be paid to Railways and Defence works as they are also covered under the Act.
- F. The establishment registration/licensing/inspection authorities under various labour laws in the Central Sphere the State sphere should guide and advise the establishments/employers at the time of registration/license/inspection in regard to their liability to pay cess and registration of BOC workers as beneficiaries with the State Welfare Boards.
- G. The Committee recommended that the States may be directed to submit a compliance report in this regard by **31st December 2018**.

4. Machinery for Registration of Workers – The Committee observed that regular estimation/survey of workers is essential in all the states for strengthening the machinery for registration of workers. It was also of the opinion that live membership /renewal data of BOC workers should be properly maintained in the states as complete data/ information is crucial for formulation and implementation of the welfare schemes and for ensuring delivery of services. The Committee made following recommendations in this regard:

- A. Every state should allot a Unique Identification Number to the registered BOC workers, and upload complete details on the State web portal and the National BOCW Portal, in read only mode, of the registered workers and their families, along with the status of registration and renewal, so that it can be accessed by other States. The Committee was of the view that this would help in portability of welfare benefits.
- B. The BOCW board may delegate /appoint officers at local/municipal/panchayat level, for the purpose of registration of BOC workers, in their respective jurisdiction.
- C. The BOC board may also authorize registered employers, registered trade unions and registered voluntary organizations working in BOC field, for the purpose of certification regarding the number of days of work performed by the worker, and simultaneously formulate penal provisions, like cancellation of registration, blacklisting etc. of the said entities to prevent fake/false registration.
- D. The BOC Workers' Welfare Board may also allow self-certification regarding the number of days of work performed by the worker. However, the Committee recommended that the self-certification should contain full details of the sites, employer and number of days of work performed in the passbook/ ID card of the worker so that the information pertaining to the 90 day period should be

verifiable at any given time. The Committee agreed that the states should be advised to take appropriate steps in this regard.

- E. The State Labour Department/Welfare Board may issue directions to workers' registration authorities, to hold regular camps/ create facilitation centres at prominent labour chowks/addas for the purpose of conducting awareness campaigns and facilitating registration of workers.
- F. The registering authorities may be directed to issue ID cards in the form of the passbook/employment diary, to the BOC workers, for getting entered therein the employment details. As the BOC workers, especially the *labour chowk* workers, generally find it difficult to obtain employment certificate from the employer and are not able to get registered, this would facilitate registration of such workers and entry of employment details.
- G. The state government may consider authorizing District Collector/Magistrate to administer and facilitate implementation of the BOC Act in their area as has been the practice in some States.
- H. States should ensure that the domicile status of a worker should not prevent the worker from getting registered outside his/her state of origin.
- I. In order to facilitate registration of BOC migrant workers under the Act, the source States should try and register them in their home state, give them an ID card/passbook with a unique no. and upload these details on their website. They should also create facilitation centers/help desks in the destination districts (as has been done by Odisha) for the registration of eligible BOC workers, and may also take up the matter with destination States to help these workers get registered in the destination States. Destination states should

ensure that all benefits are also given to those workers who are registered in their home states. Verification could be done from the website of the source state, which could provide the destination state access to their data base in Read Only mode. The Destination States may be directed to conduct special drive with proper focus on migrant BOC workers and ensure that the migrant workers from outside the State are not discriminated at the time of registration and delivery of benefits. Employers should also be made responsible for registration of BOC workers with the State Welfare Boards.

- J. The authorities responsible for registration of migrant workers, must share information with the respective State Welfare Board so that their registration/renewal/delivery of welfare benefits is monitored by the Boards of the source States.
- K. The Committee recommended that the States should submit their compliance reports for the above points by **31st December 2018**.

5. Collection of cess:

A. The State Governments may further delegate powers of cess collector, and assessing officer to officers at local/municipal/panchayat level, for the purpose of cess collection and assessment, in their respective jurisdiction. Accordingly, the powers of appellate authority may also be delegated as may be suitable. This would help ensuring cess collection from private bodies too.

B. State cess collection and cess assessment authorities should inter alia ensure that cess is collected from the construction projects of Railways, Defence, NHAI, Border Road organization and that from those of Central and State Governments

departments/ undertakings. The Committee felt that there is a general perception that cess is not being collected properly from Railways, Defence private construction bodies and it was emphasized that suitable steps and technology like GIS mapping etc. may be used to optimize cess collection.

C. The Committee was of the view that a uniform mechanism to calculate/ estimate the cost of construction at the time of collection of cess in advance should be followed. In this regard, the Committee appreciated the method of collection of advance cess at the PWD/Municipal/local authority rates as is being followed by some States. The Committee recommended that the State Governments should notify PWD/Municipal/local authority rates so that advance cess is collected uniformly.

D. The Committee observed that the proceeds of the cess are not being transferred to the State Building and Other Construction Workers Welfare Board within 30-days of its collection as stipulated in the BOCW Cess Act and rules made thereunder. The Committee recommended that the States should ensure that the cess proceeds are transferred to the Welfare Fund and that penal action should be taken in case of non-compliance. Cheques/ DDs/ RTGS for Cess Payment should be issued/ made in the name of the BOC Welfare Board.

Further, the Committee recommended that the State Governments should issue instructions to cess collectors that in case of non-compliance of Section 3 of the BOCW Cess Act read with Rule 5 of the Cess Rules, 1998, suitable action will be taken against the concerned cess collector.

E. The Committee observed that generally the amount of cess collected at the rate of 1% of the cost construction is reported as fund available with the Board, which does not reflect the whole picture. The Committee clarified that the welfare fund is the gross

total of the amount of cess collected, the amount of interest accrued thereon, the amount of penalty received on account of delay or less payment of cess, contributions received from the beneficiaries etc., and the States, therefore, should maintain complete break-up of each source of the fund.

F. The Committee recommended that the States should submit a compliance report in respect of A to E above by **30th September 2018**.

G. The Committee observed that the States Boards are not taking legal action against the offenders as stipulated under rule 15 of the Cess Rules and not referring such complaints to the Central Government for seeking prior sanction. The Committee recommended that the States/the Boards should take necessary legal steps in this regard.

H. The Committee was of the opinion that a potent provision under section 54 of the BOCW (RECS) Act, empowering the registered voluntary organisations and the registered Trade Unions to file prosecution complaints before the competent Courts **in regard to any punishable offence under the said Act**, has remained largely unused and that may be for lack awareness amongst the stakeholders. The Committee recommended that the States and the Welfare Boards should take suitable steps to make the registered voluntary organisations and the registered Trade Unions aware of the provisions.

H. The Committee recommended that the States may be directed to submit compliance report in regard to G & H above by **31st December, 2018**.

6. Model Welfare Scheme:

6.1 Life and disability cover – The Committee recommended that state welfare board may cover BOC workers under Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) and Pradhan Mantri Suraksha Bima Yojana (PMSBY), by making payment of 50 per cent of the total contribution of premium amounting to Rs.171 per worker per annum, out of the BOC welfare fund, as the remaining 50 per cent will be borne by the Central Government under the converged PMJJBY/PMSBY Schemes. These schemes provide coverage of Rs.2 lakhs in case of natural death and Rs.4 lakhs in case of accidental death, besides disabilities benefits as per this scheme. Alternately the state welfare board may provide minimum coverage of Rs 4 Lakhs, in case of accidental death, and Rs 2 Lakh in the event of natural death to the dependent(s) of the deceased beneficiary, besides disability benefits.

6.2 Health and Maternity Cover – The Committee recommended that following benefits should be provided to BOC workers:

- (i) Reimbursement of expenses up to a prescribed limit in case of major diseases as listed by the Ministry of Health & Family Welfare.
- (ii) Paid maternity leave to registered construction workers ranging from 90 days to 26 weeks for up to two deliveries.
- (iii) Rs.6000/-per delivery for up to two deliveries to the wife of the registered construction worker.

Further, in light of the recent launching of the National Health Protection Scheme, the Committee felt that there was a need for a deeper examination of convergence of BOCW health schemes with NHPS. The Committee therefore decided to constitute a sub-committee that would examine the provisioning of health and maternity benefits to building and other construction workers.

6.3 Education – The Committee recommended financial assistance for education of wards of the beneficiaries at the following rates per child per annum:

- a. Class 1 to 5 at the rate of Rs. 1200
- b. Class 6 to 10 at the rate of RS 1800,
- c. Class 11 to 12 at the rate of Rs 3,000
- d. Graduation courses at the rate of Rs 10,000,
- e. Post-Graduation courses at the rate of Rs 12,000
- f. ITI/Vocational course/Professional Course at the rate equivalent to annual fee of Govt institutes/colleges

The Committee recommended that it should be ensured that the beneficiary ward maintains 50% of the annual attendance in the class.

This is besides the Special Centres that the State should open for migrant workers.

6.4 Housing – The committee decided to reiterate the section 60 direction of the Central Government dated 11.7.17 in regard to provision of transit accommodation/hostel/labour shed/night shelter etc. , the salient features of which are quoted below:

(A) The BOC workers are predominantly migratory who move from one place to other in search of work. During the period of transit or until they find work, they face great hardship due to lack of basic facilities like transit shelters, toilets etc., in and around the area common for their gathering in a city or metro.

(B) In order to mitigate the hardship that a BOC worker faces, the States are advised to take proactive steps to facilitate transit accommodation/labour shed cum night shelter, mobile toilets and mobile crèches to BOC workers in the areas of their concentration prior to their finding work.

(C) While incurring expenditure on such facilities due care has to be taken so as to ensure that sufficient funds remain available for providing social security to BOC workers on a

sustained basis, which is the first and foremost objective of the BOCW Act. Social security benefits will hold precedence over all other existing benefits and that only after meeting these priority expenses, any balance of fund may be utilised for giving additional benefits under section 22 (h) of the Act.

(D) Besides, the following conditions should be adhered to:

(a) The land should belong to the Government/ Local Body;

(b) It should be at a Central location;

(c) Priority should be given to Tier I & II cities;

(d) It must be used exclusively for BOC Workers;

(e) A Rent/User-fee must be charged and a record/register for the same must be maintained;

(f) The building must be maintained properly and all amenities provided for the users;

(g) The cost of providing transit accommodation, mobile toilet facilities and mobile crèche facilities must not exceed 10 per cent of the total expenses incurred during that financial year; and

(h) It must be ensured that it is not contrary to the provisions contained in Section 33, 34, 35 and 36 of the Act and the Rules framed thereunder wherein it is the employer's obligation to provide temporary accommodation and other facilities to the BOC workers within the work site or nearby it. Thus it is to be ensured that the transit accommodations and other facilities are not used in lieu of accommodations and other provisions to be facilitated by the employer.

6.5 Skill development - The Committee was of the view that there should be convergence of the skill development activities of the BOCW Board with those of the State Skill Development Missions/Ministry of Skill Development and Entrepreneurship and

National Skill Development Corporation so as to maximize benefits to the BOC workers and their dependents. The state Welfare Boards need to be advised accordingly.

6.6 Pension – There was no consensus regarding pension benefits as the committee was apprehensive that this was constitute a permanent liability which a number of states may not be able to sustain in the long term. The Committee considered it necessary to constitute a sub-committee to draft a model pension scheme for building and other construction workers, so that domain experts may be consulted and a viable pension scheme may be formulated.

7. Social Audit: The Committee discussed the guidelines for social audit developed under NREGA and was of the view that these need to be adapted to the BOCW Act. There was consensus regarding adoption of the MNREGA guidelines, however, there were two views regarding the framework / machinery to be engaged: (i) to use the existing NREGA machinery, or (ii) to create a separate machinery exclusively for BOC workers as in the existing NREGA machinery BOC workers schemes would not get the focus and attention required. The committee recommended carrying out a pilot project in a few places where the NREGA machinery may be in a position to carry out a social audit of the BOCW welfare schemes. The Committee recommended that there should be a separate budget provision for social audit from the welfare fund, having an annual ceiling of 0.5 percent of the total cess expenditure in that F.Y.
