

3. Trade unions and freedom of association:
Subject to the provisions of this Act and notwithstanding any other law:--

- ¹[(i) workers of an establishment may form and, subject to the rules of the organization, may join associations of their own choice without previous authorization;]
- (ii) a worker shall not be entitled to be a member of more than one trade unions at any one time and on joining another trade union, his earlier membership of the other trade union shall stand cancelled;
- (iii) employers may establish and, subject to the rules of the organization, may join associations of their own choice without previous authorization;
- (iv) every trade union and employers association shall frame its own constitution and rules to elect its representatives in full freedom to organize its

1. Para (i) substituted by Punjab Industrial Relations (Amendment) Act, XIII of 2014.

administration and activities and to formulate its programmes; and

- (v) worker's or employers' organizations may establish and join federations and confederations and any such organization, federation or confederation may affiliate with international organizations and confederations of workers? or employers' organizations.

COMMENTS

This section concedes the right of workers, without distinction whatsoever, subject only to the provisions of the Act and the rules framed thereunder, or of the Rules of the organisation concerned, to join the associations of their own choosing without any previous authorisation. The employers have also been given the same right. Such unions can draw up their own constitutions and rules. They can establish and join federations or confederations with power to affiliate with international organisations and confederation of workers or employers, as the case may be.

4. Application for registration: Any trade union may, under the signatures of its President and Secretary, apply to the Registrar for registration of the trade union under this Act.

COMMENTS

Scope: This section as also those which immediately follow it up to Section 16, deal with the application for registration, of the trade union, requirements of such application, requirements for registration of such Trade Union, disqualifications for being an officer of a Trade Union, maintenance of registers, accounts, minute books, etc., transfer of officer of Trade Union during pendency of application for registration, certificate of registration, cancellation of registration appeal against cancellation of such registration, appointment of Registrar of Trade Unions, powers and functions of Registrars and incorporation of registered Trade Unions.

Registration has been made within easy reach and is no longer cumbersome and dilatory. The President and Secretary may apply registration of their Union to the Registrar of the Trade Unions. The application must contain a statement giving the name of the Union, the address of its head office, the date of its formation, the titles, names, ages, addresses and occupations of its officers, total number of paid membership, name of establishment or grant of establishments or industry to which it relates, in case of a federation the names, addresses and registration numbers of member Unions, and must be accompanied by three copies of its

constitution, a copy of the resolution and adopting such constitution bearing the signatures of the Chairman of the meeting, a copy of the resolution authorising its President and Secretary to apply for registration and in case of a federation of Trade Unions, a copy of the resolution from each of the constituent units agreeing to become members of the federation.

2. Membership of Trade Union: The membership of a Trade Union cannot be extended to two or more establishments. A person elected as an office-bearer of a Union was held to have not been automatically disqualified to function as such merely due to his dismissal from service of establishment where the constitution of the Union did not restrict the election to only members of the Union. 1972 PLC 266.

5. Requirements for application: Every application for registration of trade union shall be made to the Registrar and shall be accompanied by:--

(a) a statement showing--

- (i) the name of the trade union and the address of its head office;
- (ii) date of formation of the trade union;
- (iii) the titles, names, ages, addresses and occupations of the office-bearers of the trade union;
- (iv) statement of total paid membership;
- (v) the name of the establishment or group of establishments, or the industry, to which the trade union relates alongwith a statement of the total number of workers employed therein;
- (vi) the names and addresses of the registered trade unions in the establishment or group of establishments or industry to which the union relates;
- (vii) in case of a federation of trade unions, the names, addresses and registration numbers of member trade unions; and
- (viii) in case of a confederation of federations, the names, addresses and registration numbers of member-federations;

- (b) three copies of the constitution of the trade union together with a copy of the resolution by the members of the trade union adopting such constitution bearing the signature of the chairman of the meeting;
- (c) a copy of the resolution by the members of the trade union authorizing its President and the Secretary to apply for its registration;
- (d) in case of a federation of trade unions, a copy of the resolution from each of the constituent trade union agreeing to become a member of the federation; and
- (e) in case of a confederation of federations, a copy of the resolution from each of the constituent federation agreeing to become a member of the confederation.

COMMENTS

1. **Scope:** Trade Union's recognition by the employer is not essential. Application of Trade Union cannot be challenged as not maintainable on ground of absence of registration by the employer. 1974 PLC Note 63.

Power to file complaint with Labour Court for cancellation of a Union's certificate of registration is available only where the Union contravenes the provisions of Section 10 (Now Sec. 12) after its registration. Cancellation of registration of union for non-fulfilment of requirements of Section 6 before issuance of certificate of registration is unlawful. PLJ 1974 Tr. C. (Lab.) 414.

2. **Formation of Trade Union:** Trade Union could be formed by employees of an establishment or industry. No restrictions, whatsoever, are contained in Industrial Relations Ordinance, 1969 (Now Punjab Industrial Relations Act, 2010) in regard to formation of such Trade Unions. 1992 PLC 733.

3. **Registration of Trade Union challenged in Constitutional petition--Laches:** Constitutional petition challenging registration of Trade Union filed after about four years from such registration, and issuance of certificate as Collective Bargaining Agent (C.B.A.), suffered from laches and was liable to be dismissed on that ground especially when petitioners had knowledge of such registration. 1994 PLC 85.

6. **Requirements for registration:** (1) A trade union shall not be entitled to registration under this Act unless the constitution thereof provide for the following matters--

- (a) the name and address of the trade union;
- (b) the objects for which the trade union has been formed;
- (c) the purposes for which the general funds of the union shall be utilized;
- (d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include not less than eighty percent from amongst the workmen actually engaged or employed in the establishment or group of establishments or the industry for which the trade union has been formed;
- (e) the conditions under which a member shall be entitled to any benefit assured by the constitution of the trade union and under which any fine or forfeiture may be imposed on him;
- (f) the maintenance of a list of the members of the trade union and of adequate facilities for the inspection thereof by the office-bearers and members of the trade union;
- (g) the manner in which the constitution shall be amended, varied or rescinded;
- (h) the safe custody of the funds of the trade union, its annual audit, the manner of audit and adequate facilities for inspection of the account books by the office-bearers and members of the trade union;
- (i) the manner in which the trade union may be dissolved;
- (j) the manner of election of office-bearers by the general body of the trade union and the term, not

exceeding two years, for which an office-bearer may hold office upon his election or re-election;

- (k) the procedure for expressing no confidence in any office-bearer of the trade union; and
- (l) the meeting of the executive and of the general body of the trade union so that the executive shall meet at least once in every three months and the general body at least once in a year.

(2) Without prejudice to the provisions of sub-section (1), a trade union of workmen shall not be entitled to registration under the Act--

(a) unless all its members are workmen actually engaged or employed in the establishment or group of establishments or industry with which the trade union is connected; ¹[***]

(b) where there are two or more registered trade unions in the establishment, group of establishments or industry with which the trade union is connected, unless it has as its members not less than one-fifth of the total number of workmen employed in such establishment, group of establishments, or industry ²[;and]

³[(c) If women are employed as workers in the establishment, group of establishments or industry with which the trade union is connected, unless it has included the female workers in the executive body, not being less than the proportion of their numerical strength in the work force of the establishment, group of establishments or industry.]

COMMENTS

1. **Registration of trade union--Requirements:** Mandatory requirement was that every application for registration of a trade union

membership less than one-fifth of the total workmen employed and that in such establishment. Application seeking registration of union in the present case was moved accompanied by a Membership list of 81 workers who also attended general meeting. Total number of workers working in the establishment at relevant time was 453 workers, which did not qualify one-fifth membership as required under provisions of S. 7(2)(b) of Industrial Relations Ordinance, 1969 (Now Sec. 62(b) of Punjab Industrial Relations Act, 2010). Application for registration of trade union, was rightly rejected, in circumstances. Order rejecting application could not be said to be a non-speaking order. Appeal against said order was dismissed. **2006 PLC 239.**

2. Registration of Trade Union: Matter of registration of Trade Union was one between Trade Union, applying for registration and the Registrar of Trade Unions and empower and others had no concern in the matter. Employer could not claim any *locus standi* to challenge the decision of the Registrar of Trade Unions merely on the ground that no opportunity of hearing was provided to it or an objection raised by it before Registrar of Trade Unions was not considered before such decision. **2006 PLC 288.**

7. Disqualification for being an office-bearer of a trade union: Notwithstanding anything contained in the constitution or rules of a trade union, a person who has been convicted of offence under Section 69 or heinous offence under the Pakistan Penal Code, 1860 (XLV of 1860) shall be disqualified from being elected as, or from being, an office-bearer of a trade union.

COMMENTS

1. Scope: This section provides that irrespective of anything contained in the Rules or the Constitution of a Trade Union a person who has been convicted of an offence under Section 61 (Now Sec. 69) will be disqualified from being elected as an officer of a trade union or if such person is holder of an office of a Trade Union, he shall cease to be such office-bearer on his conviction under Section 61 (Now Sec. 69). The two situations have been considered by the Legislature. One that a person who is convicted of an offence under Section 61 will not be elected as an office-bearer. The other situation is that if a person is already holding an office in a Trade Union and he has been convicted under Section 61 then he shall cease to hold such office and shall also be disqualified from being elected as an office-bearer.

Section 61 (Now Sec. 69) provides penalty for embezzlement or misappropriation of Trade Union fund by any officer or employee of a registered Trade Union. Also if a disqualified person is elected as an officer of the

union, registration of union can be cancelled under Section 10. (Now Section 12).

For conviction of an officer of a Trade Union for mis-appropriation of union funds following ingredients of offence are to be proved:--

1. Entrusting any person with property or having any dominion over property.

2. The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or wilfully suffering any other person to do so in violation--

(i) of any direction of law prescribing the mode in which such trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust.

In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property and he dishonestly misappropriates the same, or wilfully offers any other person to do so, instead of discharging the trust attached to it.

Instead of cross-mark, voter put his thumb impression on ballot-paper in symbol allotted to petitioner and Polling Officer invalidated the vote. *Held*, intention of voter was clearly to cast his vote in favour of petitioner, Polling Officer thus, wrongly invalidated his vote. **1988 PLC 900.**

Petitioners despite having been dismissed from service before holding of election and their case being subjudice in appeal, allowed to participate in election and they elected as office-bearers. Labour Appellate Tribunal setting aside election on ground that petitioners were not entitled to contest. Constitutional petition challenging said order dismissed on ground that petitioners were not "workmen" for purposes of Section 8(7), Industrial Relations Ordinance, 1969 (Now Section 9(10) of P.I.R.A., 2010) and order allowing them to participate in election was without jurisdiction. Leave to appeal granted in question of public importance as to interpretation of Sections 2 (xxviii) & 8(7) of Industrial Relations Ordinance (Now Sec. 2(xxxix) and 9(10) of P.R.I.A., 2010) and Regulation No. 32(1)(2) of National Industrial Relations Commission Regulations. **1985 SCMR 128.**

Registration was granted to Trade Union with membership of less than one-fifth of total number of workmen employed in the establishment, such registration being in contravention of requirement of law, was set aside by High Court. **1987 PLC 234.**

S. 8]

2. Registration of Trade Union--Essentials: Workers who had formed Union, unless were actually employed in establishment with which they were concerned, Trade Union formed by them would not be entitled to registration. Fact of non-employment of workers having been pointed out to Registrar Trade Unions, it was incumbent upon him to make proper enquiry into the matter. No such enquiry having been conducted by Registrar, he was directed to conduct the required enquiry and to act in accordance with law after he was satisfied that Trade Union had been registered in contravention of Industrial Relations Ordinance, 1969 (Now Punjab Industrial Relations Act, 2010). **1992 PLC 733.**

Two or more trade unions already registered in an establishment while another trade union was registered. Where two or more trade unions were already registered in an establishment, group of establishments or industry, with which the trade union, seeking registration, was in fact connected, such trade union would not be entitled to registration, unless it had, as its members, not less than one-fifth of the total number of workmen employed in such establishment or group of establishments or in the industry. **1992 PLC 23.**

An application must necessarily disclose name of the establishment or industry and also to prove that members of the Trade Union being workmen were actually engaged in the Industry. **1995 PLC 151.**

Where any action or order apparently appears to have been passed in contravention of any provision of law then instead of perpetuating such action/order on the pretext that proceedings suffered from laches, it would not be advisable in the interest of justice to dispose of such matter on technical point and the same would be heard and decided on merits. **1995 PLC 151.**

3. Management's entitlement to join proceedings--Extent: Right of management to join proceedings before Registrar, Trade Unions has not been expressly provided. Management, however, would be joined on such proceedings for purpose of Section 7 (2), Industrial Relations Ordinance, 1969 (Now Sec. 6(2) of Punjab Industrial Relations Act, 2010) for necessary information and verification of strength of workers, their classes and categories with identification and ancillary matters. Management could question membership of trade union of a person, who was not employed as worker in the establishment. Management, however, having no right to interfere in the internal business of trade union, in its formation, duties and functions *vis-a-vis* its members under the scheme of law was not a necessary party in proceedings before Registrar. **1994 PLC 323.**

8. Registered trade union to maintain register: Every registered trade union shall maintain in such form as may be prescribed:

- (a) a register of members showing particulars of subscriptions paid by each member;
- (b) an accounts book showing receipts and expenditure; and
- (c) a minute book for recording the proceedings of meetings.

COMMENTS

Scope: This section lays down the minimum statutory record which a union is required to maintain. This record consists of a register of members showing particulars of subscription paid by each member, an account book showing receipt and expenditure of union funds and a minute book. These Registers and Books are mandatory which a union is required to maintain. However, it is open to the union to maintain any additional register or records, for instance, a union may maintain a separate register as Minute Book of General Body and another register as Minute Book for recording the proceedings of its executive committee. Failure to comply with the provisions of this section or any contravention of this section is punishable under Section 70.

9. Registration: (1) The Registrar, on being satisfied that the trade union has complied with all the requirements of this Act, shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of fifteen days from the date of receipt of the application.

(2) In case the application is found by the Registrar to be deficient in a material respect, he shall communicate in writing his objections to the trade union within a period of fifteen days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objections.

(3) When the objections raised by the Registrar have been satisfactorily met, the Registrar shall register the trade union as provided in sub-section (1) and issue a certificate of registration in the prescribed form within fifteen days of the date of the communications of reply of objections.

(4) In case of further delay, the Registrar may register the applicant trade union provisionally till further orders.

(5) In case the replies to the objections of the Registrar are not satisfactory, the Registrar may reject the application.

(6) In case the application has been rejected or the Registrar has delayed disposal of the application beyond the period of fifteen days provided in the above sub-sections or has not issued a certificate of registration beyond the above sub-sections or has not registered the applicant trade union within such period the trade union may file an appeal in the Labour Court provisionally, may, for reasons to be stated in its judgment, pass an order directing the Registrar to register the trade union and to issue a certificate of registration or may dismiss the appeal.

(7) Notwithstanding anything contained in any other provision of the Act, every alteration or change made in the constitution of a registered trade union and every proceedings of election of its office-bearers or change of its office-bearers or otherwise, the trade union shall, by registered post, notify to the Registrar within fifteen days of such election or change for the approval of the Registrar.

(8) The Registrar may refuse to register such election of office-bearers or change of office-bearers or alteration or change made in the constitution, if it is in contravention of any of the provisions of the Act, or if it is in violation of the constitution of the trade union.

(9) Subject to the provision of sub-section (8), every inclusion or exclusion of any constituent unit of a federation of trade unions or confederation of federations, the federation or confederation shall, by registered post, notify to the Registrar within fifteen days of such inclusion or exclusion.

(10) In case there is a dispute in relation to the election of the office-bearers or change of office-bearers or alteration made in the constitution of a trade union, the Registrar or any trade union aggrieved by the refusal of the Registrar, any office-bearer or member of the trade union may ¹apply or appeal to the Labour Court which shall within seven days of

¹ Words substituted by Punjab Industrial Relations (Amendment) Act, XIII of 2014.

the receipt of the application or appeal], pass an order either directing the Registrar to register the change or alteration in the constitution or in the office-bearers of the trade union or may, for reasons to be recorded in writing, direct the Registrar to hold fresh elections of the trade union under his supervision.

COMMENTS

1. **Registration:** In an appeal before it the Labour Court is not only to see to the non-compliance of the procedure adopted by the Registrar but it has also to examine any defect or deficiency in the application for registration of the Trade Union. Thus where the Registrar after receiving such an application neither made any objection within 15 days' time as required under Section 8(1) (Now Sec. 9(1)) nor registered it even after expiry of 60 days' time the appellants in appeal before Labour Court contended that the Court should not go into the formalities and intricacies of legal requirements of registration but must confine itself to the question of non-compliance of the procedure by the Registrar and issue directions for registration of the Trade Union, it was *held* that the Labour Court cannot remain content to scrutinise the procedural defects of the Registrar only while there is an application pending with prayer to direct him to register the Trade Union. It was further observed that the Labour Court should also examine whether things standing as they are, the Registrar could register the Trade Union and whether there are any objections which could be validly raised by the Registrar. For the laches of the Registrar, a Trade Union cannot be registered against the legal provisions of law irrespective of merit. A Trade Union for its registration must comply with certain provisions of law, and the mere failure of the Registrar to communicate his objection to the Trade Union within time does not remove the deficiency of the Trade Union, if there be any. **1971 PLC 42.**

Registrar is bound to issue certificate of registration to trade union once all requirements have been fulfilled. Employer is not entitled to right of hearing before issuance of certificate of registration. **NLR 1995 Labour 71; 1996 PLC 45.**

Number of workers as members of applicant union was disputed. Enquiry of Registrar to ascertain number of members was made on back of applicant union and without any notice to it. Applicant union, in circumstances was prejudiced for not being given opportunity to prove the number of its members. Order of Registrar dismissed application for registration and order of the Labour Court dismissed the appeal against the order of Registrar, in circumstances, set aside in revision by Appellate Tribunal and Registrar was directed to re-decide matter after enquiry in presence of all rival unions. **1985 PLC 183.**

A fair reading of Section 8(7) of the I.R.O. (Now Sec. 9(10), P.I.R.A.) shows that an appeal is provided both in case of a dispute in relation to change of officers of a Trade Union or refusal on the part of the Registrar to change under Section 8(5). **1984 PLC 67.**

Registrar has to verify whether persons who are to cast their votes at election were members of Union. Registrar's finding in such matters would not be open to interim restraint by the High Court. **1989 PLC 457.**

Establishment bifurcated into two Zones. Such Zones of establishment were two establishments for purpose of registration of trade unions and certification of Collective Bargaining Agents in the Zones. **1989 PLC 969.**

Registrar of Trade Unions was competent to issue certificate after examination of documents which were submitted before him. Certificate of registration having been issued in favour of workers' union, presumption would be that workers in question were employees of petitioner's establishment and after exercising lawful jurisdiction, certificate of registration was granted to them. Employer (petitioner's establishment) had no right to come into the picture at the time of registration of union, therefore, no right could be extended to it. Registrar was thus, bound to issue certificate of registration, if all requirements of law had been fulfilled. Certificate of registration was thus, correctly and rightly granted to the union concerned. **1996 PLC 45.**

Registrar of Trade Unions issuing show-cause notice calling upon petitioner to explain as to why election results were not communicated within stipulated time and that Executive Committee was not constituted in accordance with provisions of bye-laws of the Union. Petitioner initially challenged order of Registrar, Trade Unions before Labour Court at "L" which returned petitioner's application for presentation of same to Court having territorial jurisdiction. Petitioner's subsequent application filed before Labour Court at "H" where Office of Registrar was situated was also returned to him for want of jurisdiction. Such orders passed by Labour Courts were not sustainable for both Labour Courts had jurisdiction. Both Labour Courts having failed to exercise jurisdiction vested in those Courts, Constitutional petition against their orders refusing to exercise jurisdiction was maintainable. **1996 PLC 446.**

2. Change of office-bearers and directions for re-elections:
Application by any person not a member of Trade Union requesting for change in office-bearers rejected on sound and detailed reasons by Registrar of Trade Unions stating that alleged no-confidence motion and re-election stated to have been held was contrary to provisions of constitution of Trade Union. Labour Court on appeal directing re-election without recording any reasons on grounds against findings of Registrar. Appeal before Labour Court, *held*, could be made by a member and in absence of any proof, thereof Labour Court could not entertain appeal against order of Registrar. Plea that