

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT : : LABOUR (RC) BRANCH
ASSAM SACHIVALAYA : DISPUR : GUWAHATI - 6

ORDER BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 18th October, 2016



NO.GLR.(RC)100/2012/238 : In a petition before the Hon'ble Madras High Court bearing NO.4604-06/1999 and in other matters, it has been declared that Section 66(1)(b) of the Factories Act, 1948 is unconstitutional and has been struck down, by virtue of which, now women are at liberty to work in the factories in the night shift between 07 PM to 06 AM. The Hon'ble High Court has laid down certain conditions in respect of their security and safety. It has been informed that in respect of the said judgement, no appeal has been preferred before the Hon'ble Supreme Court or any other competent court.

Since the Hon'ble Madras High Court has declared section 66(1)(b) along with its proviso as violative of Articles 14, 15 and 16 of the Constitution, therefore, now the said provision will not create any obstruction to the women working in the night shifts in the factories. Therefore, in view of the above decision, the State Government of Assam authorises the factories of the State to employ women in the night shifts from 7 P.M. to 6 A.M. upon complying with the following conditions, namely :-

1. It will be the duty of the employer and other responsible persons that they may prevent any act of probable sexual harassment and in case of such incident, they shall arrange for taking appropriate action.
2. It shall be the duty of the employer or other responsible persons at the work places or institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, statement or prosecution of acts of sexual harassment by taking all steps required.
3. All employers or persons in charge of work place or factory should take appropriate steps to prevent sexual harassment and they should take the following steps :
 - (i) Express prohibition of sexual harassment in any form such as unwelcome sexually determined behaviour either directly or by implication or advances or contact to gain contact or demand sexual favours or make sexually coloured remarks or showing pornography or any other unwelcome physic verbal or non verbal contact of sexual nature ;
 - (ii) The Rules or regulations shall be framed by the factory managements relating to conduct and discipline prohibiting sexual harassment and provide for appropriate penalties in such rules against the offenders and also introduce amendments wherever necessary which are existing in the Standing Orders;
 - (iii) Provide appropriate working conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no women employee should have reasonable ground to believe that she is disadvantaged in connection with her employment.
4. In case of any criminal case the employer shall initiate appropriate action in accordance with the penal law without delay and also ensure that victims or witnesses are not victimized or discriminated while dealing with the complaints of sexual harassment and wherever necessary, at the request of the affected workers, shift or transfer the perpetrator, if circumstances so warrant. The employer shall take appropriate disciplinary action if such conduct amounts to misconduct in employment.

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5. The employer shall maintain a complaint redressal mechanism in the factory itself and the said mechanism should ensure time-bound treatment of complaints. Such mechanism should be at any rate to provide, when necessary a Complaint Committee, a special counsellor or other support services including the maintenance of confidentiality.
6. Such Complaint Committee should preferably be headed by a woman and not less than half of its members should be women besides a non-governmental organisation's representation in the committee. Such person should be familiar with the issue relating to women and sexual harassment.
7. The women employees should be sensitized about their rights in particular by prominently notifying the guidelines on the subject.
8. Wherever there is a harassment at the instance of a third party either by an act or omission the employer and person in charge of the factory should take all steps necessary and reasonable to assist the affected person, in terms of support and preventive action.
9. The employer shall provide proper lighting not only inside the factory, but also surrounding of the factory and to all places where the female workers may move out of necessity in the course of such shift and it shall be mandatory to install CCTV Surveillance in all the crucial areas to ensure safety of women employees.
10. The employer shall see that the women workers are employed in a batch preferably not less than ten and the total of the women workers employed in a night shift shall not be less than $2/3^{\text{rd}}$ of the total strength.
11. It is mandatory for employer to provide separate Ladies Toilets in the work place with adequate lighting and security.
12. Sufficient women security shall be provided during the night shift at the entry as well as exit points.
13. Sufficient number of work sheds shall be provided for the women workers to arrive in advance and also leave after the working hours.
14. Separate canteen facility shall be provided for the women employees.
15. Transportation facility shall be provided wherever transportation is provided by the employer or the occupier of the factory with pre-installed CCTV Surveillance and GPS System in the vehicles used for transportations of women employees.
16. The employer or occupier of the factory shall provide Night Creches for the Children of the women employees.
17. The employer shall appoint not less than two women wardens per night shifts who shall go round and work as Special Welfare Assistants.
18. The factory shall provide appropriate medical facilities and also make available at any time of urgency by providing necessary telephone connections and where more than hundred women workers are employed in a shift, a separate vehicle be kept ready to meet the emergent situation such as hospitalization, whenever there is a case of injury or incidental acts of harassment etc.
19. Wherever the factory provides boarding and lodging arrangements for the women workers, the same shall be kept exclusively for the women under the control of women wardens or supervisors.
20. During night shift not less than $1/3^{\text{rd}}$ of strength of the supervisors or shift-in-charge or foreman or other supervisory staff shall be women.
21. There shall be not less than twelve consecutive hours of rest or gap between the last shifts and the night shift wherever a women worker is changed from day shift to night shift and so also from night shift to day shift.
22. In order respects, the provisions of the Factories Act and the rules of other statutory provisions with respect to the hours of work and the Payment of Equal Remuneration Act and all other Labour Legislations shall be followed by the employer.
23. Apart from the facilities, which are permissible under the Factories Act and additional holiday shall be permitted for the women workers during their menstruation period, which shall be a paid holiday for the night shift.

24. The women workers who work in night shifts and regular shifts shall have a monthly meeting through their representatives with principal employer once in eight weeks as grievance day and the employer shall try to comply all just and reasonable grievances.
25. The employer shall be at liberty to employ women workers as a whole or in part during night shift, provided, the above directions be complied with.
26. The employer shall send a fortnightly report to the Inspector of Factories about the details of employees engaged during night shift and shall also send express report whenever there is some untoward incident to the Inspector of Factories and local Police stations as well.
27. The area Factories Inspectors and the Labour Officer shall strictly enforce the direction and make it a point to take note of the non-compliance in their inspection from time to time and see that the employer complies with the directions by appropriate action.

This notification will come into force with the immediate effect.

Sd/- K.V. Eapen
Addl. Chief Secretary to the Govt. of Assam
Labour and Employment Department.

MEMO.NO.GLR(RC)100/2012/238-A,

Dated Dispur, the 18th October, 2016.

Copy to :-

1. P.S. to the Hon'ble Minister, Labour & Employment, Assam, Dispur, Guwahati- 6, for kind appraisal of the Hon'ble Minister.
2. P.S. to Addl. Chief Secretary, Labour and Employment Department, Dispur, Guwahati- 6, for kind appraisal of the Addl. Chief Secy.
3. The Labour Commissioner, Assam, Gopinath Nagar, Guwahati- 16, for information and necessary action.
4. The Chief Inspector of Factories, Assam, G.S. Road, Bhangagarh, Guwahati- 5 for information and necessary action.
5. The Deputy Director, Printing & Stationery, Assam Govt. Press, Bamunimaidan, Guwahati- 21, for information and necessary issue in the Assam Gazette. He is requested to send 100 copies of the Assam Gazette to this Department urgently.

By order etc,



Joint Secy. to the Govt. of Assam,
Labour and Employment Department.

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