

THE KERALA SMALL PLANTATION WORKERS' WELFARE FUND ACT, 2008

KERALA

India

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Act 17 of 2008

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An Act to provide for the constitution of a Fund for promoting the welfare of, and to pay pension to, the workers in small plantations in the State of Kerala and for certain other matters connected therewith. WHEREAS, it is expedient to provide for the constitution of a Fund for promoting the welfare of, and to pay pension to, the workers in small plantations in the State of Kerala and for certain other matters connected therewith. BE it enacted in the Fifty-ninth Year of the Republic of India as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Kerala

Small Plantation Workers' Welfare Fund Act, 2008. (2) It extends to the whole of the State of Kerala. (3) It shall come into force at once.

2. Definitions. - In this Act, unless the context otherwise requires.-

(a) "Board" means the Kerala Small Plantation Workers' Welfare Fund Board constituted under section 6; (b) "Chief Executive Officer" means the Chief Executive Officer appointed under sub-section (1) of section 9; (c) "contribution" means the sum of money payable to the Fund in accordance with the provisions of section 5; (d) "employer" in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether known as a managing agent or manager or superintendent or by any other name) such other person shall be deemed as the employer in relation to that plantation; (e) "family" means wife or husband, minor sons and unmarried daughters of a plantation worker and includes his father, mother and mentally retarded or physically handicapped or widowed children who are solely dependant upon him; (f) "Fund" means the small Plantation Worker's Welfare Fund established under section 3; (g) "member" means a member of the Fund; (h) "plantation" means any land used or intended to be used for cultivating one

or more than that of rubber, tea, coffee, cardamom, coco, oil palm or cashew; (i) "prescribed" means prescribed by rules made under this Act; (j) "Schedule" means the Schedule to this Act; (k) "Scheme" means a Scheme framed under sub section (1) of section 3; (l) "small plantation" means a plantation having an extent less than five hectares and where one or more small plantation workers are employed, but shall not include a plantation as defined in the Plantations Labour Act, 1951 (Central Act 69 of 1951); (m) "small plantation worker" means a person engaged for doing any work in a small plantation for not less than ninety days in the preceding twelve months for wages or reward, whether directly or through any contractor or agent, of the owner or company or family or Trust or Society and includes any self-employed person working in his own small plantation having an extent not more than half hectare. Explanation. - For the purpose of this Act, if any question arises as to whether a person is a small plantation worker or not that question shall be referred to the Board, or to an officer authorised by the Board in this behalf, and the decision of the Board/ his thereon shall be final; (n) "year" means the financial year.

3. Small Plantation Workers' Welfare Fund Scheme.- (1) The Government shall,

by notification in the Gazette, frame a Scheme to be called "the Kerala Small Plantation Workers' Welfare Fund Scheme" and there after as soon as may constitute a Fund in accordance with the provisions of this Act and the Scheme. (2) The Fund shall vest in the Board and be administered by the Board. (3) Subject to the provisions of this Act, the Scheme may provide for all or any of the matters specified in the Schedule. (4) The following shall be credited to the Fund, namely:-(a) the contributions specified under section 5; (b) the amount borrowed by the Board under section 10; (c) damages realised under section 19; (d) grants, loans or advances given by the Government of India, the State Government, any local authority institution or any institution; (e) any donation from any other manner in accordance with law; (f) any amount raised by the Board from other sources to augment the resources of the Board; (g) any fee levied under the Scheme; (h) any other amount to be credited to the Fund under the provisions of the Scheme. (5) Fund may be utilised for all or any of the following purposes, namely:-(a) for payment of pension to a member who is unable to work due to infirmity or has completed the age of sixty years; (b) for payment of family pension; (c) for payment of financial assistance to a member who is suffering from permanent disability; (d) for payment of loans or grants to a member to meet expenses in connection with the marriage of daughters or for expenses in connection with the death of member or dependant or for expenses for construction or maintenance of his house; (e) for providing maternity benefits to women workers employed in plantations; (f) for providing facilities for treatment and education to the member and his family members; (g) to provide for loan if a member is not having his own land or residential house, to purchase such land or land with building for him/her. (h) to provide for the necessities in relation to the education of the Children of Plantation workers. (i) for any other purpose stated in the Schedule and Scheme. (6) The Government may, by notification in the Gazette, add, amend or modify anything to the Scheme either prospectively or retrospectively. (7) The Scheme framed under sub-section (1) or the notification under sub-section (6) shall be laid, as soon as may be, after it is issued, before the Legislative Assembly while it is in session for a total period of fourteen days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any amendment in the

Scheme or notification, or decides that the Scheme or notification should not be issued, the Scheme or notification shall thereafter have effect only in such amended form or be of no effect, as the case may be; however that any such amendment or annulment shall be without prejudice to the validity of anything previously done under the Scheme or the notification, as the case may be.

4. Saving of certain rights and privileges.-- On the date of commencement of this

Act, any privileges, which have been provided by the employer to the worker shall not be denied or reduced by the reason of payment of contribution.

5. Contribution to the Fund.--(1) Every plantation worker shall contribute for

every half year one hundred and twenty rupees each to the Fund.(2)Every employer shall contribute to the Fund every half year an amount of one hundred and twenty rupees equal to the contribution of the worker to the Fund.(3)Every self-employed member shall contribute for every half-year two hundred and forty rupees each to the Welfare Fund.(4)The Government shall contribute to the Fund at the rate of sixty rupees for half year for each worker/each self-employed person.(5)The contribution shall be paid to the Chief Executive Officer or to any officer authorised by the Board in this behalf.

6. Constitution of the Board.- (1) The Government may, by notification in the

Gazette, constitute with effect from such date as may be specified therein, a Board by name "the Kerala Small Plantation Workers' Welfare Fund Board" for the administration of the Fund, to supervise and exercise the functions including the payment of financial assistance from the Fund.(2)The Board shall be a body corporate by name aforesaid, having perpetual succession and a common seal and shall, in the said name, sue and be sued.(3)The Board shall consist of fifteen Directors as may be nominated by the Government as hereinafter provided, namely:-(i)five members representing the plantation workers;(ii)five members representing the employers;(iii)five members representing the Government.(4)The Government may appoint one of the Directors of the Board to be the Chairperson.(5)The Government shall publish in the Gazette, the names of the Chairperson and the Directors of the Board.(6)The Board shall administer the Fund vested in it, in such manner as specified in the Scheme.(7)The Board may, with the previous approval of the Government, delegate the powers and functions under this Act or the Scheme as it may consider necessary for the efficient administration of the Fund to the Chief Executive Officer, subject to such condition and restrictions as may be specified.

7. Term of office of the Directors.--(1) A Director nominated under sub-section

(3)of section 6 shall hold office for a period of three years from the date of such nomination: Provided that a Director may continue as Director till the appointment of his successor.(2)Notwithstanding anything contained in section 8, the Government may, at any time for the reasons to be recorded in

writing, remove any Director of the Board from his office, after giving him a reasonable opportunity of showing cause against the proposed removal: Provided that if the Government are of the opinion that it is not expedient in the public interest to record the reasons in writing or to give an opportunity, it shall not be necessary to record in writing the reasons for removal or to give an opportunity of showing cause against the proposed removal. (3) Any Director may resign his office, by giving notice in writing to the Government, but shall continue in office until the resignation is accepted by the Government. (4) A casual vacancy of the Director may be filled up by the Government and the Director so appointed shall hold office for the unexpired term of office of the Director in whose vacancy he is appointed.

8. Removal of non-official Directors.- (1) The Government may, by notification

in the Gazette, remove any non-official Director of the Board from the said position on the following reasons.- (a) If he absents himself for three consecutive meetings, without the permission of the Board: Provided that such absence may be condoned by the Board for sufficient reasons before the publication of the notification in the Gazette; (b) If the Government are of the opinion that he is ineligible to function as Director or has become incapable or the continuance of such Director by abusing his position is detrimental to the public interest: Provided that before removing a Director under this sub-section, he shall be given a reasonable opportunity to show cause why he should not be removed. (2) A non-official Director of the Board removed under clause (a) of sub-section (1) shall be disqualified for re-nomination as a Director of the Board for a period of three years from the date of his removal, unless otherwise ordered by the Government. (3) A non-official Director of the Board removed under clause (b) of sub-section (1) shall not be eligible for re-nomination until he is declared by an order of the Government to be no longer ineligible.

9. Appointment of officers and staff.- (1) The Government may appoint a Chief

Executive Officer and such number of other officers and employees as may consider necessary for carrying out the functions of the Board under this Act. (2) The conditions of appointment, service and the scales of pay of the officers and employees referred to in sub-section (1) shall be such, as may be prescribed.

10. Power of the Board to borrow.- The Board may, from time to time, with the

previous approval of the Government and subject to such terms and conditions as may be specified by the Government, borrow the required amount for carrying out the purposes of this Act.

11. Determination of the amount due.- (1) The Chief Executive Officer or any

other officer appointed under sub-section (1) of section 9 authorised by him in this behalf may, after making such enquiry as he may consider necessary, from employer or plantation worker under the provisions of this Act and the Scheme made thereunder to ascertain the contribution to be received

from the employer or the plantation worker as per the provision of this Act or the scheme made thereunder.(2)The Officer conducting the enquiry under sub-section (1) shall, for the purposes of such enquiry, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:-(a)enforce the attendance of any person and examine him on oath;(b)require the discovery and production of documents;(c)receive evidence on affidavits;(d)issue commission for the examination of witnesses.(3)Any enquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) and for the purpose of section 196 of the said Code.(4)No order determining the amount under sub-section (1) shall be made unless the persons involved have been given a reasonable opportunity of being heard.(5)Any person aggrieved by an order under sub-section (1) may within sixty days from the date of receipt of the order, prefer an appeal to the Government or to any other authority as may be specified by the Government in this behalf and the decision of the Government or of such authority on such appeal shall be final.

12. Provisional assessment and collection of contribution. - Every employer liable

to pay contribution under section 5 shall, pending determination of the amount due from him under section 11, pay on every three months by way of an advance contribution an amount equal to one fourth of the amount payable annually by him according to the latest assessment under the said section, in the time and manner as specified in the Scheme.(a)If the advance contribution of the employer is not paid on or before the due date, the officer authorised under section 11 or the Chief Executive Officer shall issue a notice to the defaulter showing the amount of arrears, and, if the amount is not paid within fifteen days of the receipt of such notice, it may be recovered in the manner provided in section 13 of this Act.(b)Where the contribution of the worker is not paid within a period of six months from the due date, the officer authorised under section 11 or the Chief Executive Officer shall issue a notice to the defaulter to clear of the dues and even after the date of receipt of such notice and fails to remit the amount due his membership shall stand cancelled.(c)An application for resumption of membership of whose membership cancelled as per clause (b) of the above shall be entertained by the officer authorised under section 11 or the Chief Executive Officer, if the applicant adduces sufficient cause for not remitting the contribution before the due dates and also expresses his consent in writing for remittance of the entire dues as on the date of application together with nine per cent interest thereon. An application under clause (c) shall not be entertained, if it is not preferred within three years from the date of cancellation of the membership.(d)A plantation worker, not preferring an application for resumption of membership within three years of cancellation of his membership, is eligible to get back seventy five per cent of the contribution at his credit.

13. Mode of recovery of money due from the employer.-- Any amount due from

the employer in pursuance of the provisions of this Act or the Scheme may, if the amount is in

arrears, be recovered together with interest thereon at the rate of nine per cent in the same manner as arrears of public revenue due on land.

14. Priority of payment of contribution over other debts.-- Where any employer,

liable to pay contribution under section 5, is an adjudged insolvent or in case such employer is a company and an order for winding up of such company is made, the amount due from such employer under this Act or the Scheme shall, where the liability therefore has accrued before the order of adjudication or winding up is made, as the case may be, deemed to be included among the debts under section 64 of the Insolvency Act,

1955. (Central Act 2 of 1956) or under section 530 of the Companies Act, 1956 (Central

Act 1 of 1956) which are to be paid in priority to all other debts, in the distribution of the properties or assets of the insolvent, or the properties or assets of the company being wound up, as the case may be.

15. Employer not to reduce wages etc.-- No employer shall, by reason only of his

liability for the payment of any contribution to the Fund, reduce, whether directly or indirectly, the wage of any plantation worker to whom the Scheme applies or the total quantum of benefits to which the plantation worker is entitled under the terms of his employment express or implied.

16. Directors of Board etc. to be public servants.- Each Director of the Board, the

Chief Executive Officer and other officers and members of the staff of the Board appointed under sub-section (1) of section 9 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

17. Penalty. -- (1) A person, who for the purpose of avoiding any payment to be

made by him under this Act or under the Scheme or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two thousand and five hundred rupees, or with both. (2) Any person who, contravenes or makes default in complying with any of the provisions of this Act or the Scheme shall, if no other penalty is elsewhere provided for under this Act for such contravention or non-compliance, be

punishable with imprisonment for a term which may extend to five months or with fine which may extend to five thousand rupees, or with both. (3) No court inferior to that of a Judicial Magistrate of the First Class shall try any offence punishable under this Act. (4) No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Chief Executive Officer.

18. Offences by companies.--(1) Where an offence under this Act has been

committed by a company, every person, who, at the time, when the offence was committed, was in charge of, and was responsible, to the company for the conduct of the business of the company, and the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment contained in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any Director, Manager, Secretary or any other officer shall be deemed to be guilty of that offence and shall be liable to be prosecuted against and punished accordingly. Explanation.- For the purpose of this section, "Company" means any body corporate and includes a firm or other association of individual and "Officer of the Company" means the Managing Director, Director, Secretary, Treasurer or Manager of the Company.

19. Power to recover damages.- Where any person makes default in the payment

of any contribution to the Fund under this Act or the Scheme, the Board may recover the defaulted amount with nine per cent interest.

20. Protection of action taken in good faith.- No suit or other legal proceedings

shall lie against the Government or any Director of the Board or any officer or other person in respect of anything which is in good faith done or intended to be done under this Act or any rule made thereunder or under the Scheme.

21. Directions of the Government.- (i) The Government may, after consultation

with the Board, give to the Board, general directions to be followed by the Board. (2) In the exercise of its powers and performance of its duties under this Act, the Board shall not deviate from any general directions issued under sub-section (1), except with the previous permission of the Government.

22. Power to order inquiry.-(1) The Government may, at any time, appoint an

officer not below the rank of a Joint Secretary to Government to inquire into the working of the Board and to submit a report to the Government.(2)The Board shall give the person so appointed, all facilities for the proper conduct of the enquiry and to furnish him such documents, accounts and information in the possession of the Board, as he may require.

23. Power to supersede the Board.- (1) If, on consideration of the report under

section 22 or otherwise, the Government are of opinion that the Board is unable to perform, or has persistently made default in the performance of the duties imposed on it by or under the provisions of this Act or the Scheme or has exceeded or abused its powers, the Government may, by notification in the Gazette, supersede the Board for such period not exceeding six months, as may be specified in the notification: Provided that before issuing a notification under this sub-section, the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any of the Board.(2)On the publication of a notification under sub-section (1).-(a)all the Directors of the Board shall, from the date of such publication, be deemed to have vacated their offices as such Directors;(b)all the powers and duties which may be exercised or performed by the Board shall, during the period of supersession, be exercised or performed by such officer or officers, as may be specified in the notification;(c)all funds and other properties vested in the Board shall during the period of supersession, be vested with the Government.(3)On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government shall reconstitute the Board in the manner provided under section 6.

24. Audit of accounts of the Board.--(1) The Board shall appoint auditors to audit

the accounts of the Board.(2)The accounts of the Board shall be verified and audited once in every year by such auditors.

25. Annual report and audited statement of accounts.-- (1) The annual report of

the Board shall be prepared under the direction of the Board and after approval by the Board, a copy of the report together with an audited statement of accounts shall be submitted to Government before the end of July every year.(2)The Government shall, as soon as the annual report is received, together with the audited statement of accounts, be laid on the table of the Legislative Assembly.

26. Bar of jurisdiction of Civil Court.-- No civil court shall have jurisdiction to

settle, decide or deal with any question or to determine any matter which is by or under this Act or the Scheme required to be settled, decided or dealt with or to be determined, by the Government or the Board or the Chief Executive Officer or any officer authorised by the Board.

27. Special provisions for transfer of accumulation from welfare funds

established by any other law or agreement.-- All sums standing to the credit of a member in any welfare fund established either by any law or by agreement shall stand transferred to and credited to the Fund established under this Act and the liability of such member to pay contribution to such welfare funds shall cease from such date as may be specified by the Government in this behalf.

28. Power to remove difficulties.-- (1) Where any difficulty arises in giving

effect to the provisions of this Act, the Government may, by order published in the Gazette, make such provisions not inconsistent with the provisions of the Act which appear to them necessary for the purpose of removing the difficulty: Provided that no such order shall be made after the expiry of two years from the commencement of this Act. (2) Every order made under this section, shall, as soon as, may be, after it is made, be laid before the Legislative Assembly.

29. Power to make rules.-- (1) The Government may, by notification in the

Gazette, make rules, either prospectively or retrospectively, for the purpose of carrying into effect the provisions of this Act. (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly, makes any amendment in the rule or decides that the rule should not be made, the rule shall, thereafter have effect only in such amended form or be of no effect, as the case may be; so, however, that any such amendment or annulment shall be without prejudice to the validity of anything previously done under that rule.

Schedule

(See section 3(3)) MATTERS FOR WHICH PROVISIONS MAY BE MADE IN THE SCHEME

1. Registration of plantation workers and employers.

2. The time and manner in which contribution shall be made to the

Fund by or on behalf of the workers and employers under section 5 and the manner in which contribution may be recovered.

3. The manner in which the contribution of small plantation workers'

may be recovered from different sectors.

4. The constitution of any committee for assisting the Board.

5. The manner in which accounts shall be kept, the investment of

moneys belonging to the Fund in accordance with any directions issued or conditions specified by the Government, the preparation of the Budget, the audit of accounts and the submissions of reports to the Government.

6. The conditions under which withdrawals from the Fund may be

permitted and any deduction or forfeiture may be made and the maximum amount of such