

# The Bombay Labour Welfare Fund Act, 1953

GUJARAT

India

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### Act 11 of 1953

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The Bombay Labour Welfare Fund Act, 1953 Bombay Act No. 11 of 1953 [Dated 17th June, 1953] For the Statement of Objects and Reasons, see Bombay Government Gazette, 1953, Part V, pages 327-328. This Order was published in Government of India, Ministry of Home Affairs, Notification No. 8/2/59 -SR (R) 9, dated 4th December, 1959. It came into force on 15th December, 1959. An Act to provide for the constitution of a [Fund] [These words were substituted for the words 'manual or clerical' by Gujarat 29 of 1973, Section 2 (i).] for the financing of activities to promote welfare of labour in the State of [Gujarat] [This word was substituted for the word 'Bombay' by Gujarat 47 of 1961, Section 2 (a).] [for conducting such activities and for certain other purposes] [These words were substituted for the words 'and for conducting such activities', by Gujarat 29 of 1973, Section 2 (b).] Whereas, it is expedient to constitute a Fund for the financing of activities to promote welfare of labour in the State of [Gujarat] [This word was substituted for the word 'Bombay' by Gujarat 47 of 1961, Section 2 (a).] [for conducting such activities and for certain other purposes] [These words were substituted for the words 'and for conducting such activities', by Gujarat 29 of 1973, Section 2 (b).] it is hereby enacted as follows.-

### 1. Short title, extent and commencement.

(1) This Act may be called the Bombay Labour Welfare Fund Act, 1953. (2) [It extends to the whole of the State of Gujarat] [These words were substituted for the words 'the Bombay Labour Welfare Board', by the Bombay Labour Welfare Board (Reconstitution) Order, 1960.]. (3) It shall come into force in such area and on such date as the State Government may, by notification in the Official Gazette, appoint in this behalf.

### 2. Definitions.

- In this Act, unless the context otherwise requires- (1) "Board" means [[the Gujarat Labour Welfare Board] [These words were substituted for the words 'the Bombay Labour Welfare Board', by the Bombay Labour Welfare Board (Reconstitution) Order, 1960.] constituted under Section 4; (1A) [

"Contribution" means the sum of money payable as contribution to the Board in accordance with the provisions of Section 6B,] [Clause (1a), which was deleted, further inserted, by Gujarat 29 of 1973, Section 2 (1).](2)"Employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, [manual, clerical, Supervisory or technical] [These words were substituted for the words 'manual or clerical' by Gujarat 29 of 1973, S. 2 (i).] in an establishment [but does not include any person. [These words were added by Guj. 29 of 1973, S. 2 (2ii).](a)Who is employed mainly in a managerial capacity, or(b)Who, being employed in a supervisory capacity, draws wages exceeding [three thousand and five hundred rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.](3)"Employer" means any person who employs either directly or through another person either on behalf of himself or any other person, one or more employees in an establishment and includes-(i)in a factory, any person named under Section 7 (i) (f) of the Factories Act as the manager;(ii)in any establishment, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;(4)"Establishment" means-(i)a factory;(ii)a tramway or motor omnibus services; and["(iii) any establishment within the meaning of the Bombay Shops and Establishments Act, 1948, which employs, or on any working day during the twelve months proceedings the specified date employed, ten or, more persons: [This portion was substituted for the portion beginning with the brackets, figures and words '(iii) any establishment and ending with the words', or any State Government' by Gujarat 29 of 1973, Section 2 (3).]Provided that, any such establishment shall, subject to the provisions contained in the succeeding proviso continue to be an establishment for the purposes of this Act, notwithstanding a reduction in the number of persons to less than ten at any subsequent time:Provided further that, where a continuous period of not less than three months the number of persons employed therein has been less than ten such establishment shall cease to be an establishment of the purposes of this Act with effect from the beginning of the months following the expiry of the said period of three months, and the employer shall, within one month from the date of such cessation, intimate by registered post the fact thereof to such authority as the State Government may specify in this behalf.](5)"Factory" means a factory as defined in Section 2 (m) of the Factories Act 1948 (LXIII of 1948);(6)"Fund" means the [[Labour Welfare Fund] [These words were substituted for the words 'the Bombay Labour Welfare Fund' by the Bombay Labour Welfare Board (Reconstitution) Order, 1959.] constituted under Section 3;(7)"Independent member" means a member of the Board who is not connected with the management of any establishment or who is not an employee, and includes an officer of Government nominated as a member.(8)"Inspector" means an Inspector appointed under Section 12;[\* \* \* \* [Clauses (8a) and (8b) were deleted, by Gujarat 47 of 1961, Section 4 (e).]\* \* \* \* \*](9)"Prescribed" means prescribed by rules made under this Act;["(9A) "specified date" in relation to any establishment for the purpose of payment to the Board of any sum specified in item (a), (b), or (bb) of subsection (2) of Section 3 shall be the date on or before which any such sum becomes payable to the Fund,"] [Clause (8a) was inserted by Gujarat 29 of 1973, Section 2 (4).](10)"Unpaid accumulations" means all payment due to the employees but not made to them within a period of [one year] [Substituted for 'three years' by Gujarat 5 of 2005, dated 25th February 2005 (w.r.e.f. 31-12-2004).] from the date on which they became due whether before or after the commencement of this Act including the wages, and gratuity legally payable [but not including the amount of contribution if any, paid by an employer to a provident fund established under the Employees' Provident Funds Act, 1952 (XIX of 1952)] [These words and figures were inserted by Gujarat 47 of

1961, Section 4 (f).](11)[ "Wages" means as defined in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (IV of 1936)] [Clause (11) was substituted by Gujarat 29 of 1973, Section 2 (5).](12)"Welfare Commissioner" means the Welfare Commissioner appointed under Section 11.

## **2A.**

[Construction of certain reference in the Act] Deleted by Gujarat 47 of 1961, Section 5.

## **3. Welfare fund.**

- [(1) The State Government shall constitute a fund called the Labour Welfare Fund and notwithstanding anything contained in any other law for the time being in force, the sums specified in sub-section (2), shall subject to the provisions of sub-section (4) and [Section 6A and 6B] [Sub-section (1) was substituted, by Guj. 29 of 1973, Section 6 (a).] be paid into the Fund.];(2)The Fund shall consist of-(a)all fines realised from the employees;(b)all unpaid accumulations;(bb)[ any contribution paid under Section 6B.] [Item (bb) was inserted by Gujarat 29 of 1973, Section 3 (29).](bbb)[ any interest paid under section 6c.] [Clause (bbb) was inserted by Gujarat 36 of 1980, Section 2.](c)any voluntary donations;(d)any fund transferred under sub-section (5) of section 7 [\*\*\*\*] [The word 'and' was deleted by Gujarat 29 of 1973, Section 3 (2b).](e)any sum borrowed under Section 8.["(f) any loan, grant-in-aid or subsidy paid by the State Government or any local authority or statutory corporation" [Item (f) and (g) were added, by Gujarat 29 of 1973, Section 3 (2c).](g)all sums received in any other manner or from any other source.")(3)The sums specified in sub-section (2) shall be collected by such agencies and in such manner and the accounts of the Fund shall be maintained and audited in such manner as may be prescribed.(4)[ Notwithstanding anything contained in any other law for the time being in force or any contract or instrument, all unpaid accumulations shall be collected by such agencies and in such manner as may be prescribed and be paid in the first instance to the Board which shall keep a separate account therefore until claims thereto have been decided in the manner provided in Section 6A.] [Sub-section (4) was added by Gujarat 47 of 1961, Section 6 (b).].

## **4. Board.**

- [[The State Government shall, by notification in the Official Gazette, constitute a Board for the State of Gujarat for the purpose of administering the Fund, and to perform other functions assigned to the Board by or under this Act] [This portion was substituted for the sentence with 'The State Government' and ending with 'under this Act' by the Bombay Labour Welfare Board (Reconstitution) Order, 1959.]; The Board shall consist of the following members, namely.-(a)such number as may be prescribed of representatives of employers and employees to be nominated by the State Government;Provided that both employers and employees shall have equal representation on the Board;(b)such number of independent members as may be prescribed, nominated by the State Government ; and(c)such number of independent members as may be prescribed, nominated by the State Government to represent women.(2)The members of the Board shall elect one of its independent members as the Chairman of the Board.(3)[ The members of the Board shall hold office during the pleasure of the State Government.] [Sub-section (3) substituted by Guj. 1 of 1999, dated

9th March, 1999.](4)The allowances, if any, payable to the members of the Board and the conditions of appointment of the representatives of the employers and employees shall be such as may be prescribed.(5)[The Board shall be a body corporate by the name of the Gujarat Labour Welfare Board] [These words were substituted for the portion beginning with the words 'The Board shall be known' and ending with the words 'a body corporate', by Gujarat 47 of 1961, Section 7 (b).] having perpetual succession and a common seal, with power to acquire property both moveable and immoveable, and shall by said name sue and be sued.(6)[ Notwithstanding anything contained in this section, until the Board for the State of Gujarat is duly constituted in accordance with the provisions of sub-section (1), the existing Board functioning and operating immediately before the commencement of the Bombay Labour Welfare, Fund (Gujarat Extension and Amendment) Act, 1961 (Gujarat XLVI of 1961), in any area of the State, shall continue to function and operate in that area and shall be the Board of the purposes of this Act for that area; and on the constitution of the Board for the State of Gujarat under sub-section (1),-(a)such existing Board shall stand dissolved, and the members thereof shall vacate office;(b)all properties, funds and dues which are vested in, realisable by the existing Board shall vest in, and be realisable by the Board so constituted.(c)all rights and liabilities which are enforceable by or against the existing Board, shall be enforceable by or against the Board so constituted, and where in any proceedings, in any Court or Tribunal the existing Board is a party thereto, the Board so constituted shall be deemed to be substituted as a party to those proceedings; and(d)the Welfare Commissioner and the other officers and servants of the existing Board shall continue to be the Welfare Commissioner and officers and servants of the Board so constituted; but the terms and conditions of service of the Welfare Commissioner and other officers and servants shall not, until duly altered by a competent authority be less favourable under the Board so constituted than those admissible to them while in service of the existing Board.]

#### **4A. [ [Section 4A was inserted by the Bombay Labour Welfare Board (Reconstitution) Order, 1959.]**

Power of the Board in respect of the Karnataka area to be exercised by the Government of Mysore for certain period.] [Sub-section (6) was substituted for sub-sections (6) and (7), by Gujarat 47 of 1961, Section 7 (c).] Deleted by Gujarat 47 of 1961, Section 8.

### **5. Disqualifications and removals.**

(1)No person shall be chosen as, or continue to be a member of, the Board who-(a)is a salaried official of the Board ; or(b)is or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors ; or(c)is found to be a lunatic or becomes of unsound mind ; or(d)is or has been convicted of any offence involving moral turpitude.(2)The State Government may remove from office any member who-(a)is or has become subject to any of the disqualifications mentioned in subsection (1); or(b)is absent without leave of the Board for more than three consecutive meetings of the Board.

## **6. Resignation of office by member and filling up of casual vacancies.**

(1)A member may resign his office by giving notice thereof in writing to the State Government, and on such resignation being accepted, shall be deemed to have vacated his office.(2)A casual vacancy in the office of a member shall be filled up, as soon as conveniently may be, by the authority concerned [\*\*\*] [The words 'and member so nominated shall hold office for the unexpired portion of the term of the office of his predecessor' deleted by Gujarat 1 of 1999, dated 9th March, 1999.].(3)No act or proceedings of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in constitution of the Board.

### **6A. [ Unpaid accumulations and claims thereto. [Section 61 was inserted by Gujarat 47 of 1961, Section 9.]**

(1)All unpaid accumulations shall be deemed to be abandoned property.(2)Any unpaid accumulation paid to the Board in accordance with the provisions of Section 3, shall on such payment, discharge an employer of the liability to make payment to an employee in respect thereof, but to the extent only of the amount paid to the Board; and the liability to make payment to the employee to the extent aforesaid shall, subject to the succeeding provisions of this section be deemed to be transferred to the Board.(3)As soon as possible after any unpaid accumulation is paid to the Board under sub-section (4) of Section 3 of the Board shall by a public notice call upon interested employees to submit to the Board their claims for any payment due to them.(4)Such public notice shall contain such particulars as may be prescribed and it shall be-(a)affixed on the notice board, or in its absence on a conspicuous part of the premises, of each establishment in which the unpaid accumulations were earned.(b)published in the Official Gazette, and(c)published in any two newspapers in the language commonly understood in the area in which such establishment is situated, and circulating therein or in such other manner as may be prescribed, regard being had to the amount of claim.(5)After the notice is first affixed and published under sub-section (4) it shall be again affixed and published from time to time for a period of [one year] from the date on which it was first affixed and published, in the manner provided in that sub-section in the months of June and December [\*\*\*] [The words 'each year' deleted by Gujarat 5 of 2005, dated 25th February 2005 (w.r.e.f. 31-12-2004).].(6)A certificate of the Board to the effect that the provisions of sub-sections (4) and (5) were complied with shall be conclusive evidence thereof.(7)Any claim received, whether in answer to the notices or otherwise within a period of [two years] [Substituted for 'four years' by Gujarat 5 of 2005, dated 25th February 2005 (w.r.e.f. 31-12-2004).] from the date of the first publication of the notice in respect of such claim, shall be transferred by the Board to the Authority appointed under Section 15 of the Payment of Wages Act, 1936 (IV of 1936), having jurisdiction in the area in which the factory or establishment, is situated, and the Authority shall proceed to adjudicate upon, and decide, such claim. In hearing such claim, the Authority shall have the powers conferred by, and shall follow the procedure (in so far as it is applicable) followed in giving effect to the provisions of that Act.(8)If in deciding any claim under sub-section (7), the Authority allows the whole or part of such claim, it shall declare that the unpaid accumulation in relation to which the claim is made shall to the extent to which the claim is allowed, cease to be abandoned property and shall order the Board to pay to the claimant the amount of the claim is allowed by it; and the Board shall make payment accordingly;Provided that, the Board shall not be liable to pay any sum in excess of

that paid under sub-section (4) of Section 3 to the Board as unpaid accumulations, in respect of the claim.(9)An appeal shall lie in the City of Ahmedabad to the Court of Small Causes and elsewhere to the District Court against a decision under sub-section (7) rejecting any claim or part thereof, if made within a period of sixty days from the date of such decision.(10)The Board shall comply with any order made in appeal.(11)The decision of the Authority, subject to an appeal as aforesaid, and the decision in appeal of the Court of Small Causes, or as the may be, the District Court, shall be final and conclusive as to the right to receive payment, the liability of the Board to pay and also as to the amount, if any.(12)If no claim is made within the time specified in sub-section (7) or a claim or part thereof has been rejected under the foregoing provisions then the unpaid accumulations in respect of such claim shall accrue to and vest in the State as bona vacantia and shall thereafter without further assurance be deemed to be transferred to, and form part of, the Fund.](13)[ Nothing in the foregoing provisions of this section shall apply to unpaid accumulations not already paid to the Board,(a)in respect of which no separate accounts have been maintained so that the unpaid claims of employees are not traceable, or(b)which are proved to have been spent before the sixth day of December 1961, and accordingly such unpaid accumulations shall not be liable to be collected and paid under sub-section (4) of Section 3].

## **6B. [ [Section 6B was inserted by Guj. 29 of 1953, Section 4.]**

(1)There shall be paid to the Board for the purposes of this Act, [Contributions] a contribution payable by the employer in respect of an employee in an establishment (hereinafter referred to as "the employer's contribution"), a contribution payable by such employee (hereinafter referred to as "the employee's contribution") a contribution payable by the State Government, as hereinafter provided and every such contribution shall form part of the Fund.(2)[ The amount of employee's contribution shall be payable every six months in respect of every employee whose name stands on the register of the establishment concerned in the month of June, or as the case may be, in the month of December, at the rate of three rupees for each such employee and the amount of employer's contribution shall be payable at every six months at the rate of six rupees for each such employee:Provided that the State Government may, by notification in the Official Gazette increase the said rate of employee's contribution to such amount not exceeding six rupees if it considers necessary so to do to enable the Board to fulfil the objects of this Act:Provided further that where the rate of employee's contribution is so increased by the State Government, the rate of employer's contribution shall be twice the rate of employee's contribution as so increased.] [This sub section was inserted and shall be deemed always to have been inserted by Gujarat 8 of 1963, Section 2.](3)Every employer shall pay to the Board both the employers contribution and the employee's contribution before the 15th day of July, and 15th day of January, every year.(4)Notwithstanding anything contained in sub-sections (2) and (3), the employers contributions and the employee's contribution payable for the first time after the date of the coming into force of the Bombay Labour Welfare Fund (Gujarat Amendments) Act, 1973 (Gujarat 29 of 1973), (hereinafter referred to as "the appointed date") shall be payable before such date, and at the respective rates as aforesaid for every employee whose name stands on the register of the establishment concerned on such date as may be specified by the State Government by notification in the Official Gazette, and such contributions payable next thereafter shall be paid in accordance with the provisions of this Act, irrespective of whether the period of six months as specified in sub-section (2) has been passed or

not.(5)Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the rules made thereunder the employer shall be entitled to recover from any such employee that employees contribution by deductions from has wages, and 'not otherwise; and such deduction shall be deemed to be a deduction authorised by or under the payment of Wages Act, 1936 (IV of 1936):Provided that no such deduction shall be made in excess of the amount of the contribution payable by such employee, nor shall any such deduction except the deduction in respect of the employee's contribution payable for the first time after the appointed date be made from any wages other than the wages for the months of June and December:Provided further, that if through in advertance or otherwise, no deduction has been made from the wages of an employee for the month's aforesaid, such deduction may be made from the Wages of such employee for any subsequent month or months with the permission in writing of the Inspector appointed under this Act.(6)Notwithstanding any contract to the contrary no employer shall deduct the employer's contribution from any wages payable to an employee or otherwise recover it from the employee.(7)Any sum duly deducted by an employer from the wages of an employee under this section be deemed to have been entrusted by him by the employee for the purpose of paying the contribution in respect of which it was deducted.(8)An employer shall pay the employer's and the employee's contribution to the Board by cheque, money order or in cash, and he shall bear the expenses of remitting to the Board such contribution.(9)The Welfare Commission shall submit to the State Government as soon as possible after the end of July and January every year in the prescribed form a statement showing the total amount of the employer's contribution in respect of his establishment for the period to which the statement relates and no receipt of the Statement from the Welfare Commissioner, the State Government shall pay to the Board a contribution of an amount equal to the employer's contribution in respect of that establishment:Provided that the statement in relation to the employee's contribution payable for the first lime after the appointed date referred to in sub-section (4) shall be submitted as soon as possible after the specified date in relation to that contribution.]

## **6C. [ Interest on unpaid accumulations, fines and contributions after notice of demand. [Section 6C was inserted by Gujarat 36 of 1980, Section 3.]**

(1)Where an employer does not pay to the Board any amount of unpaid accumulations or fines released from the employees or any amount of the employer's or, as the case may be, employee's contributions within the time he is required by or under the provisions of this Act to pay such amount, the Welfare Commissioner May cause to be served a notice on such employer to pay to the Board the amount within the period specified therein, which shall not be less than thirty days from the date of service of such notice.(2)Where the employer on whom a notice is served under sub-section (1) fails 'without sufficient cause to pay any such amount within the period specified in the notice, he shall without prejudice to any penalty which may be imposed on him under this Act be liable to pay to the Board simple interest on that amount for the period commencing on the date of expiry of the period specified in the notice and ending on date of the payment of that amount-(a)in respect of the period falling within the first three months after such expiry, at the rate of twelve per cent per annum, and(b)in respect of the other period, at the rate of eighteen per cent per annum.(3)The amount of interest payable to the Board under sub-section (2) shall be collected by the Welfare Commissioner in such manner as may be prescribed :Provided that the Welfare

Commissioner may, subject to such conditions as may be prescribed, remit the whole or any part of the amount of interest in respect of any period.]

## **7. Vesting and application of Fund.**

(1)The fund shall vest in and be held and applied by the Board as Trustees subject to the provisions and for the purposes of this Act. The moneys therein shall be utilized by the Board to defray the cost of carrying out measures which may be specified by the State Government from time to time to promote the welfare of labour and of their dependants.(2)Without prejudice to the generality of sub-section (1) the moneys in the Fund may be utilized by the Board to defray expenditure on the following:-(a)community and social education centres including reading rooms and libraries;(b)community necessities;(c)games and sports;(d)excursions, tours and holiday homes;(e)entertainment and other forms of recreations;(f)home industries and subsidiary occupations for women and unemployed persons;(g)corporate activities of a social nature;(h)cost of administering the Act including the salaries and allowances of the staff appointed for the purposes of the Act; and(i)such other objects as would in the opinion of the State Government improve the standard of living and ameliorate the social conditions of labour;Provided that the Fund shall not be utilized in financing any measure which the employer is required under any law for the time being in force to carry out;Provided further that unpaid accumulations and fines shall be paid to the Board and be expended by it under this Act notwithstanding anything contained in the Payment of Wages Act, 1936 (IV of 1936), or any other law for the time being in force.(3)The Board may, with the approval of the State Government, make a grant of the Fund to any employer, any local authority or any other body in aid of any activity for the welfare of labour approved by the State Government .(4)If any question arises whether any particular expenditure is or is not debitable to the fund, the matter shall be referred to the State Government and the decision given, by the State Government shall be final.(5)It shall be lawful for the Board to continue any activity financed from the labour welfare fund of any establishment, if the said fund is duly transferred to the Board.

## **8. Power of Board to borrow.**

- The Board may from time to time with the previous sanction of the State Government and subject to the provisions of this Act, and to such conditions as may be specified in this behalf borrow any sum required for the purpose of this Act.

## **9. Investment of fund.**

- Where the Fund or any portion thereof cannot be applied at any early date for fulfilling the objects of the Act, the Board shall invest the same in any of the securities specified in clauses (a) to (d) and (f) of Section 20 of the Indian Trusts Act, 1882 (II of 1882).

## **10. Directions by State Government to Board.**

- The State Government may give the Board such directions as in its opinion are necessary or



expedient in connection with expenditure from the Fund or for carrying out the other purposes of the Act. It shall be the duty of the Board to comply with such directions.

## **11. Appointment and Powers of Welfare Commissioner.**

(1)(i)The Welfare Commissioner shall be appointed by the Board with the previous approval of the State Government;(ii)the Welfare Commissioner shall be the principal executive officer of the Board;(iii)it shall be the duty of the Welfare Commissioner to ensure that the provisions of this Act and the rules made there under are duly carried out and for this purpose he shall have power to issue such order not inconsistent with the provisions of the Act and rules made thereunder as he deems fit including any order implementing the decisions taken by the Board under the Act or rules made thereunder.[\* \*\*\*\*\* \*] [Sub section (2) was deleted by Gujarat 47 of 1961, Section 10.]

## **12. Appointment of Inspectors.**

(1)The State Government may appoint Inspectors to inspect records in connection with the sums payable into the Fund, [Inspector appointed, whether by a local authority or the State Government under the Bombay Shops and Establishments Act, 1948 (Bombay LXXIX of 1948) in relation to any area, shall be deemed to be also Inspector for the purposes of this Act, in respect of establishments, to which this Act applies and the local limits within which such Inspector shall exercise his functions under this Act shall be the area for which he is appointed under the said Act.] [This portion was added by Gujarat 29 of 1973, Section 5.](2)Any Inspector may-(a)with such assistance, if any, as he thinks fit, enter at any reasonable time any premises for carrying out the purposes of this Act;(b)exercise such other powers as may be prescribed.

## **13. Absorption of the existing staff under Commissioner of Labour.**

(1)[Any staff under the control of the Commissioner of Labour, Bombay which was-(i)taken over by a Labour Welfare Board constituted under this Act and existing on the date of such taking over, and(ii)allotted to the Gujarat Labour Welfare Board established under the Bombay Welfare Board (Reorganisation Order), 1960,shall be subject to the provisions of this Act and the rules made thereunder] [This Portion was substituted for the words beginning with the words 'The Board shall take over' and ending with the words 'the rules made thereunder', Gujarat 29 of 1973, Section 11 (1).]:Provided that-(a)during the period of such employment all matters relating to pay, leave, retirement, allowances, persons, provident fund and other conditions of service of the said staff shall be regulated by the Bombay Civil Services Rules or such other rules as may from time to time be made by the State Government ;(b)every such member shall have a right of appeal to the State Government against any order of reduction, dismissal or removed from service, fine or any other punishment:Provided further than person so taken over may elect within the prescribed period that the desires to be governed by the rules made under this Act in respect of conditions of service of the staff appointed by the Board under this Act and on his electing to do so the provisions of the first proviso shall cease to apply to him.(2)[ On the coming into force of this Act in any area to which it is extended by the Bombay Labour Welfare Fund (Gujarat Extension and Amendment) Act, 1961 (Gujarat XLVII of 1961), the Board shall take over and employ such of the existing staff under the

control of the Commissioner of Labour, Ahmedabad as the State Government may direct, and every such person so taken over and employed shall be subject to like terms and conditions and to the same provisions as in sub-section (1)] [Sub-section (3) was inserted by Gujarat 47 of 1961, Section 11 (2).].

#### **14. Appointment of clerical and other staff by Board.**

- The Board shall have power to appoint the necessary clerical and executive staff to carry out and supervise the activities financed from the Fund: Provided that the expenses of the staff thus appointed and other administrative expenses shall not exceed a prescribed percentage of the annual income of the Fund.

#### **15. Power of the State Government to remove any person on staff of the Board.**

- The State Government shall have the power to remove any person whom it may deem unsuitable, from the service of the Board and to make an appointment in respect of whom more than one-third of the members of the Board have not agreed.

#### **16. Power of State Government or authorised officer to call for record, etc.**

- The State Government or any officer authorised by the State Government may call for the records of the Board, inspect the same and supervise the working of the Board.

#### **17. Mode of recovery of sums payable to the Board [into Fund], etc.**

- Any sum payable [to the Board or] [These words were inserted by Gujarat 36 of 1980, Section 4 (1).] into the Fund under this Act shall, without prejudice to any other mode of recovery, be recoverable on behalf of the Board as an arrear of land revenue.

#### **17A. [ Penalty for failure to make payment of accumulations, etc. [Sections 17A, 17B, 17C, 17D and 17E were inserted by Gujarat 36 of 1980, Section 5.]**

- Any employer who fails to pay any amount of unpaid accumulations or fines realised from employees or any amount of the employer's or, as the case may be employee's contributions, within the period specified in a notice served on him under sub-section (1) of Section 6-C, shall, on conviction, be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

#### **17B. Penalty for unlawful deduction.**

- Any employer who deducts the whole or any part of the employer's contribution from the wages payable to an employee or otherwise recover it from the employee shall, on conviction, be

punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

### **17C. Penalty for obstructing inspectors exercising powers of discharging duties, etc.**

- Any person who wilfully obstructs an Inspector in the exercise of his powers or discharge of his duties under this Act or fails to produce for inspection on demand by an Inspector any document maintained in pursuance of the provision of this Act or the rules made thereunder or to supply to him on demand true copies of any such document, shall on conviction, be punishable-(a)for the first offence, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and(b)for a second or subsequent offences, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both :Provided that in the absence of special and adequate reason to the contrary' to be mentioned in the judgement of the Court, in any case where the offender is sentenced to a fine only, the amount of fine shall not be less than fifty rupees.

### **17D. Offences by companies.**

(1)Where an offence under this Act is 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 as well as 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, 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 an 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 neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.Explanation. - For the purpose of this Section-(a)"Company" means any body corporate and includes a firm or other association of individuals and(b)"director" in relation to a firm, means a partner in the firm.

### **17E. Provisions relating to jurisdiction.**

(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-(a)no court inferior to that of a Metropolitan Magistrate or a judicial Magistrate of the first class shall try any offence punishable under this Act; and(b)no Court shall take cognizance of any offence punishable under this Act, unless a complaint thereof is made within six months of the date on which the offence is alleged to have been committed.(2)No prosecution for any offence under this Act shall be instituted, by any person except an Inspector and no prosecution shall be instituted by the Inspector except with the previous sanction of the Welfare Commissioner.]

## 18. Supervision of the Board.

(1) If the State Government is satisfied that the Board has made default in performing any duties imposed on it by or under this Act or has abused its power, the State Government may by notification in the Official Gazette shall supersede and reconstitute the Board [in the manner specified in sub section (1) of Section 4 for constitution of the Board.] [These words were substituted for the words, 'in the prescribed manner' by Gujarat 29 of 1973, Section 6.] Provided that before issuing the notification under this sub-section, the State Government will give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanation objections, if any, of the Board. (2) After the suppression of the Board and until it is reconstituted the powers, duties and functions of the Board under this Act shall be exercised or performed by the Board or by such officer or officers, as the State Government may appoint for this purpose.

## 19. Rules.

(1) The State Government may by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may be made for all or any of the following matters, namely:-(a) the agency for and the manner of collection of sum specified in [sub-section (3) of Section 3; and the period within which the same shall be paid to the credit of the Fund; (b) the manner in which the accounts of the Fund shall be maintained and audited under sub-section (3) of Section 3; (bb) [the manner in which the Welfare Commissioner shall collect under sub-section (3) of Section 6C the amount of interest payable under sub-section (2) of that section to the Board, and the conditions subject to which the Welfare Commissioner may remit the whole or any part of the amount of interest under the proviso to sub-section (3) of that Section;"] [Clause (bb) was inserted by Gujarat 36 of 1980, Section 6 (1).] (c) the procedure for making grants from the Fund under Section 7; (d) the procedure for defraying the expenditure incurred in administering the Fund; (e) the number of representatives of employers and employees, independent members and representatives of women on the Board, and the allowance, if any, payable to them, under Section 4; (f) the manner in which the Board shall conduct their business; (g) the duties and powers of the Inspectors and the conditions of service of the Welfare Commissioner and Inspectors and other staff appointed under this Act; (ga) [the delegation of the powers, and functions of the Board to the Welfare Commissioner and the conditions and limitations subject to which the powers may be exercised or functions discharged :] [This clause was inserted by Bombay 16 of 1956, Section 2.] (h) the percentage of the annual income of the Fund beyond which the Board may not spend on the staff and on other administrative measures; (i) the registers and records to be maintained under the Act; (j) the publication of the report of the activities financed from the Fund together with a statement of receipts and expenditures of the Fund and statement of accounts; (k) any other matter which under this Act is or may be prescribed.]" (2A) In making any rules under this Section, the State Government may direct that a breach thereof shall be punishable with fine not exceeding two thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of the offence, ".] [Sub-section (2A) was inserted, by Bombay. 16 of 1956, section 6(2).] (3) [All rules made under this section shall be laid for not less

than thirty days before the State Legislature as soon as may be after they are made, and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.] [Sub-sections (3) and (4) were added by Gujarat 47 of 1961, Section 12.](4)Any modifications made by the State Legislature shall be notified in the Official Gazette and shall, thereupon take effect.]

## **20. Members of Board, Welfare Commissioners, Inspectors and all officers and servants of Board to be public servants.**

- The members of the Board, the Welfare Commissioner, Inspectors and all officers and servants of the Board shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (XIV of 1960).

## **21. Protection to persons acting in good faith.**

- No suit, prosecution or other legal proceedings shall be against any person for anything which is in good faith done or intended to be done under this Act.

## **22. Exemption.**

- The State Government may by notification in the Official Gazette exempt any class of establishment from all or any of the provisions of this Act subject to such conditions as may be specified in the notification.

## **23. Amendment of section 8 of Act IV of 1936.**

- In Section 8 of the Payment of Wages Act, 1936, (IV of 1936) to sub-section (8) the following shall be added, before the Explanation, namely:-"but in the case of any factory or establishment to which the Bombay Labour Welfare Fund Act, 1953 (Bombay XL of 1953), applies all such realisations shall be paid into the Fund constituted under the said Act."