

THE KERALA CASUAL, TEMPORARY AND BADLI WORKERS
(WAGES) ACT, 1989

(Act 1 of 1990)

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THE KERALA CASUAL, TEMPORARY AND BADLI WORKERS
(WAGES) ACT, 1989*

(Act 1 of 1990)

An Act to provide for the fixation of the wages payable to casual, temporary and badli workers in certain establishments and employments and for matters connected therewith.

Preamble.—WHEREAS it is expedient to provide for the fixation of the wages payable to casual, temporary and badli workers in certain establishments and employments and for matters connected therewith,

BE it enacted in the Fortieth Year of the Republic of India as follows:—

1. *Short title, extent, commencement and application.*—(1) This Act may be called the Kerala Casual, Temporary and Badli Workers (Wages) Act, 1989.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

(4) It shall apply to—

(a) every factory, plantation and motor transport undertaking;

(b) every establishment to which any of the provisions of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960), applies, which is specified by the Government by notification in the Gazette and which is situate in such area or areas as may be specified in the notification,

(c) such other establishment or undertaking as the Government may, by notification in the Gazette, specify in this behalf:

Provided that no notification under clause (b) or clause (c) shall be issued by the Government, unless not less than two months' notice of their intention so to do has been given and any objection or suggestion received in response to the notice has been considered by the Government

(5) It shall not apply to any establishment, factory, plantation, motor transport undertaking or other undertakings belonging to or under the control of the Central Government

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

(a) “badli worker” means a worker who is appointed in the place of a permanent worker who is temporarily absent;

*Received the assent of the President on the 14th day of January, 1990 and published in the Kerala Gazette Extraordinary No. 57 dated the 22nd January, 1990.

(b) "casual worker" means a worker whose employment is of a casual nature;

(c) "employer" means, in relation to any establishment, factory, plantation, motor transport undertaking or other undertaking,—

(i) belonging to, or under the control of any State Government, a person or authority appointed by that Government for the supervision and control of workers, or, where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of workers, or, where no person has been so appointed, the chief executive officer of the local authority;

(iii) in any other case, the person who or the authority which has the ultimate control over the affairs of the establishment, factory, plantation or undertaking, and where the said affairs are entrusted to any other person, whether called manager, managing director or by any other name, such person,

(d) "factory" has the meaning assigned to it in clause (m) of section 2 of the Factories Act, 1948 (Central Act 63 of 1948);

(e) "Inspector" means an inspector appointed under section 6;

(f) "motor transport undertaking" has the meaning assigned to that expression in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961);

(g) "permanent worker" means a worker who is employed on a permanent basis;

(h) "plantation" has the meaning assigned to it in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act 69 of 1951);

(i) "State" means the State of Kerala;

(j) "temporary worker" means a worker who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period;

(k) "wages" has the meaning assigned to that term in clause (vi) of section 2 of the Payment of Wages Act, 1936 (Central Act 4 of 1936);

(l) "worker" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in any establishment or employment to which this Act applies and includes an out worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, furnished, prepared, adopted or otherwise processed.

3 *Wages payable to casual, temporary or badli workers*—Notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any court or other authority, or in any contract or other agreement, no employer shall pay to any casual, temporary or badli worker employed by him in an establishment, factory, plantation, motor transport undertaking or other undertaking, wages, whether payable in cash or in kind, at rates less than the minimum of the wages payable by him to a permanent worker for performing the same work or work of a similar nature

4 *Power of Government to appoint authorities for hearing and deciding claims and complaints.*—(1) The Government may, by notification in the Gazette, appoint such officers not below the rank of a District Labour Officer, as they think fit, to be the authorities for the purpose of hearing and deciding—

- (a) complaints with regard to the contravention of section 3,
- (b) claims arising out of non-payment of wages at the rates referred to in the said section;

and may by the same or a subsequent notification define the local limits within which each such authority shall exercise its jurisdiction

(2) Every complaint or claim referred to in sub-section (1) shall be made in such manner as may be prescribed

(3) If any question arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under sub-section (1).

(4) Where a complaint or claim is made to the authority appointed under sub-section (1), it may, after giving the applicant and the employer, an opportunity of being heard, and after such inquiry as it may consider necessary, direct,—

- (i) in the case of a claim arising out of non-payment of wages at the rates referred to in section 3, that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid,
- (ii) in the case of a complaint, that adequate steps be taken by the employer so as to ensure that there is no contravention of section 3.

(5) Every authority appointed under sub-section (1) shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(6) Any employer or worker aggrieved by any order made by an authority appointed under sub-section (1) on a complaint or claim may, within thirty days from the date of the order, prefer an appeal to such authority as the Government may, by notification in the Gazette specify in this behalf, and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority.

(7) The authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in sub-section (6); allow the appeal to be preferred within a further period of thirty days but not thereafter

(8) The provisions of sub-section (1) of section 33C of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), shall apply for the recovery of monies due from an employer arising out of the decision of an authority appointed under this section

5 *Duty of employers to maintain registers.*—On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the casual, temporary and badli workers employed by him, as may be prescribed.

6 *Inspectors* —(1) The Government may, by notification in the Gazette, appoint such persons as they may think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act or the rules made thereunder are being complied with by employers, and may define the local limits within which each Inspector may make such investigation

(2) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860)

(3) An Inspector may, at any place within the local limits of his jurisdiction,—

(a) enter, at any reasonable time, with such assistance as he thinks fit, any building, premises, vehicle or vessel;

(b) require any employer to produce any register, muster-roll or other documents relating to the employment of workers, and examine such documents,

(c) take, on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act or the rules made thereunder are being or have been complied with,

(d) examine the employer, his agent or servant or any other person found in charge of the establishment, factory, plantation, motor transport undertaking or other undertaking or any premises connected therewith or any person whom the Inspector has reasonable cause to believe to be, or to have been, a worker in the establishment, factory, plantation or undertaking;

(c) make copies of, or take extracts from, any register or other document maintained under this Act in relation to the establishment, factory, plantation, motor transport undertaking or other undertaking.

(4) Any person required by an Inspector to produce any register or other document or to give any information shall comply with such requisition.

(5) Every employer shall afford the Inspector all facilities for making any entry, inspection, examination or investigation under this Act.

7. *Penalties.*—(1) If any employer contravenes the provisions of section 3, he shall be punishable with fine which may extend to five thousand rupees.

(2) If any person being required so to do, omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine which may extend to one thousand rupees.

(3) If any employer or other person obstructs any Inspector in the discharge of his duties under this Act, he shall be punishable with fine which may extend to two thousand rupees.

(4) If any employer refuses or wilfully neglects to afford an Inspector reasonable facilities for making an entry, inspection, examination or investigation under this Act, he shall be punishable with fine which may extend to two thousand rupees.

(5) If any employer, being required by or under this Act so to do, refuses to give any evidence or prevents his agent, servant or any other person in charge of the establishment, factory, plantation, motor transport undertaking, or other undertaking, as the case may be, or any worker, from giving evidence, he shall be punishable with fine which may extend to one thousand rupees.

(6) If any person makes default in complying with the provisions of any rule or order made under this Act, he shall if no other penalty is provided for such contravention by this Act, be punishable with fine which may extend to five hundred rupees.

8. *Offences by Companies.*—(1) Where an offence under this Act has been committed by a company every person who, at the time 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 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 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 purposes 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

9. *Cognizance and trial of offences* —(1) No court inferior to that of a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) No court shall take cognizance of an offence punishable under this Act except upon a complaint made with the sanction of the Government or an officer authorised by them in this behalf

(3) No court shall take cognizance of an offence punishable under this Act unless complaint thereof is made within three months from the date on which sanction is granted under this section

10 *Burden of proof*—Notwithstanding anything contained in any law for the time being in force, in any proceeding under this Act, the burden of proving that a work performed by a casual, temporary or badli worker is not the same work or work of a similar nature as that performed by a permanent worker shall be on the employer.

11. *Power to make rules* —(1) The Government may, by notification in the Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which complaint or claim referred to in sub-section (1) of section 4 shall be made

(b) registers and other documents which an employer is required under section 5 to maintain in relation to the casual, temporary and badli workers employed by him,

(c) any other matter which is required to be, or may, prescribed

(3) 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 modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.