

THE KERALA PAYMENT OF SUBSISTENCE ALLOWANCE ACT, 1972

(Act 27 of 1973)

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ACT 27 OF 1973**THE KERALA PAYMENT OF SUBSISTENCE ALLOWANCE ACT, 1972***

An Act to provide for the payment of subsistence allowance to the employees in certain establishments during the period of suspension.

Preamble.—WHEREAS it is expedient to provide for the payment of subsistence allowance to the employees in certain establishments during the period of suspension;

BE it enacted in the Twenty-third Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Payment of Subsistence Allowance Act, 1972.

(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.

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

(a) “employee” means any person employed in or in connection with the work of any establishment to do skilled, semi-skilled or unskilled manual, supervisory, technical, clerical or any other kind of work for hire or reward, whether the terms of employment be express or implied, but does not include any such person who is employed mainly in a managerial or an administrative capacity or as an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the employer to be cleaned, washed, altered, ornamented or repaired by such out-worker in any place not under the control and management of the employer;

(b) “employer” means the owner of an establishment and includes any person responsible to the owner for supervision and control of the establishment;

(c) “establishment” means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, but does not include any office or department of any Government or any establishment of any railway, major port, mine or oilfield;

(d) “period of suspension” in a case where express permission of the authority under sub-section (1) of section 33 of the Industrial Disputes Act, 1947, is necessary before the employment of an employee can be validly terminated includes the period until such permission is obtained and termination of service is effected;

(e) “prescribed” means prescribed by rules made under this Act;

(f) “suspension” means an interim decision of an employer as a result of which an employee is debarred temporarily from attending his office and performing his functions in

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the establishment where he is employed, such restriction being imposed on the employee on the ground either that a disciplinary proceeding has already been, or is shortly to be, instituted against him or that a criminal proceeding in respect of an offence alleged to have been committed by him is under investigation or trial;

(g) “wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;

(iii) any travelling concession;

but does not include—

(i) any bonus;

(ii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(iii) any gratuity payable on the termination of his service.

3. *Payment of subsistence allowance.*—(1) Whenever an employee is placed under suspension, he shall be paid by the employer for the period during which he is under suspension subsistence allowance of an amount equal to fifty per centum of the wages which the employee was drawing immediately before such suspension:

¹[Provided that, —

(a) where the period of suspension exceeds ninety days, the amount of subsistence allowance shall, for the period exceeding one hundred and eighty days, wages; and

(b) where the period of suspension exceeds one hundred and eight days, the amount of subsistence allowance shall, for the period exceeding one hundred and eighty days, be equal to the wages,

which the employee was drawing immediately before such suspension:]

Provided further that an employee shall not be entitled to any subsistence allowance if he accepts employment during the period of suspension in any establishment other than the establishment where he had been working immediately before his suspension.

1 Substituted by Act 1 of 1979 (w.e.f. 28.02.1979).

(2) An employee shall not in any event be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1), but when an employee is exonerated of the charge which caused his suspension, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the same period.

(3) Where any employee has been placed under suspension before the commencement of this Act and such suspension is in force at such commencement, he shall be deemed to have been placed under suspension on the date of such commencement.

4. *Recovery of money due from an employer.*—Where any money is due to an employee from an employer under this Act, the employee himself or any other person authorised by him in this behalf, or, in the case of the death of the employee, his legal representative may, without prejudice to any other mode of recovery, make an application to the Government in such manner as may be prescribed for the recovery of money due to him, and if the Government, after giving the employer an opportunity of being heard, in such manner as may be prescribed, is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

5. *Saving of certain rights and privileges.*—Nothing in this Act shall affect any right or privilege to which any employee is entitled on the date of commencement of this Act under any law for the time being in force or under any contract, custom or usage, which is more favourable to him than any right or privilege conferred upon him by this Act.

²[5A. *Act not to apply to certain establishments.* — Nothing contained in this Act shall apply to any public sector undertaking of the Central Government.]

6. *Delegation of powers.*—The Government may, by notification in the Gazette, direct that any power exercisable by it under this Act or the rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in such notification, be exercisable also by such officer or authority subordinate to the Government as may be specified in the said notification.

7. *Protection of action taken under the Act.*—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

8. *Penalties.*—Whoever contravenes any provision of this Act or any rule made thereunder shall be punishable with imprisonment for a term which may extend to three months or with fine which shall be not less than one thousand rupees, or with both.

² Inserted by Act 1 of 1979 (w.e.f. 28.02.1979).

9. *Offence by companies, etc.*—Where a person committing an offence under this Act is a company or other body corporate or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

10. *Presumption to be made in certain cases.*—In any proceedings under section 4 or in any prosecution under section 8, it shall be presumed, until the contrary is proved, the burden of proving which shall lie on the employer, that there has been an interim decision of the employer as a result of which the employee has been debarred temporarily from attending his office and performing his functions in the establishment where he is employed.

11. *Cognizance of offences.*—(1) No court shall take cognizance of any offence punishable under this Act, save on complaint made by, or under the authority of, the Government.

(2) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act.

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

(2) Without prejudice to the generality of the foregoing power, such rules may provide for any matter which may be, or is required to be, 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 shall 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.
