

The West Bengal Labour Welfare Fund Act, 1974

[West Bengal Act No. XXXVIII of 1974]

[*Passed by the West Bengal Legislature*]

[Assent of the President was first published in the Calcutta Gazette, Extraordinary of the 30th August, 1974]

[30th August, 1974]

An Act to provide for the constitution of a fund for promoting activities connected with the welfare of labour in West Bengal and for matters connected therewith.

Whereas it is expedient to constitute a fund for promoting activities connected with the welfare of labour in West Bengal and for matters connected therewith ;

It is hereby enacted in the Twenty-fifth Year of the Republic of India by the Legislature of West Bengal, as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the West Bengal Labour Welfare Fund Act, 1974.

(2) It extends to the whole of West Bengal.

(3) This section shall come into force at once and the remaining sections shall come into force on such date or dates and in such area or areas as the State Government may, by notification in the *Official Gazette*, appoint and different dates may be appointed for different sections or for different areas.

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

(1) “Board” means the West Bengal Labour Welfare Board constituted under section 4 ;

(2) “contribution” means the sum of money payable to the Board in accordance with the provisions of section 9 ;

(3) “employee” means any person who is employed for hire or reward to do any work, skilled or unskilled, manual, clerical,

supervisory or technical, in an establishment and includes a sales promotion employee but does not include any person—

- (a) who is employed mainly in a managerial capacity, or
- (b) who, being employed in supervisory capacity, draws wages exceeding sixteen hundred rupees *per mensem* or exercise, either by the nature of duties attached to the office, or by reason of the powers vested in him, functions mainly of a managerial nature.

Explanation.—“Sales promotion employee” shall have the same meaning as in the Sales Promotion Employees (Conditions of Service) Act, 1976 (11 of 1976) ;

- (4) “employer” means any person who employees 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 clause (f) of subsection (1) of section 7 of the Factories Act, 1948 (63 of 1948), 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 ;
- (5) “establishment” includes—
 - (i) a factory,
 - (ii) a tramway or motor transport undertaking, and
 - (iii) any commercial establishment within the meaning of clause (2) of section 2 of the West Bengal Shops and Establishments Act, 1963 (West Ben. Act XIII of 1963), which employs, or on any working day during the preceding twelve months, employed ten or more persons :

Provided that any such commercial establishment shall continue to be an establishment for the purposes of this Act notwithstanding that there was a reduction in the number of persons to less than ten at any subsequent time :

Provided further that where for a continuous period of not less than three months the number of persons employed

therein has been less than ten, such commercial establishment shall cease to be an establishment for the purposes of this Act with effect from the beginning of the month following the expiry of the said period of three months, but 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,

- (iv) any other class of establishments which the State Government may, after giving three months' notice of its intention of so doing, specify by notification in the *Official Gazette* ;
- (6) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948) ;
- (7) "fund" means the Labour Welfare Fund constituted under section 3 ;
- (8) "independent person" means a person who is not connected with the management of any establishment or who is not an employee, and includes the Welfare Commissioner or any officer of the State Government ;
- (9) "Inspector" means an Inspector appointed under section 16 ;
- (10) "motor transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier ;
- (11) "prescribed" means prescribed by rules made under this Act ;
- (11a) "regulations" means regulations made by the Board under this Act ;
- (12) "unpaid accumulation" means all sums due to the employees but not actually paid to them within a period of three years from the date on which they became due whether before or after the commencement of this Act including the wages, bonus and gratuity 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 (19 of 1952) ;
- (13) "wages" means wages as defined in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936), and includes bonus payable under the Payment of Bonus Act, 1965 (21 of 1965) ;

- (14) "Welfare Commissioner" means the Welfare Commissioner appointed under section 15 ;
- (15) "welfare of labour" includes activities mentioned in sub-section (2) of section 11.

3. Labour Welfare Fund.—(1) The State Government shall constitute a fund to be called the Labour Welfare Fund.

(2) The fund shall consist of—

- (a) all unpaid accumulations paid to the Board at such intervals and in such manner as may be prescribed ;
- (b) all fines realised from the employees ;
- (c) all fines imposed on employers by courts for contravention of the provisions of—
 - (i) the Industrial Disputes Act, 1947 (14 of 1947),
 - (ii) the Factories Act, 1948 (63 of 1948),
 - (iii) the Minimum Wages Act, 1948 (11 of 1948),
 - (iv) the Payment of Wages Act, 1936 (4 of 1936),
 - (v) the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946),
 - (vi) the West Bengal Shops and Establishment Act, 1963 (West Ben. Act XIII of 1963) ;
- (d) any contribution paid under section 9 ;
- (e) any penal interest paid under section 10 ;
- (f) any voluntary donations ;
- (g) any fund transferred under sub-section (5) of section 11 ;
- (h) any loan, grant-in-aid or subsidy paid by the Central or State Government or any local authority ;
- (hh) any sum paid by the Central Government or the State Government or any local authority for implementation of any scheme for the welfare of labour not employed in any establishment ;
- (i) any sum borrowed under section 12.

(3) The sums specified in sub-section (2) shall be paid or collected by such agencies, at such intervals and in such manner as may be prescribed.

(4) The accounts of the fund shall be maintained and audited in such manner as may be prescribed.

4. Board.—(1) The State Government shall, by notification in the *Official Gazette*, constitute for the State of West Bengal a Board to be called the West Bengal Labour Welfare Board. The Board shall consist of—

- ¹[(a) the Minister-in-charge of the Labour Department, Government of West Bengal or the Minister of State of the Labour Department, Government of West Bengal, in charge of Employment Exchanges and Employees' State Insurance, who may be nominated by the Minister-in-charge of the Labour Department, Government of West Bengal, shall be the *ex-officio* Chairman of the Board.]
- (b) a Vice-Chairman to be nominated by the State Government,
- (c) the Secretary, Labour Department, Government of West Bengal, who shall be an *ex officio* member of the Board,
- (d) the Welfare Commissioner, who shall be an *ex officio* member of the Board,
- (e) six persons representing employers to be nominated by the State Government in consultation with the employers' associations,
- (f) six persons representing employees to be nominated by the State Government in consultation with the employees' associations, and
- (g) six independent persons, other than the persons referred to in clauses (c) and (d), of whom at least one shall be a woman, to be nominated by the State Government.

(2) Save as otherwise expressly provided in this Act, the members of the Board referred to in clauses (e) and (f) of sub-section (1) shall hold office for a term of three years commencing on the date on which their names are notified in the *Official Gazette* :

Provided that notwithstanding the expiry of the term of office of any such member, he shall continue to hold office until the nomination of his successor is notified in the *Official Gazette*.

(3) The members of the Board referred to in clauses (b) and (g) of sub-section (1) shall hold office during the pleasure of the State Government.

(4) The allowances, if any, payable to the members of the Board shall be such as may be prescribed.

1. Subs. by Act XII of 2002.

(5) The Board shall be a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and shall by the said name sue and be sued.

(6) The Board shall conduct its business in such manner as may be prescribed.

5. Disqualifications and removal.—(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 other than the Welfare Commissioner ; or
- (b) is or at any time has been adjudged insolvent ; 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 ; or
- (e) is an employer or the representative of an employer, if the employer is a defaulter in paying contribution under the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), or under the Employees' State Insurance Act, 1948 (38 of 1948).

(2) The State Government may remove from office any member who—

- (a) is or has become subject to any of the disqualifications mentioned in sub-section (1) ; or
- (b) is absent without leave of the Board from three consecutive meetings of the Board.

6. Resignation of office by members and filling up casual vacancies.—(1) A member may resign his office by giving notice, in writing, to the State Government, and on such resignation being accepted he 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 possible, by the State Government and a member so appointed shall hold office for the unexpired portion of the term of office of the member whose place he fills.

(3) No Act or proceeding of the Board shall be invalid on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

7. Power to appoint Committees.—For the purpose of advising the Board in the discharge of its functions and also for carrying into effect any of the matters specified in sub-section (2) of section 11, the Board may constitute one or more Committees, of which at least one member shall be a member of the Board.

8. Unpaid accumulations and claims thereto.—(1) Any unpaid accumulation paid to the Board shall, on such payment, discharge an employer of his liability to make payment to an employee in respect thereof 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.

(2) As soon as possible after the payment of any unpaid accumulation is made to the Board, the Board shall by notice (containing such particulars as may be prescribed) exhibited on the notice-board of the factory or establishment in which the unpaid accumulation was earned and also published in any two newspapers circulating, and in the language commonly understood, in the area in which the factory or establishment in which the unpaid accumulation was earned is situated, or in such other manner as may be prescribed, regard being had to the amount of the claim, invite claims by employees for any payment due to them. The notice shall be inserted in the manner aforesaid in June and December of every year, for a period of three years from the date of the payment of the unpaid accumulation to the Board.

(3) If any question arises whether the notice referred to in sub-section (2) was given, as required by the sub-section, a certificate of the Board that it was so given shall be conclusive.

(4) If a claim is received whether in answer to the notice or otherwise, within a period of four years from the date of first publication of the notice in respect of such claim, the Board shall transfer such claim to the authority appointed under section 15 of the Payment of Wages Act, 1936 (4 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 same powers and shall follow the same procedure as far as they are applicable, as are conferred by and laid down in the Payment of Wages Act, 1936.

(5) If the authority aforesaid is satisfied that any such claim or a portion of it is valid so that the right to receive payment is established, it shall order the Board to pay the amount found due 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 clause (a) of sub-section (2) of section 3 to the Board as unpaid accumulations.

(6) If a claim for payment is refused, the employee shall have a right of appeal in Calcutta to the City Civil Court and elsewhere to the District Judge and the Board shall comply with any order made in appeal. An appeal shall lie within sixty days of the decision of the authority.

(7) The decision of the authority subject to the appeal aforesaid and the decision in appeal of the City Civil Court, or, as the case may be, of the District Judge 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.

(8) If no claim is made within the time specified in sub-section (4), or a claim has been refused as aforesaid by the authority or in appeal by the City Civil Court or the District Judge, as the case may be, then the unpaid accumulation in respect of such claim shall vest in the State and shall stand transferred to and from part of the fund.

9. Contributions.—(1) The contribution payable under this Act shall comprise contribution payable by an employer (hereinafter referred to as “the employer’s contribution”), contribution payable by an employee (hereinafter referred to as “the employee’s contribution”) and the contribution payable by the State Government, and shall be paid to the Board and form part of the fund.

¹[(2) For each employee whose name stands on the register of an establishment,—

(a) the employers’ contribution shall be six rupees, and

(b) the employee’s contribution shall be three rupees,

both payable every six months ending on the thirtieth day of June, and the thirty-first day of December, each year.]

(3) Every employer shall pay to the Board both the employer’s contribution and the employee’s contribution before the 15th day of July and the 15th day of January of every year.

1. Subs. by Act XII of 2002.

(4) Notwithstanding anything contained in any other law but subject to the provisions of this Act and the rules made thereunder, the employer shall be entitled to recover from each employee the employee's contribution by deduction from his wages and such deduction shall be deemed to be a deduction authorised by or under the Payment of Wages Act, 1936 (4 of 1936) :

Provided that no such deduction shall be made from the wages of an employee other than the wages for the months of June and December of every year :

Provided further that if through inadvertence or otherwise no deduction is made from the wages of an employee for the months aforesaid, such deduction may be made for any subsequent month or months with the permission in writing of the Inspector.

(5) Notwithstanding any contract to the contrary no employer shall deduct the employer's contribution from the wages payable to an employee or otherwise recover it from such employee.

(6) An employer shall pay the employer's and employee's contribution to the Board by cheque or money order or in cash and shall bear the expenses of remitting to the board such contributions.

(7) The Welfare Commissioner shall submit to the State Government as soon as possible after the end of July and January every year a statement of the total receipts along with such other information as may be prescribed. On receipt of such statement, the State Government shall pay to the Board a contribution of an amount equal to the employers' contribution for every six months ending on the thirtieth June and the thirty-first December.

10. Interest on unpaid accumulations or fines or contributions after notice of demand.—(1) If an employer does not pay to the Board any amount of unpaid accumulation or fine realised from an employee or the amount of employer's or employee's contributions under section 9, within the due time the Welfare Commissioner may cause to be served a notice on such employer to pay the amount within such time as may be mentioned in the notice.

(2) If the employer fails without sufficient cause to pay such amount within the period specified in the notice, he shall, in addition to that amount, pay to the Board simple interest—

- (a) for the first three months at one *per cent.* of the said amount for each complete month after the last date by which he should have paid it according to the notice, and
- (b) at one and half *per cent.* of that amount for each complete month thereafter :

Provided that the Welfare Commissioner may, subject to such conditions as may be prescribed, remit the whole or any part of penalty in respect of any period.

11. Vesting and application of fund.—(1) The fund shall vest in the Board as Trustees and shall be applied for promoting any of the activities connected with the Welfare of Labour referred to in sub-section (2).

(2) Without prejudice to the generality of powers in this behalf the fund may be applied by the Board in connection with the following activities, namely :—

- (a) community and social education centres including reading rooms and libraries,
- (b) games and sports,
- (c) excursions, tours and holiday homes,
- (d) entertainment and other forms of recreations,
- (e) home industries and subsidiary occupations for women and unemployed persons,
- (f) corporate activities of social nature,
- (ff) implementation of any scheme for the welfare of labour not employed in any establishment out of the sum referred to in clause (hh) of sub-section (2) of section 3 ;
- (g) cost of administering the Act including the salaries and allowances of the staff appointed for the purposes of this Act, and
- (h) such other objects as would in the opinion of the State Government improve the standard of living ameliorate the social conditions of labour :

Provided that the fund shall not be applied in financing any activity which the employer is required under any law for the time being in force to carry out.

(3) The Board may, with the approval of the State Government, make a grant out of the fund to any employer, any local authority or any other body in aid of any activity for welfare of labour.

(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 of the State Government thereon 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.

12. Power of Board to borrow.—The Board may from time to time with the previous sanction of the State Government and subject to such conditions as may be specified in this behalf borrow any sum required for the purposes of this Act.

13. Investment of fund.—If the fund or any portion thereof cannot be applied at an early date for carrying out any of the activities referred to in this 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 (2 of 1882).

14. Directions by the State Government to the 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 of any the purposes of this Act. It shall be the duty of the Board to comply with such directions.

15. Appointment and powers of Welfare Commissioner.—(1) There shall be a Welfare Commissioner to be appointed by the State Government subject to such terms and conditions of his service as may be prescribed.

(2) The Welfare Commissioner shall be the principal executive officer of the Board.

(3) It shall be the duty of the Welfare Commissioner to ensure that the provisions of this Act and the rules made thereunder are duly carried out and for this purpose he shall have the power to issue such orders not inconsistent with the provisions of this Act and the rules made thereunder as he deems fit including any order implementing the decisions taken by the Board under this Act or the rules made thereunder.

16. Appointment of Inspectors and their powers.—(1) The State Government may appoint Inspectors for carrying out the purposes of this Act.

(2) The terms and conditions of service of such Inspectors shall be such as may be prescribed.

(3) Any Inspector may—

- (a) with such assistants, if any, as he considers necessary being persons in the service of the Government, enter at all reasonable hours any premises or place for inspecting any records, registers, documents and notices required to be maintained and kept under this Act or the rules made thereunder and require the production thereof for inspection and for taking copies, if necessary, and
- (b) exercise such other powers as may be prescribed.

17. Absorption of the existing staff of Labour Commissioner.—The Board shall take over and employ such of the existing staff under the control of the Labour Commissioner, West Bengal, as the State Government may direct and every person so taken over and employed shall be subject to the provisions of this Act and the rules made thereunder :

Provided that—

- (a) during the period of such employment all matters relating to pay, leave, allowances, pensions, provident fund and all other conditions of service of the said staff shall be regulated by the rules of the State Government for the time being in force or such other rules as may from time to time be made by the State Government ;
- (b) every person so taken over shall have a right of appeal to the State Government against any order of reduction, dismissal or removal from service of fine or any other penalty imposed by the Board :

Provided further that any person so taken over may elect within the prescribed period that he desires to be governed by the regulations made under this Act in respect of the 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.

18. Appointment of staff by Board.—(1) The Board shall appoint such number of officers and other employees as may be necessary for carrying out its functions under this Act.

(2) The Board shall, with the approval of the State Government, make regulations regarding the method of recruitment, pay and allowances, and all other conditions of service of the members of its staff appointed under this section :

Provided that until regulations are so made the conditions or service of such staff shall be governed by the rules made by the State Government in this behalf.

19. Power of State Government or authorised officer to call for records, etc.—The State Government or any officer authorised by the State Government in this behalf may call for the records of the Board, inspect the same and supervise the working of the Board.

20. Mode of recovery of sums payable to the Board, etc.—Any sum payable to the Board or into the fund under this Act shall, without prejudice to any other mode of recovery, be recoverable as an arrear of land revenue.

21. Penalties.—(1) 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 registers, records or other documents maintained in pursuance of the provisions of this Act or the rules made thereunder or to supply to him on demand true copies of any such documents, shall, on conviction, be punished—

- (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 any case where the offender is sentenced to fine only, the amount of fine shall not be less than fifty rupees.

(2) If any employer—

- (a) fails to pay any contribution which under this Act, he is liable to pay, or

(b) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules made thereunder, in respect of which no penalty is provided, he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

22. Provisions relating to jurisdiction.—(1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under section 21.

(2) No prosecution for such offence shall be instituted except by an Inspector with the previous sanction of the Welfare Commissioner.

(3) No Court shall take cognizance of such offence, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

23. Supersession of Board.—(1) If the State Government is satisfied that the Board has made default in performing any of the duties imposed on it by or under this Act or has abused its power, the State Government may, by notification in the *Official Gazette*, supersede the Board :

Provided that before issuing the notification under this sub-section, the State Government shall give a reasonable opportunity to the Board to show cause why it shall not be superseded and shall consider the explanation, if any, of the Board.

(2) After the supersession 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 such officer or officers, as the State Government may appoint for this purpose.

24. Rules.—(1) The State Government may, by notification in the *Official Gazette* and subject to the condition of previous publication, make rules for carrying 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 intervals at which or the period within which any of the sums referred to in section 3 shall be paid to the fund, the manner .

of making such payment and the agency for paying or collecting any such sum ;

- (b) the manner in which the accounts of the fund shall be maintained and audited under sub-section (4) of section 3 ;
- (c) the procedure for defraying expenditure out of the fund ;
- (d) the allowances, payable to the members of the Board under sub-section (4) of section 4 ;
- (e) the manner referred to in sub-section (6) of section 4 in which the Board shall conduct its business ;
- (f) the particulars to be contained in the notice and the other manner in which such notice is to be displayed under sub-section (2) of section 8 ;
- (g) the form for submission of statement under sub-section (7) of section 9 ;
- (h) the condition subject to which penalty may be remitted under the proviso to sub-section (2) of section 10 ;
- (i) the terms and conditions of service of the Welfare Commissioner referred to in sub-section (1) of section 15 ;
- (j) the terms and conditions of service of the Inspectors and their powers referred to in section 16 ;
- (k) delegation of powers and functions of the Board to the Welfare Commissioner and the conditions and limitations subject to which such powers may be exercised or functions discharged ;
- (l) the registers and records to be maintained and returns to be sent to the State Government by the Board under this Act ;
- (m) the publication of the report of the activities financed from the fund together with a statement of receipts and expenditure of the fund and a statement of accounts ;
- (n) any other matter which under this Act is required to be or may be prescribed.

24A. Power to make regulations.—The Board may, with the previous approval of the State Government, by notification in the *Official*

Gazette, make regulations, not inconsistent with the provisions of this Act or the rules made thereunder, for discharging its functions under this Act.

25. Members of Board, Welfare Commissioner, Inspectors and all officers and employees of Board to be public servants.—The members of the Board, the Welfare Commissioner, the Inspectors and all other officers and other employees of the Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Act 45 of 1860).

26. Protection to persons acting in good faith.—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 under this Act.

27. Exemptions.—The State Government may, by notification in the *Official Gazette*, exempt any class of establishments from all or any of the provisions of this Act subject to such conditions as may be specified in the notification.

28. Amendment of section 8 of Act 4 of 1936.—In section 8 of the Payment of Wages Act, 1936, in its application to West Bengal, to subsection (8), the following proviso shall be added before the *Explanation*, namely :—

“Provided that in the case of any establishment to which the West Bengal Labour Welfare Fund act, 1974, applies, all such realisations shall be paid into the fund constituted under the said Act.”.
