

Himachal Pradesh Climbing/Trekking Porters (Regulation Of Employment) Act, 1977

4 OF 1978

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Himachal Pradesh Climbing/Trekking Porters (Regulation Of Employment) Act, 1977

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An Act to regulate the supply of porters to the climbing/trekking parties visiting Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-eighth Year of the Republic of India as follows:-

1 For Statement of Objects and Reasons, see R.H.P. Extra, dated 31-12-1977, p. 1193 and for its authoritative Hindi text see R.H.P. Extra, dated 24-11-1993, P. 2177.

1. Short title, extent and commencement :-

(1) This Act may be called the Himachal Pradesh Climbing/Trekking Porters (Regulation of Employment) Act, 1977.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall come into force with effect from such date as the State Government may, by notification¹ in the Official Gazette, appoint in this behalf and different dates may be appointed for different provisions of the Act and different areas of the State.

1 Provisions of the Act comes into force w. e. f. 15-10-1987 in whole of Himachal Pradesh vide Not. No.YSS-G-7-3/86, dated 13-10-87 published in R.H.P. Extra, dated 14-10-87. p. 2012.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "competent authority" means the Director, Mountaineering Institute Manali and includes any other officer who may be appointed by the State Government to function as the competent authority under this Act, by notification published in the Official Gazette;

(b) "employer" when used in relation to mountaineering expedition, means the person who has ultimate control over the affairs of the expedition, and when the affairs of any expedition are entrusted to any person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be employer in relation to that expedition;

(c) "Institute" means the Mountaineering Institute Manali, Kullu district, Himachal Pradesh;

(d) "porter" means a person employed to assist the climbing/trekking parties visiting Himachal Pradesh in the operations connected with climbing the peaks, for hire or reward, whether directly or through any agency, to do any work skilled/unskilled or manual, but does not include a person employed for assisting climbing operations primarily in managerial or clerical capacity or as medical attendant for the members of the mountaineering expedition;

(e) "qualified medical practitioner" means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedule to the Indian Medical Council Act, 1956 (102 of 1956); and

(f) "State Government" means the Government of Himachal Pradesh.

3. Employment of porters for assisting climbing and

trekking parties :-

(1) No porter, who is not registered with the Institute and certified by the competent authority to be fit to be employed for assisting the climbing operation shall be employed or permitted to be employed as a porter to assist the climbing/trekking parties visiting Himachal Pradesh.

(2) Every climbing/trekking party visiting Himachal Pradesh shall inform the competent authority about its plan/programme for leading the mountaineering expedition alongwith its requirements of porters and the competent authority shall recommend the suitable porters from the register of porters maintained in his office for employment as porters.

4. Qualifications for registration of porters :-

No porter shall be eligible for registration under this Act,-

- (a) who has not completed his 18 years age;
- (b) who has not been granted a medical certificate certifying that he is fit for being engaged in climbing operation on high altitudes by a qualified medical practitioner to whom the porter is referred for medical examination by the competent authority; and
- (c) whose presence in the area of climbing operations is considered prejudicial to the public interest by the District Magistrate, within whose territorial jurisdiction such area of climbing operations lies.

5. Application for the registration of porters :-

(1) The person who desires to work as porter to assist the climbing/trekking parties visiting Himachal Pradesh, shall make an application to the competent authority, for the registration of his name in the "Register of Porters" to be maintained by such authority.

(2) Every application under sub-section (1) shall be made in the prescribed form and shall be accompanied by such fees as may be prescribed.

(3) On the receipt of the application under sub-section (1) the competent authority shall-

- (a) refer the applicant to a qualified medical practitioner to ensure that the applicant is fit to work as porter at high altitudes; and
- (b) get the antecedents of the applicant verified and ensure that the District Magistrate has no objection with regards to the presence of the applicant in the area of climbing operations.

(4) The competent authority if after holding such enquiry, as it thinks fit, is satisfied that the applicant is fit to work as porter, shall register his name as porter for a period of one year in the first instance and shall issue him the certificate of registration, subject to such conditions as it may deem fit:

Provided that no application for registration under this section shall be rejected by the competent authority, unless the applicant has been afforded a reasonable opportunity of being heard and the reasons for rejection have been recorded in the orders so passed by the competent authority.

(5) The registration certificate issued under sub-section (4) shall be valid for one year and thereafter it shall be renewed by the competent authority from time to time subject to such conditions as it may deem fit for a period not exceeding one year at a time on payment of prescribed renewal fee, and on the satisfaction of the competent authority that the applicant has not ceased to be qualified as porter under the provisions of this Act.

(6) The registration certificate if not renewed within a period of thirty days after the expiration of the period of certificate already issued, or renewed, shall be deemed to have lost its validity.

(7) Where a registration certificate, issued under this section is lost, destroyed or mutilated, a duplicate may be granted on payment of the prescribed fee.

6. Classes of porters :-

After considering the facts stated by the applicant in his application and the medical certificate issued by the qualified medical practitioner under sub-section (3) of section 5, the competent authority shall be competent to classify the applicant in any of following categories of porters and cause the name of the applicant registered in the relevant register to be maintained by him:-

- (a) class `A-to assist parties climbing/trekking any height;
- (b) class `B-to assist parties climbing/trekking heights not exceeding 19,000 feet;
- (c) class `C-to assist parties climbing/trekking heights not exceeding 13,500 feet.

7. Issue of identity cards to registered porters :-

(1) Every porter registered under this Act shall be issued, in the form, as may be prescribed, an identity card by the competent authority.

(2) The porter shall carry with him his identity card throughout the period of his employment and shall produce the same for inspection as and when he is required to do so by the competent authority.

8. Cancellation of registration :-

(1) A certificate of registration of a porter may be withdrawn or cancelled by the competent authority,-

(i) if the competent authority is satisfied that the certificate has been obtained by fraud or mistake; or

(ii) if after the registration of the porter, the certifying medical practitioner has revoked the certificate of fitness granted or renewed by him to the porter on the basis of which the registration has been affected; or

(iii) if, on a reference made by the competent authority under section 10 a qualified medical practitioner declares that the porter is not fit to work as porter on the high altitudes; or

(iv) if the presence of the porter is considered to be prejudicial to the public interest by the District Magistrate, within whose territorial jurisdiction the local limits or major part of the area covered by the registration certificate falls; or

(v) if, in the opinion of the competent authority, the porter is guilty of misconduct, or wilful default or negligence in discharge of his obligations under the terms of his employment and in the opinion of the competent authority, not fit to be engaged or permitted to be engaged for assisting the climbing/trekking parties; or

(vi) at the porters own request:

Provided that not less than 15 days previous notice specifying the ground on which it is proposed to withdraw or cancel the certificate of registration, shall be given by the competent authority to the porter, unless the withdrawal or cancellation of the registration is at the request of the porter himself.

(2) As and when the certificate of registration is withdrawn or cancelled by the competent authority under sub-section (1) the porter shall surrender his certificate of registration and the identity card, issued to him under this Act or the rules framed thereunder, within a period of 15 days after the date of such cancellation.

9. Certificate of fitness :-

(1) A certificate of fitness granted or renewed, for the purposes of clause (b) of section 4,-

(a) shall be valid only for a period of twelve months from the date

thereof, and

(b) shall be subject to specified conditions in regard to employment generally or the nature of work in which the porter may be employed or permitted to be employed.

(2) The certifying medical practitioner shall revoke a certificate granted or renewed by him, if in his opinion, the holder of it is no longer fit for work in the capacity stated therein.

(3) Where a certifying medical practitioner refuses to grant or renew a certificate or revokes a certificate, he shall, if so required by the porter concerned, state his reasons for so doing.

(4) Where a certificate under section 5, with reference to any porter, is granted or renewed subject to such conditions as are referred to in clause (b) of sub-section (1) of section 9, the porter shall not be required to attend or be allowed to attend his work as porter except in accordance with those conditions.

10. Power to require medical examination :-

(1) Where the competent authority is of the opinion that any person employed as porter to assist the climbing/trekking parties,-

(a) is suffering from an infectious or contagious disease; or

(b) is without a certificate of fitness; or

(c) is a person with a certificate of fitness, but is no longer fit to work in the capacity stated in the certificate;

it may serve on the manager of the climbing trekking party, a notice requiring that such person shall be examined by a qualified medical practitioner to whom the competent authority may refer for medical examination and such person shall not be employed or permitted to work as porter, until he has been examined and has been certified that he has been granted a fresh certificate of fitness.

(2) Every certificate which has been granted by a qualified medical practitioner on a reference under sub-section (1) shall for the purposes of this Act be conclusive evidence of the matters stated therein.

11. Power to return improperly recruited porters :-

Where it appears to the competent authority, after such enquiry as it thinks fit to make, that any porter employed for the assistance of the climbing/trekking parties, has been recruited otherwise than in accordance with the provisions of this Act, the competent authority may direct that such porter shall be discharged and returned to his

home by and at the cost of the employer.

12. Fixation or revision of rates of wages :-

(1) The State Government may, by notification in the Official Gazette,-

(a) fix rates of wages in respect of working porters and in respect of different localities and different conditions of work, different rate of wages may be fixed;

(b) revise from time to time, at such intervals as it may think fit, the rates or wages fixed under this section.

(2) The rates of wages may be fixed or revised by the State Government in respect of working porters for time work or piece work.

(3) The rates of wages so fixed shall be binding on all the employers and working porters and every porter shall be entitled to be paid wages at a rate which shall, in no case, be less than rate of wages fixed under sub-section (1).

(4) Nothing contained in this section shall be construed to preclude any employer from entering into an agreement with a porter for granting him right or privileges in respect of any matter which are more favourable to him than those to which he would be entitled to under this Act.

(5) All wages shall be paid in current coin or currency notes or in both.

13. Medical facilities :-

(1) There shall be provided and maintained by the employer, so as to be readily accessible such medical facilities for the porters at such operating centres and halting stations as may be prescribed by the competent authority.

(2) There shall be provided or maintained by the employer, so as to be readily accessible during all working hours, a first -aid box equipped with the prescribed contents with the climbing expedition.

14. No charge for facilities and conveniences :-

No fee or charge shall be realised from any porter in respect of any arrangements or facilities to be provided or any equipment or appliance to be supplied by the employer.

15. Notice to be given of accidents :-

Whenever there occurs in or about the area of operations,-

- (a) an accident causing loss or life or serious injury; or
- (b) a breakage of ropes, chains, or other gear by which persons or materials are lowered or raised; or
- (c) all over winding of cages or other means of conveyances in any shaft while persons or materials are beings lowered or raised; or
- (d) a premature collapse of any part of working etc.; or
- (e) any other accident; the employer, agent or manager of the expedition shall give immediate notice to the competent authority giving full account of the occurrence.

16. Employers liability for compensation for injury :-

If personal injury is caused to a porter by accident arising out of his employment as porter or in the course of his training for employment as porter, his employer shall be liable to pay compensation and such compensation shall be assessed on the scale of rates of compensation prescribed for similar injuries under the Workman Compensation Act, 1923 (8 of 1923).

17. Penalties :-

If any person contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act, he shall on conviction by a Magistrate, be liable to be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to three hundred rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to fifty rupees for every day during which such contravention continues after conviction for the first such contravention.

18. Power to make rules :-

- (1) The State Government may make rules¹ for the purpose of carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for,-
 - (a) the form of register of porters to be maintained by the competent authority under section 3;
 - (b) the form of applications for the registration of porters or applications for renewal of registration of certificates under section 5 the particulars it may contain, the fees which should accompany

it and the manner of depositing such fees; (c) the form of certificate of registration to be issued under subsection (4) of section 5;

(d) the form of identity card to be issued to the porter under section 7;

(e) the conditions in regard to employment generally or the nature of work in which the porters may be employed or permitted to be employed;

(f) the fixation or revision of rates of wages in respect of the working porters under section 12; and

(g) any other matter which has to be, or may be, prescribed under this Act.

(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 not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in any rule or decides that the rule should not be made, the rule shall 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.

1 Rules made vide Not. No. 8-10/75-GAD(B), dated 26-6-1981 (Appended)