

## **Kerala Headload Workers Act, 1978**

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## **SCHEDULE 1 :- THE SCHEDULE**

### **Kerala Headload Workers Act, 1978**

#### CHAPTER 1 PRELIMINARY

#### **1. Short Title, Extent And Commencement :-**

- (1) This Act may be called the Kerala Headload Workers Act, 1978.
- (2) It extends of 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, ppoint, and different dates may be appointed for different areas and for different provisions of this Act

and for different establishments.

## **2. Definitions :-**

In this Act, unless the context otherwise requires,-

- (a) "adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year of age ;
- (b) "adult" means a person who has completed his eighteenth year of age ;
- (c) "appellate authority," in relation to any area, means the appellate authority appointed under section 4 for that area ;
- (d)"Board" means a Board constituted under section 14;
- (e) "committee" means a committee appointed under section 18;
- (f) "Conciliation Officer," in relation to any area, means the conciliation Officer appointed under section 3 for that area ;
- (g) "contractor" , in relation to an establishment, means a person who undertakes to execute any work for such establishment by engaging headload workers on hire or otherwise, or who supplies headload workers as individuals or in groups for the purpose of engaging them in such establishment and includes a sub contractor and a brcker ;
- (h) "dispute" means any dispute or difference between employers and employers or between employers and headload workers or between headload workers and headload workers, which is connected with the employment or non-employment or the terms of employment or the conditions of employment, of any headload workers.

Explanation -Where any employer discharges, dismisses, retrenches or otherwise terminates the services of, or denies employment to, an individual headload worker, any dispute or difference between that headload worker and his employer connected with, or arising out of, such discharges, dismissal, retrenchment, termination or denial of employment shall be deemed to be a dispute notwithstanding that no other headload worker or any union of headload workers is a party to the dispute ;

(i) "employer" means,-

- ( i ) in relation to a headload worker engaged by or through a contractor, the principal employer ;
- (ii) in relation to a headload worker who is not employed by any employer or contractor, the committee constituted under section 18; and
- (iii) in relation to any other headload worker, the person who has

ultimate control over the affairs of the establishment in or for which the headload worker is employed and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent manager or by any other name prevailing in such establishment ;

(j) "establishment" means an establishment specified in the Schedule and includes the precincts thereof ;

(k) "family" means husband, wife, dependent parents, minor children and unmarried or widowed daughters ;

(l) "fund" means a fund constituted under a scheme ;

(m) "headload worker" means a person engaged directly or through a contractor in or for an establishment, whether for wages or not, for loading or unloading or carrying on head or person or in a trolley any article or articles in or from or to a vehicle or any place in such establishment, and includes any person not employed by any employer or contractor but engaged in the loading or unloading or carrying on head or person or in a trolley any article or articles for wages, but does not include a person engaged by an individual for domestic purposes ;

(n) "Inspector" means an Inspector appointed under section 5;

(o) "minor" means a person who has not completed his fifteen year or age ;

(p) "principal employer" means an employer who engages a head load worker by or through a contractor in any establishment ;

(q) "prescribed" means prescribed by rules made under this Act ;

(r) "Scheme" means a scheme made under this Act ;

(s) "Wages" means all remuneration, whether payable in cash or in kind, which would, in the terms of employment, express or implied, were fulfilled, be payable to a headload worker employed in an establishment or for work done in such establishment, but does not include-

( i ) the value of--

(A) any house accommodation, supply of light, water or medical attendance or ;

(B) any other amenity or service excluded by general or special order of the Government ; or

(ii) any contribution paid by the employer to any pension fund or any scheme of social insurance and the interest which may have accrued thereon; or

(iii) any travelling allowance or value of any travelling concession; or

(iv) any sum paid to a headload worker to defray special expenses

entailed on him by the nature of his employment ;

(v) any gratuity payable on discharge ;

(vi) any bonus.

## CHAPTER 2

### CONCILIATION OFFICERS, APPELLATE AUTHORITIES AND INSPECTORS

#### **3. Appointment Of Conciliation Officers :-**

The Government may, by notification in the Gazette, appoint for any area specified therein any officer of the Labour Department not below the rank of Deputy Labour Officer to be a conciliation Officer for the purpose of performing the functions entrusted to the conciliation Officer by or under this Act.

#### **4. Appellate Authorities :-**

The Government may, by notification in the Gazette, appoint for any area specified therein an officer of the Labour Department not below the rank of District Labour Officer to be an appellate authority for the purpose of performing the functions of the appellate authority under this Act.

#### **5. Inspectors :-**

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

(a) such officers, or

(b) such persons as possess the prescribed qualifications, as they think fit, to be Inspectors for the purposes of this Act and define the local limits within which they shall exercise their powers.

(2) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,-

(a) enter with such assistants, if any, being persons in the service of the Government or any local or public authority, as he thinks fit, any establishment wherein headload workers are employed or wherefrom work is given out to headload workers, for the purpose of examining any register, record of wages or notice required to be kept or exhibited under any scheme or rule made under this Act and require the production thereof either on the spot or in the office of the Inspector:

Provided that the Inspector shall not enter any establishment at any time between 7 p. m and 7 a. m. except when work is being carried on in such establishment ;

(b) examine any person found in any such establishment, if he has

reasonable cause to believe that such person is a headload worker employed therein or to whom work is given therefrom;

(c) require any person giving any work to a headload worker or a group of headload workers to give any information, which is in his power to give, in respect of the name and address of each of the persons to whom the work is given and in respect of payment made or to be made for the said work;

(d) seize or take copies of such registers, records of wages or notices or portions thereof, as he may consider relevant in respect of an offence under this Act or any scheme or rule made thereunder which he has reason to believe has been committed by an employer; and

(e) exercise such other powers as may be prescribed.

(3) Every employer shall afford as Inspector all reasonable facilities for making an entry, inspection, examination or inquiry under this Act.

### CHAPTER 3

#### HOURS AND LIMITATIONS OF EMPLOYMENT AND WAGES

### **6. Hours Of Work :-**

Save as otherwise expressly provided in this Act, no adult headload worker shall be required to work for more than eight hours in any day and no adolescent or minor headload worker shall be required to work for more than six hours in any day:

Provided that nothing contained in this section shall be deemed to prohibit an agreement between the employer and the headload workers for working for less than eight hours or six hours, as the case may be, on any particular day or days or on all days of employment or to affect any custom or practice prevailing in the locality under which the headload worker is required to work for less than eight hours or six hours, as the case may be.

### **7. Limitation Of Employment :-**

(1) No headload worker shall be required to carry on his head or person at a time any article or articles weighing more than seventy-five kilograms.

(2) Notwithstanding anything contained in this Act, no person who is more than sixty years of age shall be entitled to the benefits conferred on a headload worker under this Act.

### **8. Daily Intervals For Rest :-**

The period of work on each day shall be so fixed that no period shall exceed three hours of continuous work and no headload worker shall work for more than three hours continuously before he has had an interval for rest for at least half an hour.

#### **9. Wages Payable To Headload Workers :-**

Every employer shall pay to any headload worker employed by him such wages as may be prescribed; and different wages may be prescribed for different establishments and for different kinds of work.

#### **10. Wages For Work Between 7 P.M. And 7 A.M :-**

Where a headload worker is required by an employer to work at any time between 7 p.m. and 7 a.m he shall be paid for such work one and a half times the wages payable to him under section 9:

Provided that nothing in this section shall apply to headload workers working in bus stands, boat jetties, landing places of country crafts and such other places as may be specified by the Government in this behalf.

#### **11. Enforcement Of Payment Of Wages :-**

(1) If any employer pays less than the wages due to a headload worker or refuses to pay such wages, the head-load worker or an official of the union of which he is a member may make an application to the conciliation Officer for a direction under subsection (2).

(2) On receipt of an application under subsection (1), the Conciliation Officer shall, after giving the applicant and the employer an opportunity of being heard and after such inquiry, if any, which he may consider necessary, direct,-

(a) in the case of a claim arising out of the payment of less than the wages, the payment to the headload worker of the amount by which the wages payable to him exceeds the amount actually paid by the employer;

(b) in the case of a claim arising out of non-payment of wages, the payment of wages, the payment of wages due to the headload worker.

(3) If, as a result of a direction under subsection (2), any amount of the wages becomes payable to a headload worker, the

Conciliation Officer shall, if the amount is not paid in accordance with his direction, make a report to the Collector specifying the full particulars regarding the amount of the wages due to the headload worker, and on receipt of such report the Collector shall proceed to recover the same from the employer as if it were an arrear of public revenue due on land.

Explanation .-In this sub-section and section 36, "Collector" means the district Collector or any other officer appointed by the Government to exercise the powers and perform the functions of a Collector under the Kerala Revenue Recovery Act, 1968 (15 of 1968).

## **12. Appeal :-**

(1) Against any order passed by a Conciliation Officer under section 11, an appeal shall lie to the appellate authority within a period of thirty days from the date of the order appealed against, and the decision of the appellate authority on such appeal shall be final; Provided that the appellate authority may admit an appeal presented after the expiration of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(2) The appellate authority shall have no power to stay the operation of the order of the conciliation Officer pending disposal of the appeal, except for good and sufficient reasons to be recorded in writing.

## **CHAPTER 4** **SCHEMES**

## **13. Scheme :-**

(1) The Government may, by notification in the Gazette, make one or more scheme or schemes for any employment or group of employments in one or more area or areas specified in the notification, and by similar notification add to, amend or vary and such scheme or substitute another scheme for any such scheme:

Provided that no such notification shall come into force unless a draft thereof is published in the Gazette and unless it is finalised after considering objections and suggestions received within one month of the publication of such draft in the Gazette.

(2) Subject to the provisions of this Act and the rules made thereunder a scheme made under sub section (1) may provide for all or any of the following matters, namely:-



- (a) for the welfare of headload workers;
  - (b) for health and safety measures for headload workers;
  - (c) for the constitution of any fund or funds including provident fund for the benefit of headload workers, the vesting of such funds, the payment of contributions to be made to such funds and all matters relating thereto;
  - (d) for regulating the recruitment and entry into the scheme of the headload workers, and the registration of headload workers and employers including the maintenance of registers, removal either temporarily or permanently, of names from the registers and the imposition of fee for registration;
  - (e) for regulating the employment of headload workers and the terms and conditions of such employment, including maternity benefit, leave with wages, provision for gratuity and conditions as to weekly and other holidays and pay in respect thereof;
  - (f) for pooling of headload workers who are not employed under any employer or contractor;
  - (g) for the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed, including any contributions to be paid by employers and headload workers and the rate of such contribution;
  - (h) for appointing persons and authorities who or which are to be responsible for the administration of the scheme and for the administration of funds constituted for the purposes aforesaid;
  - ( i ) for such incidental and supplementary matters as may be necessary or expedient for giving effect to the purposes of the scheme;
  - (j) generally for making better provision as regards the terms and conditions of employment of head lod workers.
- (3) If any question arises whether any scheme applies to any class of headload workers, the matter shall be referred to the Government whose decision thereon shall be final.
- (4). The Government may, by notification in the Gazette, add to the Schedule any establishment in respect of the headload workers whereof they are of opinion that a scheme should be made under this Act, and thereupon the establishment so added shall be deemed to be an establishment specified in the Schedule for the purposes of this Act.
- (5) Every notification under subsection (1) shall be laid, as soon as may be after it is issued, 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 notification or decides that the notification should not be issued, the notification 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 notification.

#### CHAPTER 5

#### BOARD

### **14. Board :-**

(1) Government may, by notification in the Gazette establish a Board to be known by such name as may be specified in the notifications for the purpose of exercising the powers and performing the functions of the board under this Act and the schemes.

(2) The Board shall be a body corporate with the name specified, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract and may, by that name, sue and be sued.

(3) The Board shall consist of members nominated from time to time by the Government representing the employers; the headload workers and the Government.

(4) The members representing the employers, the headload workers and the Government shall equal in number.

(5) The Government shall appoint one of the members of the Board to be its Chairman.

(6) After nominations of all the members of the Board and the appointment of the Chairman, the Government shall publish their names in the Gazette.

(7) The term of office of the members of the Board shall be such as may be prescribed.

(8) The board shall exercise such powers and perform such functions and shall follow such procedure as may be specified in the scheme or in the rules made under this Act.

(9) In the exercise of the powers and the discharge of its functions, the Board shall be bound by such directions as the Government may give to it from time to time.

### **15. Disqualifications And Removal :-**

(1) No person shall be nominated as, or continue to be, a member of the Board who-

(a) is a salaried officer of the Board; 2. (except person appointed as the Chief Executive of the Board)

(b) is, or at any time has been, adjudged an 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;

(e) ceases to represent the employers or headload workers, as the case may be.

(2) The 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 for more than three consecutive meetings of the Board.

#### **16. Appointment Of Officers For Assisting The Board :-**

(1) The Government may appoint such number of officers as they think fit for assisting the Board in the exercise of its powers and the performance of its functions under this Act and the schemes.

(2) The officers appointed under subsection (1) shall exercise such powers and discharge such duties as may be prescribed.

#### **17. Supersession Of Board :-**

(1) If the Government are of opinion-

(a) that the Board is unable to perform its functions; or

(b) that the Board has persistently made default in the performance of its functions or has exceeded or abused its powers, the Government may, by notification in the Gazette, supersede the Board for such period as may be specified in the notification :

Provided that, before issuing a notification under this subsection on any of the grounds mentioned in clause (b), the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded, and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under subsection (1),-

(a) all the members of the Board, shall, as from the date of such publication, vacate their offices as such members;

(b) all the powers and functions which may be exercised or performed by the Board shall, during the period of supersession, be exercised or performed by such person or persons as may be

specified in the notification;

(c) all funds and other property vesting in the Board shall, during the period of supersession, vest in the Government.

(3) On the expiration of the period of supersession specified in the notification issued under subsection (1), the Government may-

(a) extend the period of supersession for such further period as it may consider necessary:

Provided that the total period of supersession shall not exceed one year ; or

(b) re-establish the Board in the manner provided in section 14.

## CHAPTER 6

### COMMITTEES

#### **18. Committees :-**

(1) The Government may, by notification in the Gazette, appoint a committee for such area and with such name as may be specified in the notification for the purpose of exercising the powers and performing the functions of the committee under this Act and the scheme, in relation to that area.

(2) Every such committee shall be a body corporate with the name specified, having perpetual succession and a common seal, with power to require hold and dispose of property and to contract and may by that name sue and be sued.

(3) The committee shall consist of such number of members, not exceeding fifteen, nominated by the Government, of whom two-thirds shall be persons representing the employers and the headload workers.

(4) The members representing the employers and the headload workers shall be equal in number.

(5) The Government shall appoint one of the members of the committee to be its Chairman and another member to be its Convener.

(6) after nomination of all the members of the committee and the appointment of the Chairman and the convener, the Government shall publish their names in the Gazette and in such other places as the Government may deem necessary.

(7) The term of office of the members of the committee shall be such as may be prescribed.

(8) The functions of the committee shall be-

(a) to pool the headload workers who are not employed under any employer or contractor;

- (b) to arrange and regulate employment to such headload workers and to pay them wages;
- (c) to take disciplinary action against them wherever necessary,
- (d) to do all such acts as are necessary for the implementation of this Act and the scheme.

(9) In the exercise of the powers and the discharge of its functions, the Committee shall be bound by such directions as the Board may give to it from time to time.

### **19. Appointment Of Officers For Assisting Committee :-**

(1) The Government may appoint such number of officers as they think fit for assisting the committee in the exercise of its powers and the performance of its function under this Act and the scheme.

(2) The officers appointed under subsection (1) shall exercise such powers and discharge such duties as may be prescribed.

### **20. Supersession Of Committee :-**

(1) If the Government are of the opinion-

(a) that the committee is unable to perform its functions; or

(b) that the committee has persistently made default in the discharge of its functions or has exceeded or abused its powers. the Government may, by notification in the Gazette, supersede the committee for such period as may be specified in the notification:

Provided that, before issuing a notification under this subsection on any of the grounds mentioned in clause (b), the Government shall give reasonable opportunity to the committee to show cause why it should not be superseded, and shall consider the explanations and objections, if any of the committee.

(2) Upon the publication of a notification under subsection (1),-

(a) all the members of the committee shall, as from the date of such publication, vacate their offices as such members;

(b) all the powers and functions, which may be exercised or performed by the committee, shall, during the period of supersession, be exercised or performed by such person or persons as may be specified in the notification;

(c) all funds and other property vesting in the committee shall during the period of supersession, vest in the Government.

(3) on the expiration of the period of supersession specified in the notification issued under subsection (1), the Government may

(a) extend the period of supersession for such further period as they consider necessary:

Provided that the total period of supersession shall not exceed one year; or

(b) appoint another committee in the manner provided in section 18.

## CHAPTER 7

### DISPUTES

#### **21. Settlement Of Disputes :-**

(1) Where a dispute which is connected with the employment or non-employment or the terms of employment or with the conditions of work, of any headload worker exists or is apprehended, the Assistant Labour Officer, having jurisdiction may hold conciliation conferences for the purpose of bringing about a settlement of the dispute and, if such settlement is not arrived at, send a report of the dispute to the Conciliation Officer.

(2) On receipt of a report under subsection (1), the Conciliation Officer may hold conciliation proceedings and shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the same and all matters affecting the merits and the right settlement thereof and may do all such things as he things fit for the purpose of promoting a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of conciliation proceedings the Conciliation Officer shall send a report thereof to the appellate authority.

(4) If a settlement of the dispute or any of the matters in dispute is not arrived at, the Conciliation Officer shall take a decision on the dispute or, as the case may be, on the matters in respect of which no settlement has been arrived at and shall send a report of the dispute with a copy of his decision to the appellate authority.

(5) The decision of the Conciliation Officer under subsection (4) shall, subject to the decision of the appellate authority under subsection (7), be binding on all parties to the dispute.

(6) Any person aggrieved by any decision of the conciliation Officer under subsection (4) may, within such time as may be prescribed, appeal to the appellate authority against such decision.

(7) On receipt of an appeal under subsection (6), the appellate authority shall make such inquiries as it deems fit and after giving the parties an opportunity of being heard decide the appeal within a period of two week from the date of receipt of the appeal.

(8) Notwithstanding anything contained in any law for the time being in force, the appellate authority shall not stay the operation of the decision of the Conciliation Officer pending its decision on the appeal except for good and sufficient reasons to be recorded in writing.

## **22. Reference Or Decision Of Disputes By Government :-**

(1) Notwithstanding anything contained in section 21, where any dispute exists or is apprehended, the Government may, by order in writing and for reasons to be stated therein,-

(a) refer the dispute to the appellate authority constituted for the area in which the dispute exists or is apprehended, for decision ; or

(b) decide the dispute themselves.

(2) Where a dispute is referred to an appellate authority under clause (a) of subsection (1) , that authority shall decide the dispute as if the reference by the Government were an appeal under subsection (6) of section 21..

(3) The decision of the Government referred to in clause (b) of subsection (1) shall be final and shall be given effect to by the parties to the dispute forthwith.

## **23. Representation Of Parties :-**

(1) A headload worker who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the headload worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other headload worker employed in, the establishment under which the headload worker is employed and authorised in such manner as may be prescribed.

(2). An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of an association of employers of which he is a member ;

(b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated ;

(c) where the employer is not a member of any association of

employers, by an officer of any association of employers connected with, or by any other employer engaged in, the establishment similar to the one in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act.

(4) In any proceeding before the appellate authority, or the Government, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the appellate authority or the Government, as the case may be.

#### CHAPTER 8

#### WORKMEN'S COMPENSATION

### **24. Application Of Workmens Compensation Act To Headload Workers :-**

The provisions of the Workmens Compensation Act, 1923 (Central Act 8 of 1923) and the rules made thereunder shall mutatis mutandis apply to the headload workers employed in any establishment, and, for that purpose, they shall be deemed to be workmen within the meaning of that Act.

#### CHAPTER 9

#### REGISTERS AND RECORDS

### **25. Register Of Headload Workers :-**

(1) Such authority or officer as may be prescribed shall prepare a register of headload workers working within its or his jurisdiction.

(2) The register shall contain such particulars as may be prescribed.

(3) The register shall be maintained by the authority or officer as the case may be, in such manner as may be prescribed.

### **26. Maintenance Of Registers And Records By Employers :-**

(1) Every employer shall maintain such registers and records as may be prescribed.

(2) The registers and records referred to in subsection (1) shall contain such particulars and shall be countersigned by such officer and shall be kept in such place, as may be prescribed.

#### CHAPTER 10

#### PENALTIES AND PROCEDURE



## **27. Penalty For Obstructions :-**

(1) Whoever obstructs any Inspector or Assistant Labour Officer of Conciliation Officer or appellate authority in the discharge of his or its duties under this Act or refuses or wilfully neglects to afford any Inspector reasonable facilities for making any inspection, examination or inquiry authorised by or under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector or a Conciliation Officer or an appellate authority any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector or a Conciliation Officer or an appellate authority acting in pursuance of his or its duties under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

## **28. Penalty For Making False Statements, Etc :-**

Whoever for the purpose of avoiding any payment to be made by him under this Act or under a scheme or for enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

## **29. Other Penalties :-**

Whoever contravenes or makes default in complying with any of the provisions of this Act or a scheme or of any rule made under this Act shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and, in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

### **30. Enhanced Penalty After Previous Conviction :-**

If any person who has been convicted of any offence punishable under this Act is again found guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

### **31. 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 subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he 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 also 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.

### **32. Cognizance Of Offence :-**

No court shall take cognizance of any offence punishable under this Act, except on complaint made by, or with the previous sanction in writing of, the Government or an officer authorised by the Government in that behalf, and no court inferior to that of a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

### **33. Limitation Of Prosecutions :-**

No court shall take cognizance of an offence punishable under this Act unless complaint there of is made within three months from the date on which the alleged commission of the offence comes to the knowledge of the Government or the officer authorised under section 32.

#### **CHAPTER 11** **MISCELLANEOUS**

### **34. Bar Of Jurisdiction Of Civil Courts :-**

No civil court shall entertain any suit or other proceedings to set aside or modify any order or decision passed by any authority or officer under this Act in respect of any of the matters falling within its or his scope.

### **35. Power To Take Evidence On Oath, Etc :-**

Any authority or officer exercising powers under this Act shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), when trying a suit in respect of the following matters, namely:-

- (a) enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses;
- (e) such other matters as may be prescribed

and any proceeding before such authority or officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (Central Act 45 of 1860).

### **36. Recovery Of Money Due From Employer :-**

(1) Where any money is due to a headload worker under a settlement or decision referred to in subsection (4) or subsection (7) of section 21 or section 22, the headload worker himself or any other person authorised by him in that behalf or, in the case of death of the headload worker, his assignees or heirs, may, without prejudice to any other mode of recovery, make an application to the appellate authority for the recovery of the money

due to him and if the appellate authority is satisfied that any money is so due, it shall issue a certificate to the Collector for the recovery of the amount and thereupon the Collector shall recover the amount as if it were an arrear of public revenue due on land: Provided that every such application shall be made within one year from the date on which the money became due to the headload workers.

(2) Any amount due from an employer as contribution to any fund and any other amount due from an employer under this Act or scheme or rule made under this Act may, if the amount is in arrear, be recovered as it were an arrear of public revenue due on land.

### **37. Power To Recover Damages :-**

Where an employer makes default in the payment of any contribution to the fund, the Government may recover from him such damages, not exceeding twenty-five per cent of the amount of arrears, as they think fit.

### **38. Recovery Of Money Due From Head Workers :-**

Where any money is due to an employer by a headload worker under a settlement or decision referred to in subsection (3) or subsection (4) or subsection (7) of section 21 or section 22, the employer himself or in any other person authorised by him in that behalf or, in the case of death of the employer, his assignees or heirs, may, without prejudice to any other mode of recovery, make an application to the appellate authority for the recovery of the money due to him and if the appellate authority is satisfied that any money is so due, it shall order the payment of such money in such number of easy instalments as may be determined by it.

### **39. Effect Of Laws And Agreement Inconsistent With This Act And Schemes :-**

(1) The provisions of this Act and the schemes shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this section.

(2) No authority other than the Government or the Board or a committee shall be entitled to make any scheme or do any other act conferring, or purporting to confer, any benefits on headload

workers.

#### **40. Members Of Board Etc., To Be Public Servants :-**

Every member of the Board or of a committee and every officer appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860.)

#### **41. Power To Remove Difficulties :-**

If any difficulty arises in giving effect to the provisions of this Act or a scheme or any settlement under this Act, the Government may, by order, do anything not inconsistent with such provisions which appears to them necessary or expedient for the purpose of removing the difficulty.

#### **42. Protection Of Action Taken In Good Faith :-**

No suit, prosecution or other legal proceedings shall lie against the Government or any authority or officer in respect of anything which is good faith done or intended to be done in pursuance of this Act or any scheme, rule or order made under this Act.

#### **43. Power To Make Rules :-**

(1) The Government may, by notification in the Gazette, 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 provide for-

(a) the obligations of headload workers and employers;

(b) regulating the employment of headload workers whether registered or not and the terms and conditions of such employment which are not specifically provided in this Act;

(c) regulating, restricting or otherwise controlling the employment by any employer of headload workers not registered in his establishment;

(d) any other matter which has to be, or may 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 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.

#### SCHEDULE 1

##### THE SCHEDULE

( See section 2 (j) )

1. Iron and steel markets or shops.
2. Cloth and cotton markets or shops.
3. Grocery markets or shops.
4. Railway yards and good sheds.
5. Establishments employing workers for loading or unloading of goods and other operations incidental and connected thereto.
6. Vegetable markets including onions and potatoes markets).
7. Establishments employing workers for loading, unloading and carrying of foodgrains and such other work incidental and connected thereto.
8. Bus stands boat jetties, landing places of country crafts.
9. Forest supply and sale coupes, timber and firewood depots.
10. Quarries.
11. Markets (including fish and meat markets) and factories employing workers, which are not covered by any other entries in this Schedule.