

Kerala Loading And Unloading (Regulation Of Wages And Restriction Of Unlawful Practices)Act, 2002

10 of 2002

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SCHEDULE 1 :- Unlawful Practices

Kerala Loading And Unloading (Regulation Of Wages And Restriction Of Unlawful Practices)Act, 2002

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An Act to regulate the wages and to restrict unlawful practices connected with loading and unloading and transportation of goods and articles and for matters connected therewith. Preamble .- WHEREAS it is expedient to regulate the wages and to restrict unlawful practices connected with loading and unloading and transportation of goods and articles and for matters connected therewith ; BE it enacted in the Fifty-Third year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Kerala Loading and Unloading (Regulation of wages and Restriction of Unlawful Practices) Act, 2002.
- (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 Official Gazette appoint and different dates may be appointed for different areas and for different provisions of this Act.

2. Definitions :-

In this Act, unless the context otherwise requires, -

- (a) "domestic purpose" means,-
 - (i) shifting, including the transportation of furniture, personal effects and other household articles for domestic use; or
 - (ii) Work in connection with the shifting of the articles of a dwelling house of a person including work connected with religious or social or public functions; or
 - (iii) cutting , removal , shifting and transportation of trees and wood for personal use; or

- (iv) construction, repairing and maintenance of house including the shifting and transportation of construction materials, equipments, machinery for personal use ; or
 - (v) dismantling, demolition and shifting of old building materials or equipments other than those covered by the non-domestic purpose and including its transportation ; or
 - (vi) shifting and transportation of animals for personal use; or
 - (vii) shifting and transportation of materials including agricultural produce, raw materials, agricultural inputs and equipment or agricultural machinery relating to agricultural operations; or
- Explanation :-For the purpose of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act 1951 (Central Act 69 of 1951);
- (viii) such other work or activity or process which the Government may, by notification in the official Gazette, specify to be domestic purpose;
- (b) "employer" means any person who engages or employs a worker for wages or otherwise to do any loading and unloading work connected with or relating to or ancillary to the purposes included in this Act and includes any other person who has ultimate control over the affairs;
- (c) "Government" means the Government of Kerala;
- (d) "loading and unloading work" means loading and unloading or carrying on head or person or in a trolley any article or goods in or from or to a vehicle or any place and includes any other work carried out for the transportation or movement of such article or goods from one place to another;
- (e) "mischief" means "mischief" as defined in section 425 of the Indian Penal Code, 1860;
- (f) "non domestic purpose" means,
- (i) industrial, agricultural or commercial purpose; or other than those covered by domestic purposes;
 - (ii) construction , maintenance and dismantling of all types of buildings other than those covered by domestic purposes, dams, bridges, tunnels, sub-ways and roads including all infrastructural projects; or
 - (iii) shifting and transportation of construction materials, equipments or machinery; or
 - (iv) cutting, removal, shifting and transportation of trees and wood for industrial and commercial purposes; or
 - (v) shifting, including the transportation of any goods or articles

which are used or intended to be used for industrial, agricultural or commercial purposes; or

(vi) installation, erection and dismantling of any electrical, electronic, electromagnetic or other sophisticated machinery of any nature and includes the laying or removal of pipes or cables; or

(vii) installation, erection and dismantling of office equipments including the shifting and transportation of stationery and furniture items; or

(viii) shifting and transportation of any animals for industrial or commercial purposes; or

(ix) shifting and transportation of any materials which are mechanically loaded or unloaded with equipments or machinery like cranes, tippers, or earth removers; or

(x) such other work or activity or process which the Government may, by notification in the Official Gazette specify to be non-domestic purpose;

(g) "notified wages" means all remuneration payable in cash or in kind which the Government may fix under section 8;

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

(i) "Trade Union" means the trade unions registered under the Trade Union Act, 1926 (Central Act 16 of 1926);

(j) "unlawful practices" means any of the practices set out in the Schedule to this Act.

(k) "worker" means any person either engaged directly or otherwise offering his services for the purpose of doing any loading and unloading work in connection with or relating to any of the domestic or non-domestic purposes under this Act including a member of Trade Union, but does not include the worker or employee covered by the Factories Act, 1948 or the Plantations Labour Act, 1951 or the Kerala Shops and Commercial Establishments Act, 1960.

3. Application Of The Act :-

The provisions of this Act shall apply to any loading and unloading work or activity or process which is connected with or related to or ancillary to,

(a) domestic purpose, and

(b) non-domestic purpose, as specified in this Act.

CHAPTER 2

RIGHT TO FREEDOM OF EMPLOYMENT AND PROTECTION TO PROPERTY

4. Right To Employ Workers Of OneS Own Choice :-

Notwithstanding any thing contained in the Kerala Head Load Workers Act, 1978 (Act 20 of 1980) an employer shall have the right to carry out loading and unloading work for domestic purposes by himself or by employing the workers of his own choice.

5. Employment Of Workers For Non-Domestic Purposes :-

Notwithstanding any thing contained in the Kerala Head Load Workers Act, 1978 (Act 20 of 1980) or the schemes made there under, an employer shall have the right to carry out loading and unloading work for non-domestic purposes either by himself or by employing the workers of his own choice in any industrial park, export processing zone, industrial or commercial area, tourism project area, agricultural market as the Government may, by notification in the Official Gazette, declare as such from time to time.

6. Prohibition Of Unlawful Practices :-

No worker shall individually or jointly commit any unlawful practices in connection with or relating to or ancillary to the purposes included in this Act.

7. Prohibitions Of Entry Into Property :-

No worker shall make any unauthorised entry into the property of an employer or other person and create any obstruction or hindrance to the work or activity or process to be carried out or commit any mischief or destruction or damage to the land and property of the employer or other person whether or not such act constitutes an offence under any other law for the time being in force.

CHAPTER 3

NOTIFIED WAGES

8. Notified Wages :-

(1) The Government may regulate the wages payable to the workers under this Act in the manner prescribed by notifying it in the official gazette and the rate of wages so notified may be different for different areas:

Provided that if the notified wages in respect of any goods or article

including machinery have not been prescribed by the Government, the Government or the officers specifically authorised by the Government in that behalf may after necessary inquiry and subject to the general guidelines as may be prescribed, fix the wages on the spot in respect of any loading and unloading work and the wages so fixed shall be deemed to be the notified wages.

(2) No worker employed or engaged in the loading and unloading work connected with or related to the purposes specified in this Act shall demand wages in excess of the notified wages.

(3) No employer shall engage any worker for loading or unloading work connected with or related to the purposes specified in this Act for the wages less than the notified wages.

(4) The Government may revise the notified wages fixed under sub-section (1) at least once in every three years.

9. Acknowledgement For The Receipt Of Amount :-

Every worker who had received an amount for the loading and unloading work connected with or related to the purposes of this Act shall give a signed receipt to the employer or the person who has engaged or employed him as the case may be, soon after its receipt and receipt so given shall be conclusive evidence that he has accepted the amount mentioned therein towards wages.

10. Maintenance Of Registers And Records :-

The registers and records to be maintained by the Labour Inspectors and employers, the form of receipt to be given by the workers and the particulars and form of registers and records to be maintained by any person who employs or engages workers for non-domestic purposes shall be in such manner as may be prescribed by the Government.

CHAPTER 4

APPOINTMENT AND POWERS OF LABOUR INSPECTORS AND INSPECTORS

11. Appointment And Powers Of Labour Inspectors And Inspectors :-

(1) The Government may, by notification in the Official Gazette, appoint officers in the Labour Department not below the rank of an Assistant Labour Officer (Grade II) as Labour Inspector for the purposes of this Act and may define the local limits within which they shall exercise their jurisdiction.

- (2) A Labour Inspector appointed under sub-section (1) may for the purpose of ascertaining whether any of the provisions of this Act has been violated or to prevent such violations, -
- (a) either suo moto or on a written complaint made in this behalf by an employer or any person aggrieved, enter any establishment or any premises connected therewith or any place at any reasonable time and with such assistance as he thinks necessary for the inspection, examination or enquiry with regard to such violations or apprehended violations;
 - (b) require an employer or any worker or any person to furnish such information as may consider necessary;
 - (c) make copies of or to take extracts from, any book., register or other documents maintained in relation to the work carried out;
 - (d) exercise such other powers as may be prescribed .
- (3) The Government may by notification in the Official Gazette, appoint officers in the Police Department of and above the rank of a SubInspector as Inspectors for the purposes of this Act and may define the local limits within which they shall exercise their jurisdiction.
- (4) An Inspector appointed under sub section (3) may for the purpose of ascertaining whether any of the provisions of this Act has been violated or to prevent the commission of an offence,-
- (a) either suo moto or on a written complaint made in this behalf by an employer or any person aggrieved, enter any establishment or any premises connected therewith or any place at any reasonable time and with such assistance as he thinks necessary for the examination or enquiry or investigation into the alleged offence under this Act;
 - (b) require an employer or any worker or any person to furnish such information as he may consider necessary;
 - (c) make copies of or to take extracts from, any book, register or other documents maintained in relation to the work carried out;
 - (d) exercise such other powers as may be prescribed.
- (5) Every Labour Inspector or Inspector appointed under sub-section (1) or sub-section (3) as the case may be shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (45 of 1860);
- (6) Any person required to produce any document or thing or to give any information by a Labour Inspector or Inspector under this section shall be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code 1860 (45 of 1860).

12. Penalty For Committing Unlawful Practices :-

Whoever commits any unlawful practices other than items 5 and 13 of the Schedule shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one thousand rupees and which may extended to five thousand rupees or with both.

13. Penalty For Obstruction And Damage :-

Whoever commits any unauthorised entry into the property of an employer or any other person and creates any obstruction or hindrance to the work or activity or process to be carried out or commits any mischief or destruction or damage to the land or property of the employer or any person, shall be punishable with imprisonment which may extend to two years or with fine which shall not be less than one thousand rupees and which may extend to ten thousand rupees or with both.

14. Penalty For Obstruction Of Duties :-

Whoever obstructs any Labour Inspector or Inspector or any other officer appointed under this Act in the discharge of his duties or refuses or wilfully neglects to afford him reasonable facilities for making any entry, inspection, examination or enquiry authorised by or under this Act, shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one thousand rupees and which may extend to ten thousand rupees or with both.

15. General Provision For Punishment Of Other Offence :-

Any person who contravenes any of the provisions of this Act or of any rule or order made thereunder shall, if no other penalty is provided for such contravention by this Act, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two thousand rupees or with both.

16. Disqualification From Work :-

Notwithstanding anything contained in the Kerala Head Load

Workers Act, 1978 (Act 20 of 1980) no worker, who has been convicted by a court of law for an offence under this Act, shall be given registration as a head load worker under the said Act for a period of six months from the date of such conviction or if he is a registered head load worker under the said Act, his registration shall be suspended for a period of one year from the date of such conviction:

Provided that where the conviction is for a second or subsequent offence under this Act the period of disqualification shall be for two years.

17. Compounding Of Offences :-

(1) The Government may, by notification in the Official Gazette, appoint officers of the Labour Department of and above the rank of District Labour Officer as appropriate authority for compounding the offences committed under this Act, before their cognizance by the Court, on payment of a sum which may not be less than the minimum of the fine stipulated for such offence but may extend to the maximum of the fine stipulated for such offence and may also include the cost of damage suffered by the complainant, by way of composition of the offence for which such person is suspected to have committed:

Provided that no such compounding shall be permitted in case of second and subsequent offences.

(2) On payment of such sum to the appropriate authority under sub-section (1), the offender, if in custody shall be released and no further proceedings shall be taken against such offence.

18. Certain Offences To Be Cognizable :-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the offences punishable under sections 12, 13, and 14 of this Act shall be deemed to be a cognizable offence within the meaning of that Code.

(2) No Court shall take cognizance of the offences referred to in sub-section (1) except upon a Police Report as provided in the Code of Criminal Procedure, 1973.

CHAPTER 6

MISCELLANEOUS

19. Violation Of The Provisions Of This Act Not To Attract Other :-

enactments

Notwithstanding anything contained in any other law for the time being in force, the violation of any of the provisions of this Act shall not constitute a dispute as defined in any other law and any such violation shall be dealt with in accordance with the provisions of this Act and the rules made thereunder.

20. Bar Of Jurisdiction Of Civil Court :-

No Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of anything done, any action taken or order or direction issued by the Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act.

21. Delegation Of Power :-

The Government may, by notification in the Official Gazette , direct that any power exercisable by them under this Act, or the rules made thereunder (other than the powers conferred by this section, section 22,23 and 25) shall in relation to such matters and subject to such conditions, if any, as may be specified in the notification, shall be exercised also by such officer or Authority subordinate to the Government, as may be specified in the notification.

22. Power To Amend Schedule :-

(1) The Government may, if it is of opinion that it is expedient or necessary in the public interest so to do, by notification in the Official Gazette, add to or alter or amend the Schedule and on any such notification being issued, the Schedule shall be deemed to have been amended accordingly.

(2) Every such notification, shall, as soon as may be after it is issued, be laid before the Legislative Assembly.

23. Power To Remove Difficultie :-

(1) If any difficulty arises in giving effect to the provisions of this Act, or the rules made there under, the Government may, by order, do anything, not inconsistent with the provisions of this Act which appears to them to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be passed after two years from the date of commencement of this Act.

(2) Every order made under this section, shall, as soon as may be after it is made, be laid before the Legislative Assembly.

24. Protection Of Action Taken In Good Faith :-

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

25. Power To Make Rules :-

(1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may, -

(a) prescribe the obligations of employers and workers;

(b) regulate the employment of workers and the terms and conditions of such employment which are not specifically prescribed in this Act;

(c) prescribe the method of summoning witnesses, production of documents relevant to the subject matter of the investigation or enquiry before the Inspector or Labour Inspector or any other officer authorised by the Government.

(d) prescribe the powers of Labour Inspector or Inspectors and other officers appointed for the purpose of this Act;

(e) prescribe the modalities for preferring complaint and matters consequential thereto;

(f) prescribe general guidelines for fixing notified wages;

(g) prescribe the procedure connected with compounding of offences;

(h) provides for any other matter which is to be or may be prescribed for the effective implementation of the provisions of 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 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 any thing previously done under that rule.

SCHEDULE 1

Unlawful Practices

1. Intentionally putting an employer in fear of any injury to, him or any other person or damage to his goods or property for getting any work done or demanding amounts in excess of the notified wages for the loading and unloading work connected with or ancillary to the purposes specified in this Act.
2. Intimidating an employer by threat or violence to compel him to engage any person or group of persons for loading and unloading work or for paying amounts in excess of the notified wages prescribed for the work performed.
3. Demanding the right to undertake the loading and unloading work connected with or related to domestic purposes after the employer has refused to engage any worker or group of workers.
4. Demanding, claiming or receiving any amount without executing any work or for the work done by others.
5. Individually or jointly making any obstruction or hindrance to the loading or unloading work and the transportation of goods and articles to be carried out in connection with or relating to or ancillary to the purposes specified in this Act,
6. Obstructing the movement of vehicles or persons carrying goods or articles and delaying of the work connected with or related to the purposes specified in this Act.
7. Initially causing damage to the articles or vehicles or machinery or goods while carrying out the loading and unloading work.
8. Indulging in acts of threat, violence, force, using abusive languages and the like in connection with the work related to the purposes specified in this Act.
9. Indulging in work under the influence of alcohol or other intoxicants.
10. Receiving amounts in excess of the notified wages prescribed for the work or receiving any amount in any other form or manner.
11. Receiving any amount without issuing proper receipt on demand.
12. Demanding or claiming any loading and unloading work in an area where the worker has no preference to do the work.
13. Unauthorised entry into the property of an employer or any person or premises of an establishment for demanding or claiming the loading and unloading work connected with or related to the purpose specified in this Act.