

Kerala Tailoring Workers Welfare Fund Act, 1994

16 of 1994

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SCHEDULE 1 :- SCHEDULE I

Kerala Tailoring Workers Welfare Fund Act, 1994

16 of 1994

An Act to provide for the constitution of a Fund to grant relief to, to promote the welfare of, and to pay pension to tailoring workers and self-employed persons in tailoring work in the State of Kerala. WHEREAS it is expedient to provide for the constitution of a Fund to grant relief to, to promote the welfare of, and to pay pension to tailoring, workers, and self-employed persons in tailoring work in the State of Kerala and for certain other matters incidental thereto; BE it enacted in the Forty-fifth year of the Republic of India as follows:-

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Kerala Tailoring Workers Welfare Fund Act, 1994.
- (2) It extends to the whole of the State of Kerala.
- (3) It shall come into force on such date as the Government, may by notification in the Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,-

- (a) "Board" means the Kerala Tailoring Workers Welfare Fund Board constituted under section 9;
- (b) "Chief Executive Officer" means the Chief Executive Officer appointed under sub-section (1) of section 12;
- (c) "Contribution" means the sum of money payable to the Fund under section 7;
- (d) "employer" means any person who employs, directly or indirectly or whether on behalf of himself or for any other person, one or more tailoring workers to do any work in connection with the various processes in tailoring or embroidery work or a company, a firm an association of individuals or a Co-operative Society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969);
- (e) "family" means,-
 - (i) husband/wife of the tailoring worker or self-employed person, and their minor children;
 - (ii) father and mother who are dependent on the tailoring worker or self employed person;
- (f) "Fund" means the Tailoring Workers Welfare Fund established

under section 3 and the Scheme;

(g) "member" means a person registered in the welfare fund and who is paying contribution under section 7 to the Fund;

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

(i) "schedule" means the Schedule to this Act;

(j) "scheme" means scheme framed under this Act;

(k) "self-employed person" means a person who engages himself in the processes of tailoring or embroidery work with or without the assistance of machine and depends mainly on tailoring work for his livelihood;

(l) "tailoring worker" means any person who is employed for wages to do any work in connection with the various processes in tailoring work or embroidery work, with or without the assistance of machine, and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor or through an agent and depends mainly on tailoring or embroidery work for his livelihood and any other person engaged in tailoring or embroidery work whom the Government may by notification in the Gazette, from time to time, declare to be a tailoring worker for the purposes of this Act;

(m) "year" means the financial year

3. Tailoring Workers Welfare Fund Scheme :-

(1) The Government may, by notification in the Gazette, frame a scheme to be called "the Kerala Tailoring Workers Welfare Fund Scheme" for the establishment of a Fund under this Act for the welfare of the tailoring workers and self employed persons in tailoring work and there shall be established, as soon as may be after the framing of the scheme, a Fund in accordance with the provisions of this Act and the scheme.

(2) There shall be credited to the Fund,-

(a) the contributions specified under section 7;

(b) the amount borrowed by the Board under section 24;

(c) damages realized under section 25;

(d) grants or loans or advances made by the Government of India or the State Government or any institution;

(e) any donations from whatever source;

(f) any amount raised by the Board from other sources to augment the resources of the Board;

(g) fee levied under the scheme;

(h) any other amount which, under the provisions of the scheme,

shall be credited to the Fund.

(3) The Fund shall vest in, and be administered by the Board constituted under section 9.

(4) The Fund may be utilized for all or any of the following purposes, namely:-

(a) for payment of pension,-

(i) to a member who is a member at least for three years and unable to work due to infirmity or has completed the age of sixty years, and

(ii) to a person who before the commencement of this Act was a tailoring worker or a self-employed person for a period of not less than three years and has completed age of sixty years and who suffers from permanent disablement;

(b) for payment of family pension;

(c) for payment of the retirement benefits as may be specified in the scheme;

(d) for payment of financial assistance to a member who suffers from permanent disablement;

(e) for payment of loans or grants to a member to meet expenses for the marriage of daughter; or for expenses in connection with the death of a dependent or for expenses for construction or maintenance of house;

(f) to provide for maternity benefits to women workers;

(g) to provide for the tailoring workers, self-employed persons and members of their families, medical facilities and educational facilities including higher education;

(h) for payment of loan for the purchase of tailoring machines or accessories;

(i) for any other purpose specified in the scheme.

(5) Subject to the provisions of this Act, the scheme framed under sub-section (1) may provide for all or any of the matters specified in sub-section (4) and in the Schedule.

(6) The Scheme shall be laid, as soon as may be, after it is framed, 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 scheme, the scheme shall thereafter have effect only in such modified form; so however that any such modification shall be without prejudice to the validity of anything previously done under the scheme.

4. Registration Of Tailoring Worker As Member :-

(1) Every tailoring worker or self employed person who has completed 18 years of age, but has not completed 60 years of age, who is not a member of any other Welfare Fund Scheme established under any law for the time being in force and who has been engaged in the tailoring for embroidery work for not less than three years shall be eligible for registration as a member under this Act and the scheme.

(2) An application for registration shall be made, in such form as may be prescribed, to the officer authorized by the Chief Executive Officer in this behalf in whose jurisdiction the applicant resides.

(3) Every application shall be accompanied by such documents together with the fee for registration as may be specified in the scheme.

(4) If the officer authorized under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the Scheme, he may register the name of the tailoring worker:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within such time as may be specified in the scheme, prefer an appeal to the Chief Executive Officer or any other authority as may be specified by the Government in this behalf and the decision of the Chief Executive Officer or of such other authority on such appeal shall be final.

(6) The Chief Executive Officer shall cause to maintain the registers as prescribed in this behalf.

5. Cessation Of Membership :-

Subject to the provision of this Act, a tailoring worker shall cease to be a member when he is not engaged in tailoring or embroidery work for not less than two years;

Provided that if the Chief Executive officer is convinced on an application made by the tailoring worker within such time and subject to such condition as may be prescribed that a member could not engage himself in tailoring and embroidery work for sufficient reasons, his membership shall be restored.

6. Maintenance Of Register By Employer :-

Every employer shall maintain a register in the prescribed form

showing the details of employment of registered tailoring workers employed in the tailoring or embroidery work undertaken by him and the same may be inspected without prior notice by the Chief Executive Officer or any other officer authorized by him.

7. Contribution To The Fund :-

(1) Every tailoring worker and every self-employed person shall contribute to the Fund ten rupees each per month and every employer, in respect of each tailoring worker engaged by him, shall contribute five rupees per month.

(2) Every employer shall along with the amount of monthly contribution in respect of each tailoring worker engaged by him pay to the Fund fifteen rupees including the amount of the workers contribution.

(3) The amount which has been remitted by the employer as contribution of a tailoring worker, can be deducted from the salary of the tailoring worker notwithstanding any contract to the contrary but shall not be so deducted in any other manner.

(4) The Government shall contribute to the Fund every year by way of grant an amount equal to ten per cent of the contribution paid by tailoring workers and self-employed persons in a year.

(5) The contribution shall be paid to the Chief Executive Officer or to any officer of the Board authorized by the Board or in any other manner as may be decided by the Board in this behalf.

(6) The amount of contribution collected shall be deposited in the Treasury Savings Bank Account of the State or in a nationalized bank or scheduled bank or co-operative bank.

8. Modification Of The Scheme :-

(1) The Government may, by notification in the Gazette, add to, amend or vary the scheme framed under this Act either prospectively or retrospectively.

(2) Every notification under sub-section (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 agrees in making 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 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.

9. Constitution Of Board :-

(1) The Government may, by notification in the Gazette, constitute, with effect from such date as may be specified therein, a Board to be called "the Kerala Tailoring Workers Welfare Fund Board" for the administration of the Fund and to supervise or carryout the activities financed from the Fund.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and common seal and shall by the said name sue and be sued.

(3) The Board shall consist of fourteen Directors nominated by Government as hereinafter provided;-

(i) six persons representing the tailoring workers and self-employed persons; one of whom shall be from scheduled caste-scheduled tribe and one shall be a woman;

(ii) four persons representing the employers;

(iii) four persons representing the Government.

(4) One of the Directors of the Board shall be appointed by the Government to be its Chairman.

(5) The Government shall publish in the Gazette the names of the Chairman and the Directors of the Board.

(6) The Board shall administer the Fund vested in it in such manner as may be specified in the scheme.

(7) The Board may, with the previous approval of the Government, delegate to the Chairman or to the Chief Executive Officer or an officer appointed under sub-section (1) of section 12 such of its powers and functions under this Act or Scheme as it may consider necessary for the efficient administration of the Fund, subject to such restrictions and conditions, if any, as it may specify.

10. Term Of Office Of The Directors :-

(1) A Director appointed under sub-section (3) of section 9 shall hold office for a period of three years.

(2) Notwithstanding anything contained in section 11, the Government may, at any time, for reasons to be recorded in writing remove from office any Director of the Board after giving him a reasonable opportunity of showing cause against the proposed removal:

Provided that it shall not be necessary to record in writing, the reason for removal or to give an opportunity of showing cause against the proposed removal, if the Government are of the opinion that it is not expedient, in the public interest, to record the reasons in writing or to give such opportunity.

(3) Any director may resign his membership by giving notice in writing to the Government and his resignation shall be deemed to have come into force on the date of the letter of resignation.

11. Removal Of Non-Official Directors :-

(1) The Government, may, by notification in the Gazette, remove any non-official Director of the Board from office,--

(a) if he has, without the permission of the Board, been absent for three consecutive meetings of the Board:

Provided, however, that such absence may be condoned by the Board before the publication of the notification in the gazette;

(b) If in the opinion of the Government, he is unsuitable or has become incapable of acting as a Director or has so abused his position as a Director as to render his continuance as such Director detrimental to the public interest:

Provided that, before removing a Director under this sub-section, he shall be given a reasonable opportunity to show cause why he should not be removed.

(2) A non-official Director of the Board removed under clause (a) of sub-section (1), shall be disqualified for re-appointment as a Director of the Board for a period of three years from the date of his removal unless otherwise ordered by the Government.

(3) A non-official Director of the Board removed under clause (b) of sub-section (1), shall not be eligible for re-appointment until he is declared by an order of the Government to be no longer ineligible.

12. Appointment Of Officers And Staff :-

(1) The Government may appointment a Chief Executive Officer and such number of other officers and staff as they consider necessary to assist the Board in the discharge of its functions and duties under this Act.

(2) Subject to the provisions of sub-section (3), the method of appointment, salary and allowances, discipline and other conditions of service of the Chief Executive Officer and the other officers and staff appointed under sub-section (1) shall be such as may be prescribed.

(3) In the case of posts in the service under the Board to which appointment is made by direct recruitment, the Government shall mutatis mutandis observe the provisions of clauses (a), (b) and (c) of rule 14 and the provisions of rules 15,16,17 and 17A of the Kerala State and Subordinate Service Rules, 1958 as amended from time to time.

13. Determination Of The Amount Due :-

(1) The Chief Executive Officer or any other officer authorized by the Board in this behalf may, after making such enquiry as may be necessary and after giving every person liable to pay contribution under section 7, an opportunity to be heard, by order determine the amount due from every employer under the provisions of this Act or the scheme.

(2) The Officer conducting the enquiry under sub-section (1), shall for the purposes of such enquiry, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:-

(a) enforcing the attendance of any person for examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(3) Any enquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of Indian Penal Code (Central Act 45 of 1860) and for the purpose of section 196 of the said code.

(4) Any person aggrieved by an order under sub-section (1) may, within thirty days from the date of receipt of the order, prefer an appeal to the Labour Commissioner or an officer not below the rank of the District Labour Officer authorized by him in this behalf and the Labour Commissioner or the officer authorized by him may, after making such enquiry, pass such orders thereon as he thinks fit:

(5) The Government may, either suo-motu or on an application of the aggrieved person, call for the records of any proceedings of the Labour Commissioner or the officer authorized by him under sub-section (4) and make such enquiry and pass such orders as they deem fit:

Provided that, an application for revision under this sub-section

shall be made within thirty days from the date of receipt of the order by the applicant:

Provided further that no order shall be passed under this sub-section, without giving the person who may be affected thereby, an opportunity of being heard.

14. Provisional Assessment And Collection Of Contribution

:-

(1) Every employer liable to pay contribution under section 7 shall, pending determination of the amount due from him under section 13 pay on or before the 10 th day of each month an amount equivalent to one-twelfth of the amount payable annually by him under the said section.

(2) The contribution due from a self-employed person for a month shall become payable on or before the 5 th day of the succeeding month.

(3) Where the contribution under sub-section (1) is not paid on or before the due date, the Chief Executive Officer or any officer of the Board authorized by it in this behalf, shall issue a notice to the employer showing the amount in arrears, and if the amount is not paid within fifteen days of the receipt of such notice, it may be recovered in the same manner as arrears of public revenue due on land.

(4) The amount, paid under sub-section (1) by an employer shall be adjusted against the amount determined under section 13 for that year.

15. Forfeiture Of Membership In Case Of Non-Payment Of Contribution :-

Where a member has not paid his contribution under sub-section (1) of section 7 for a continuous period of not less than one year, his membership shall automatically stand cancelled:

Provided that if the Chief Executive Officer is satisfied that the non-payment of contribution was on reasonable grounds, he may revive the membership of the defaulter on payment of arrears of contribution in the manner as may be specified in the scheme.

16. Mode Of Recovery Of Money Due From Self Employed Persons And Employers :-

Any amount due from the self-employed persons and employers in

pursuance of the provisions of this Act or the Scheme may, if the amount is in arrears, be recovered in the same manner as an arrear of public revenue due on land.

17. Priority Of Payment Of Contribution Over Other Debts :-

Where any employer, liable to pay contribution under section 7 is adjudicated as insolvent or in case such employer is a company, an order of winding up is made the amount due from such employer under this Act or the Scheme shall, where the liability therefore has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which under section 64 of the Insolvency Act, 1955 (2 of 1955) or under section 530 of the Companies Act, 1956 (Central Act 1 of 1956) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

18. Employer Not To Reduce Wages Etc :-

No employer shall by reason only of his liability for the payment of any contribution to the Fund, reduce whether directly or indirectly the wages of any tailoring worker to whom the scheme applies or the total quantum of benefits to which the tailoring worker is entitled under the terms of his employment, express or implied.

19. Closure Of Accounts :-

(1) The amount outstanding in the account of a member shall be returned to him when he ceases to be a member under section 5 or section 15.

(2) In case a member does not wish to continue his membership the amount outstanding in his account shall be returned to him upon his application, in the manner prescribed.

20. Directors Of Board Etc. To Be Public Servants :-

Every Director of the Board, the Chief Executive Officer and other officers and Members of the staff of the Board 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).

21. Penalty :-

(1) A person who for the purpose of avoiding any payment to be made by him under this Act or under the scheme, or of 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 three months, or with fine which may extend to five hundred rupees or with both.

(2) A person who contravenes or makes default in complying with any of the provisions of this Act or of the scheme 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 two months or with fine which may extend to four hundred rupees or with both.

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

(4) No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Chief Executive Officer.

22. Enhanced Punishment For Second Or Subsequent Offence :-

Whoever, having been convicted by a Court, of an offence punishable under this Act, again commits the same offence, shall be punishable for every such subsequent offence with imprisonment for a term which may extend to one year, but which shall not be less than three months or with fine which may extend to four thousand rupees:

Provided that the Court may, for any adequate and special reason to be recorded in the judgement; impose a sentence of imprisonment for a term of less than three months.

23. Offences By Companies :-

(1) Where an offence under this Act has been committed by a company, every person who at the time that 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 sub-section shall render any such person liable to any punishment if he proves that the offence

was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) , where any 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 officer of the Company, such officer of the Company shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purpose of this section,-

(a) "Company" means any body corporate and includes a firm, co-operative society or other association of individuals;

(b) "Officer of the Company" means the Managing Director, Director Secretary, Treasurer or Manager of the Company and includes the office, bearers of a firm, co-operative society or other association of individuals.

24. Power Of The Board To Borrow :-

The Board may from time to time with the previous approval of the Government and subject to such terms and conditions as may be specified by the Government, borrow money for the purposes of the Scheme.

25. Power To Recover Damages :-

Where any person makes default in the payment of any contribution to the Fund under this Act or the Scheme, the Board may recover from him damages not exceeding twenty-five percent of the amount of arrears as it may think fit to impose.

26. Protection For Acts Done In Good Faith :-

No suit or other legal proceeding shall lie against any Director of the Board or any other person in respect of anything which is in good faith done or intended to be done under this Act or under this Scheme.

27. Directions By Government :-

(1) The Government may, after consultation with the Board, give to the Board, general directions to be followed by the Board.

(2) In the exercise of its powers and performance of its duties under this Act, the Board shall not depart from any general directions

issued under sub-section (1), except with the previous permission of the Government.

28. Power To Order Inquiry :-

(1) The Government may, at any time, appoint an officer not below the rank of a Joint Secretary to Government to enquire into the working of the Board and to submit a report to the Government.

(2) The Board shall give the person so appointed, all facilities for the proper conduct of the inquiry and furnish to him such documents accounts and information in the possession of the Board as he may require.

29. Power To Supersede Board :-

(1) If, on consideration of the report under section 28 or otherwise, the Government are of opinion that the Board has persistently made default in the performance or the duties imposed on it by or under the provisions of this Act or the scheme or has exceeded or abused its powers, the Government may, by notification in the Gazette, supersede the Board for such period not exceeding six months as may be specified in the notification:

Provided that, before issuing a notification under this sub-section, 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 sub-section (1),-

(a) all the Directors of the Board shall, as from the date of such publication, be deemed to have vacated their offices as such Directors;

(b) all the powers and duties which may be exercised or performed by the Board shall, during the period of supersession be exercised or performed by such officer or officers as may be specified in the notification;

(c) all funds and other properties vested 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 sub-section (1), the Government shall reconstitute the Board in the manner provided in section 9.

30. Audit Of Accounts Of The Board :-

(1) The Board shall appoint auditors to audit the accounts of the

Board.

(2) The Board shall pay to the said auditors such remuneration as the Government may direct.

(3) The accounts of the Board shall be examined and audited once in every year by such auditors.

31. Annual Report And Audited Statement Of Accounts :-

(1) The Annual report of the Board shall be prepared by the Chief Executive Officer under the direction of the Board and after approval by the Board, a copy of the report together with an audited statement of accounts shall be submitted to Government before the end of July every year.

(2) The Government shall, as soon as the annual report is received, cause the same together with the audited statement of accounts to be laid in the immediately following session of the Legislative Assembly.

32. Bar Of Jurisdiction Of Civil Courts :-

No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or the scheme required to be settled, decided or dealt with or to be determined by the Government or the Board or the Chief Executive Officer or any other officer appointed under section 12.

33. Special Provisions For Transfer Of Accumulations From Welfare Fund Scheme :-

(1) The sums standing to the credit of a member in any existing welfare fund on the date of commencement of this Act shall stand transferred to and credited to the fund established under this Act and the liability of such member to pay contribution to such welfare funds shall cease from such date.

(2) When the amount standing to the credit of a member of any existing welfare fund is transferred to the welfare fund constituted under this Act, action shall be taken recognizing the seniority of the said member in the former scheme.

34. Power To Make Rules :-

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

(2) 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

SCHEDULE I

[See section 3 (5)]

Matters for which provision may be made in the Scheme.

1. Registration of tailoring workers and self-employed persons.
2. The time and manner in which contribution shall be made to the fund by tailoring workers, self-employed person and employees under section 7 and the manner in which contribution may be recovered.
3. The manner in which the tailoring workers contribution may be recovered by the employers.
4. The constitution of any committee for assisting the Board.
5. The manner in which accounts shall be kept, the investment of moneys belonging to the Fund in accordance with any direction issued or conditions specified by the Government, the preparation of the budget, the audit of accounts and the submission of reports to the Government.
6. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.
7. The form in which a member shall furnish particulars about himself and his family whenever required.
8. The nomination of a person to receive any family pension of a member on his death and the cancellation or variation of such nomination.
9. The registers and records to be maintained with respect to tailoring workers and the returns to be furnished by the employers,
10. The form or design of any identity card for the purpose of identifying any member of the fund and for issue, custody and replacement thereof.
11. The fees to be levied for any of the purposes specified in the schedule.
12. The further powers, if any, which may be exercised by the officers appointed under the Act.
13. The manner in which the sums transferred under section 33 to be brought and credited to the fund.
14. The purposes for which the fund may be utilized for the welfare of tailoring workers, self employed person or their dependents.
15. The procedure for defraying the expenditure incurred in the administration of the Fund.
16. The procedure for paying pension, family pension, death cum-retirement benefits, grants or advances from the fund.
17. Any other matter which is to be provided for in the scheme or which may be

necessary or proper for the purpose of implementing the Scheme.