

Kerala Toddy Workers Welfare Fund Act, 1969

22 of 1969

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An Act to provide for the constitution of a fund [to promote the welfare of , and for payment of pension to toddy workers'] in the State of Kerala WHEREAS it is expedient to provide for the constitution of a fund ["to promote the welfare of, and for payment of pension to, toddy workers"] BE it enacted in the Nineteenth Year of the Republic of India, as follows:-

1. Short Title, Extent And Commencement :-

- (1) This Act may be called ["Kerala Toddy Workers Welfare Fund Act"] 1969.
- (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 Toddy Workers Welfare Fund Board] constituted under section 6;
- (b) "contribution" means a contribution payable in respect of a member under [the scheme];
- (c) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees and includes any person who has a licence for the manufacture, [distribution, storage or sale] of toddy under the Abkari Act for the time being in force;
- (d) "employee" means any person who is employed for wages in connection with the tapping, manufacture, [transport, storage or sale] of toddy 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 in or in connection with the tapping, manufacture, [transport, storage or sale] of toddy;
- ["(e) "fund" means the Kerala Toddy Workers Welfare Fund established under the scheme:"];
- (f) "manufacture" means any process for the preparation of toddy and includes the preparation of a tree for tapping;
- ["(g) "member" means a member of the fund and includes any person eligible to become a member of the fund;
- (gg) "prescribed" means prescribed by rules made under this Act;"];]

- (h) "schedule" means the schedule to this Act;
- (i) "scheme" means [the scheme] framed under this Act;
- (j) "wages" means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-
 - (i) the cash value of any food concession;
 - (ii) overtime allowance, bonus and commission.

3. Toddy Workers Welfare Fund :-

- (1) The Government may, by notification in the Gazette, frame a scheme to be called the [Kerala Toddy Workers Welfare Fund Scheme] for the establishment of a fund under this Act for employees 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) The fund shall vest in, and be administered by the Board constituted under section 6.
- (3) 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 the Schedule.

4. Contributions And Matters Which May Be Provided For In The Scheme :-

- (1) The contribution which shall be paid by the employer to the fund shall be eight per cent of the wages for the time being payable to each of the employees, and the employees contribution shall be equal to the contribution payable by the employer in respect of him.
- (2) The employer shall, in addition to the contribution payable under sub-section (1), contribute to the fund as gratuity an amount equal to five per cent of the wages for the time being payable to each of the employees:
Provided that where the amount of any contribution payable under this Act involves a fraction of a rupee, the scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee,
["(3) The Government shall contribute to the fund every year an amount not less than 7.5 per cent of the employees contribution to the fund by way of grant"].

4A. Power Of Exemption :-

(1) Notwithstanding anything contained in section 4, where the Government, on the recommendation of the Board, are of opinion that it is necessary in the public interest so to do, they may, by notification in the Gazette, exempt any class of employers, either prospectively or retrospectively, from payment of contribution under that section for such period as may be specified in the notification.

(2) For the removal of doubt it is hereby declared that an employee shall not be liable to pay his contribution under sub-section (1) of section 4 for the period for which his employer is exempted from payment of contribution."].

5. Modifications Of 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 agrees 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.

6. 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 Toddy Workers Welfare Fund Board] for the administration of the fund and to supervise or carry out the activities financed from the fund.

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

(3) The Board shall consist of such number of Directors as may be appointed by the Government and they shall be chosen in such manner as may be provided for in the scheme:

Provided that the Board shall include an equal number of Directors representing the Government, the employers and the employees.

(4) One of the Directors of the Board shall be appointed by the

Government as Chairman.

(5) The Government shall publish in the Gazette the names of all 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 its Chairman or to the Chief Welfare Fund Inspector or to any Welfare Fund Inspector such of its powers and functions under this Act or the 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:

Provided that no delegation shall be made under this sub-section unless all the members present support such delegation."].

["(8). No act or proceeding of the Board shall be invalidated merely by reason of any vacancy in, or any defect in the constitution of the Board."].

7. Appointment Of Officers :-

(1) The Government may appoint a Chief Welfare Fund Inspector and as many Welfare Fund Inspectors as they consider necessary to assist the Chief Welfare Fund Inspector in the discharge of his duties. The Chief Welfare Fund Inspector shall be the Chief Executive Officer of the Board.

(2) The Board may with the previous approval of the Government appoint such staff as it may consider necessary.

(3) The method of recruitment, salary and allowances, discipline and other conditions of service of the Chief Welfare Fund Inspector and the Welfare Fund Inspectors shall be such as may be specified by the Government and the method of recruitment, salary and allowances, discipline and other conditions of service of the staff appointed by the Board shall be such as may be specified by the Board with the previous approval of the Government.

8. Determination Of Amounts Due From Employers :-

(1) The Chief Welfare Fund Inspector or any other Welfare Fund Inspector authorised by him in this behalf may, by order, determine the amount due from any employer under the provisions of this Act or of the scheme and for this purpose may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are

vested in a court for trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) enforcing the attendance of any person or 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.

(3) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code.

(4) No order determining the amount due from any employer shall be made under sub-section (1) unless the employer has been given a reasonable opportunity of being heard.

(5) Any person aggrieved by an order under sub-section (1) may prefer an appeal to the Government or any other authority as may be specified by the Government within sixty days from the date of the receipt of the order and the decision of the Government or of such authority on such appeal shall be final.

8A. Provisional Assessment Of Contribution :-

["8A. Provisional assessment of contribution.-

["(1) Every employer shall, pending determination under section 3 of the amount due from him in any year, pay every month by way of advance contribution an amount equivalent to one-twelfth of the amount payable annually in respect of his employees according to the latest determination under the said section:

Provided that every employer, in respect of whom an order of determination under section 8 has not been made at any time, shall pay every month by way of advance contribution an amount equivalent to one-twelfth of the amount of contribution payable by him under section 4 in respect of his employees according to the best of his judgment:

Provided further that where advance contribution is paid by an employer according to the best of his judgment, a statement showing the manner in which such judgment was made by him shall be produced at the time of payment."].

(2) The advance contribution for a month shall become payable on or before the 5th day of the succeeding month.

(3) Where the advance contribution is not paid on or before the due date the Welfare Fund Inspector shall issue a notice to the defaulter showing the amount of arrears, and if the amount is not paid within seven days of the receipt of such notice, it may be recovered in the same manner as arrears of land revenue.

(4) The amount paid under this section for an year shall be adjusted against the amount determined under section 8 for that year."].

8B. Power To Rectify Errors, Etc :-

(1) The Chief Welfare Fund Inspector or any other Welfare Fund Inspector who has passed an order under sub-section (1) of section 8, against which no appeal has been made to the Government as provided in sub-section (5), may, on application or otherwise, and any time within four years from the date of passing such order, rectify any error apparent on the face of the record:

Provided that no such rectification, which has the effect of enhancing the amount determined, shall be made unless the employer concerned has been given a reasonable opportunity of being heard:

Provided further that the time-limit mentioned in this sub-section shall not be applicable for a period of six months from the date of commencement of the Kerala Toddy Workers Welfare fund (Amendment) Act, 1996, in the case of an order made under sub-section (1) of section 8 which is prejudicial to the interests of the Fund.

(2) Where any such rectification has the effect of reducing the mount determined, the officer concerned shall make refund to the employer entitled thereto or adjustment against future contribution of the employer according to his option.

(3) Where any such rectification has the effect of enhancing the amount determined, the provisions of this Act and the scheme made thereunder shall apply to every such order of enhancement, as if such determination has been made under sub-section (1) of section 8.

8C. Power Of Revision :-

8C. Power of revision.-

The Chairman of the Board may, on his own motion, call for an examine any order passed under sub-section (1) of section 8, or sub-section (1) of section 8B at any time within a period of two years from the date of passing such order if he has reason to believe that such an order is prejudicial to the interests of the board, and subject to the provisions of this Act and the scheme made thereunder may pass such orders as he thinks fit:

Provided that no such order shall be passed unless the employer concerned has been given a reasonable opportunity of being heard:

Provided further that the time-limit mentioned in this section shall not be applicable for a period of six months from the date of commencement of the Kerala Toddy Workers Welfare Fund (Amendment) Act, 1996."].

9. Mode Of Recovery Of Moneys Due From Employers :-

Any amount due from the employer in pursuance of the provisions of this Act, or the scheme may, if the amount is in arrear, be recovered ["together with interest thereon at the same rate as applicable , from time to time, to the dues in arrears under the Abkari Act, 1 of 1077"], in the same manner as an arrear of land revenue.

10. Protection Against Attachment :-

(1) The amount standing to the credit of any member in the fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member and no receiver appointed under the insolvency Act, 1955 shall be entitled to or have any claim on any such amount.

(2) Any amount standing to the credit of a member in the fund at the time of his death and payable to his nominee under the scheme shall, subject to any deduction authorised by the scheme vest in

the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member.

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

Where any employer is adjudicated insolvent or being a company an order for winding up is made, the amount due from the employer under the scheme shall, where the liability therefor 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 or under section 530 of the companies Act, 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.

12. 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 employee to whom the scheme applies or the total quantum of benefits to which the employee is entitled under the terms of his employment express or implied.

13. Members Of Board, Etc., To Be Public Servants :-

Every Director of the Board, the Chief Welfare Fund Inspector and every Welfare Fund Inspector appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

14. Penalty :-

(1) Whoever for the of avoiding any payment to be made by himself 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 [six months] or with fine which may extend to [one thousand rupees] or with both.

(2) Whoever 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 three months or with fine which may extend to five hundred rupees, or with both.

["(2A) No court inferior to that of a Judicial Magistrate of the first class shall try any offence punishable under this Act."].

["(3) No court shall take cognisance 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 Welfare Fund Inspector."]

14A. Enhanced Punishment For Default In Payment Of Employees Contributions Already Deducted :-

(1) Whoever makes default in the payment of the employees share of contribution to the fund after having deducted it from the wages of the employees, in accordance with the provisions of this Act or the scheme, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than three months and with fine which may extend to four thousand rupees.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), an offence under sub-section (1) shall be cognizable.

14B. Enhanced Punishment For Second Or Subsequent Offence :-

14B. Enhanced punishment for second or subsequent offence.-

Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence against 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 and the with fine which may extend to four thousand rupees."].

15. Offences By Companies :-

(1) If the person committing an offence under this Act is a company, every officer of the company who is in default 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 in any proceeding against an officer of the company in respect of an offence under this Act it appears to the Court hearing the case that the offence is attributable to the negligence, default, breach of duty, misfeasance or breach of trust committed by the officer, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him either wholly or partly, from his liability on such terms as it may think fit.

(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 wilful negligence, default, breach of duty, misfeasance or breach of trust on the part of any officer of the company, such officer of the company, shall be deemed to be guilty of the 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, a co-operative society or other association of individuals;

(b) "director" in relation to a firm means a partner in the firm;

(c) "officer of the company" means the Managing Director, Directors, Managing Agent, Secretary, Treasurer or Manager of the company and includes the office bearers of a firm, co-operative society or other association of individuals; and

(d) "officer of the company who is in default" means any officer of the company who is knowingly guilty of non-compliance, failure, or contravention of the provisions of this Act or the scheme made thereunder or who knowingly and willfully authorizes or permits such non-compliance, failure or contravention.

15A. Directions By Government :-

The Government may, after consultation with the Board, give to the Board general instructions 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 instructions issued under sub-section(1), except with the previous permission of the Government.

15B. Power To Order Inquiry :-

(1) The Government may, at any time, appoint any person to inquire 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 or information in possession of the Board as he may require.

15C. Power To Supersede The Board :-

(1) If, on consideration of the report under section 15B or otherwise, the Government are of opinion that the Board has persistently made default in the performance of 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 the six months as may be specified in the notification:

Provided that, before issuing a notification under this subsection, 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 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 re-constitute the Board in the manner provided in section 6."].

15D. Power To Borrow :-

The Board may, 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.

15E. Audit Of Accounts Of The Board :-

The accounts of the Board shall be examined and audited once in every year by the Director of Local Fund Audit.

15F. Laying Of Annual Report And Audited Accounts Of The Board Before The Legislative Assembly :-

(1) The copy of the annual report of the Board, prepared under the direction of, and approved by, the Board together with an audited statement of accounts shall be submitted to Government before the end of the months of December every year.

(2) The Government shall as soon as the receipt of the same, cause to be laid on the table of the Legislative Assembly."].

16. Section 16 :-

17. Protection For Acts Done In Good Faith :-

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

17A. 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 required to be settled, decided or dealt with or to be determined by the Government or the Board or the Chief Welfare Fund Inspector or any Welfare Fund Inspector."].

18. Special Provisions For Transfer And Vesting Of Welfare Funds Established By Custom Or Agreement :-

All welfare funds established either by custom or agreement before the date of commencement of this Act and standing to the credit of the employees on the date of the commencement of this Act shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument, stand transferred to and vest in the fund established under section 3 and shall be credited to the accounts of the employees entitled thereto in the fund.

19. 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) 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 sessions 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."].