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## **Tamil Nadu Essential Services Maintenance (Amendment) Act, 2003**

**37 of 2003**

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## **Tamil Nadu Essential Services Maintenance (Amendment) Act, 2003**

**37 of 2003**

An Act to amend the Tamil Nadu Essential Services Maintenance Act, 2002. BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fifty-fourth Year of the Republic of India as follows:-

Statement of Objects and Reasons<sup>2</sup> The Tamil Nadu Essential Services Maintenance Act, 2002 (Tamil Nadu Act 36 of 2002) has not explicitly provided for effective steps to deal with the Government Servants who openly defy the notification issued under Section 3. Apart from the possible prosecution under Section 4, the Government thought it fit that further powers are needed to deal with such defiant persons in a manner effectively affecting their service conditions. Accordingly, the Tamil Nadu Essential Services Maintenance (Amendment) Ordinance, 2003 (Tamil Nadu Ordinance 3 of 2003) was promulgated by the Governor on the 4th July 2003 and the same was published in the Tamil Nadu Government Gazette Extraordinary, dated the 4th July 2003. Further, it is proposed to exclude the refusal to work overtime from the definition of the term 'strike.'

2. The Bill seeks to replace the said Ordinance with modification.

1. Received the assent of the Governor on the 14th November, 2003 - Published in Tamil Nadu Government Gazette, Extraordinary, Part IV, Section 2, Page 169, dated 16th November, 2003.

2. Vide T.N. Bill No.36 of 2003 - Published in Tamil Nadu Government Gazette, Issue No.308, dated 6th November 2003.

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

(1) This Act may be called the Tamil Nadu Essential Services Maintenance (Amendment) Act, 2003.

(2) It shall be deemed to have come into force on the 23rd day of April, 2003.

## **2. Amendment Of Section 2 :-**

In Section 2 of the Tamil Nadu Essential Services Maintenance Act, 2002 (Tamil Nadu Act 36 of 2002) (hereinafter referred to as the Principal Act), in sub-section (1), for clause (c), the following clause shall be substituted, namely:

"(c) "strike" means the cessation of work by a body of persons while employed in any essential service acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept work assigned, and includes any conduct which is likely to result in, or results in cessation or substantial retardation of work in any essential service."

## **3. Substitution Of Section 7 :-**

For Section 7 of the Principal Act, the following Section shall be substituted, namely:

"7. Disciplinary Action: (1) Notwithstanding anything contained in any Service Rules that are made applicable to Government servants, if any notification under Sec.3 of the Act has been published by the Government in the official gazette prohibiting strikes in respect of the service defined under Sec.2 of the Act, any Government servant, who has not reported for duty, after the notification prohibiting strike, where he/she was reporting prior to the notification, shall be deemed to have admitted having committed misconduct knowingly and voluntarily, warranting the punishment.

(2) The Appointing Authority may impose any penalty including a major penalty, viz., dismissal from service or in the alternative a break in service as the case may be for the aforesaid admitted misconduct without conducting enquiry and is deemed that it is not reasonably practicable to hold an enquiry and the circumstances warranting invocation of clause (b) of second proviso to Article 311(2) of the Constitution exist.

Explanation I: If a Government servant absents himself/herself

from attending office, he/she is deemed to have participated in the strike which has been prohibited by issuance of notification under Sec.3 of the Act and he/she is deemed to have explicitly admitted the misconduct.

Explanation II: It will not be obligatory on the part of the Appointing Authority or the Government as the case may be to individually serve the order of dismissal or the order of break in service or any other punishment on the employees by issuance of separate order and it will be sufficient if the said order is published in the Notice Board of the office where he/she was working, or if a newspaper publication is made indicating either en masse or individually stating the decision made in terms of sub-section (2) in respect of the said employee. Such publication can be made in any newspaper approved by the Department of Information and Public Relations.

(3) The Government servant against whom an order of dismissal or an order effecting break in service or any other punishment has been passed is entitled within one week to approach the Appointing Authority who has passed the order and prove that his/her non-reporting to duty was not due to his/her participation in the strike but due to bona fide reasons other than participation in the strike.

(4) If the Appointing Authority is satisfied that he/she did not join the strike, the Appointing Authority may pass orders revoking or modifying the orders passed under Sec.7(2) or reject the same.

(5) If a Government servant is aggrieved by the order under Sec.7(4) he/she may appeal to the Appellate Authority within two weeks and the order passed by the Appellate Authority shall be final.

Explanation: The Appellate Authority for the purposes of the above sub-section is the authority against whom appeal would normally lie under the respective Rules."

#### **4. Repeal And Saving :-**

(1) The Tamil Nadu Essential Services Maintenance (Amendment) Ordinance, 2003 (Tamil Nadu Ordinance 3 of 2003) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the Principal Act, as amended by this Act.